

# Executive Summary

Effective whistleblowing provides an essential service in fostering integrity and accountability while deterring and exposing misconduct, fraud and corruption. A recent analysis of whistleblower protections across G20 countries found Australia's laws to be comprehensive for the public sector, but lacking in the private sector. However, the Moss Review of the *Public Interest Disclosure Act 2013* (PID Act) identified many flaws and areas for reform of the PID Act. Evidence to the inquiry, as well as consideration of existing laws, indicates that whistleblower protections remain largely theoretical with little practical effect in either the public or private sectors. This is due, in large part, to the near impossibility under current laws of:

- protecting whistleblowers from reprisals (i.e. from retaliatory action);
- holding those responsible for reprisals to account;
- effectively investigating alleged reprisals; and
- whistleblowers being able to seek redress for reprisals.

Another significant issue identified by the committee is the fragmented nature of whistleblower legislation. In particular, significant inconsistencies exist not only between various pieces of Commonwealth public and private sector whistleblower legislation, but also across the various pieces of legislation that apply to different parts of the private sector. The committee has made a number of recommendations to address these issues based on a detailed comparison of three separate Acts.

The committee has recommended separate public and private whistleblower protection legislation. However, the committee recognises that it would be the preference of Labor and Green committee members that a single Act be proceeded with in the first instance.

The committee's work on this inquiry was greatly assisted by a substantial body of academic work over the past two decades on whistleblower protections. The committee has used the best practice guidelines set out in the *Breaking the Silence* report as a systematic basis for conducting its inquiry and structuring this report. The table overleaf summarises the best practice criteria for whistleblowing legislation and the areas where the committee is recommending reforms.

One of the committee's main recommendations is the establishment of a Whistleblower Protection Authority (to be housed within a single body or an existing body) that can support whistleblowers, assess and prioritise the treatment of whistleblowing allegations, conduct investigations of reprisals, and oversight the implementation of the whistleblower regime for both the public and private sectors.

The committee notes the Moss review recommendation to ensure that the whistleblower regime is focussed on serious misconduct such as fraud and corruption. The committee considers that, for whistleblowing associated with serious misconduct, it is likely that reprisals would be a form of corrupt conduct (that is, dishonest or unethical or criminal conduct to obtain personal benefit by a person entrusted with a

position of authority). It is therefore the committee's view (assuming that the Moss Review recommendations are implemented) that the most appropriate body to house the Whistleblower Protection Authority is a body that has a demonstrated track record in identifying and investigating corruption and bringing those responsible to account.

### Best practice criteria for legislation and recommendations for reform

<b>Best Practice Criteria for Whistleblowing Legislation</b>		<b>Summary of reforms recommended by the committee</b> (see Chapter 4 for further detail)
<b>1</b>	Broad coverage of organisations	Broaden to cover the private sector, and ensure consistency by bringing all private sector legislation into a single Act.
<b>2</b>	Broad definition of reportable wrongdoing	Broaden the private sector definition of disclosable conduct to a breach of any Commonwealth, state or territory law.
<b>3</b>	Broad definition of whistleblowers	Provide protections for both former and current staff that could make a disclosure, or are suspected of making a disclosure. Provide appropriate protection for recipients of disclosures and those required to take action in relation to disclosures.
<b>4</b>	Range of internal / regulatory reporting channels	Adopt a tiered approach comprising: (i) internal disclosure; (ii) regulatory disclosure; and (iii) external disclosure (in appropriate circumstances).  Protect internal disclosures in the private sector, including in registered organisations.
<b>5</b>	External reporting channels (third party / public)	
<b>6</b>	Thresholds for protection	Align thresholds for protection across the public and private sectors.
<b>7</b>	Provision and protections for anonymous reporting	Allow for anonymous disclosures across the public and private sectors.
<b>8</b>	Confidentiality protected	Protect the confidentiality of the disclosures and the whistleblower's identity.
<b>9</b>	Internal disclosure procedures required	An appropriate body to set and promote standards for internal disclosure procedures in the private sector.
<b>10</b>	Broad protections against retaliation	Align the public and private sector with the protections, remedies and sanctions for reprisals in the <i>Fair Work Registered Organisations Act 2009</i> .
<b>11</b>	Comprehensive remedies for retaliation	
<b>12</b>	Sanctions for retaliators	

13	Oversight authority	Establish a Whistleblower's Protection Authority (to be housed within a single body or an existing body) that has as its priority to support whistleblowers, that has the power to investigate reprisals, and that will oversight the implementation of the whistleblower regime.
14	Transparent use of legislation	Annual reports to Parliament for both the public and private sectors in consistent format to facilitate comparison.

