

Submission by the
Commonwealth Ombudsman

**Public Interest Disclosure Amendment
(Review) Bill 2022**

Submission by the Commonwealth Ombudsman, Iain Anderson

20 January 2023

Introduction and summary

1. The Office of the Commonwealth Ombudsman (OCO) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Public Interest Disclosure Amendment (Review) Bill 2022 (Cth) (the Bill).
2. The Bill will implement 21 of the 33 recommendations of the independent statutory review of the *Public Interest Disclosure Act 2013* (PID Act) conducted by Mr Philip Moss AM in 2016 (the Moss Review)¹ as well as:
 - recommendations 10 and 11 of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) report on the inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press, and
 - recommendations 6.1 and 6.3 of the Parliamentary Joint Committee on Corporations and Financial Services report on the inquiry into whistleblower protections in the corporate, public and not-for-profit sectors.
3. Should the Bill be passed, OCO understands the Australian Government intends to commence a second stage of reform to simplify the PID scheme and implement protections for public sector whistleblowers.²
4. This submission covers:
 - OCO's role concerning the PID scheme
 - analysis of the proposed amendments
 - implementation risks
 - consideration of a whistleblower protection authority.

Our role

5. The purpose of the OCO is to:
 - provide assurance that the organisations we oversee act with integrity and treat people fairly, and
 - influence systemic improvement in public administration in Australia and the region.
6. We seek to achieve our purpose by:
 - independent, impartial review of complaints about Australian Government administrative action
 - fostering public administration that is accountable, lawful, fair, transparent and responsive, and
 - providing a level of assurance that Commonwealth, State and Territory law enforcement, integrity and regulatory agencies are complying with statutory requirements and have sound administrative practices in relation to covert, intrusive and coercive powers within our jurisdiction.

¹ *Public Interest Disclosure Act (PID Act) 2013* s 82A.

² Commonwealth, *Parliamentary Debates*, House of Representatives, 30 November 2022, 3924, (the Hon Mark Dreyfus KC MP, Attorney-General).

Our role concerning the PID scheme

7. OCO has a role in overseeing and reporting on the operation of the public interest disclosure (PID) Scheme. This includes handling and investigating complaints regarding how an agency handled a disclosure under the PID Act. OCO can receive an internal disclosure (i.e. a disclosure made by an OCO staff member); and consent to another agency allocating a PID to us for investigation.³ OCO can also investigate complaints concerning an agency's handling of a disclosure or PID investigation under the *Ombudsman Act 1976* (Ombudsman Act).
8. OCO also has a role in promoting awareness and understanding of the PID Act and providing information to disclosers and agencies.⁴ OCO provides information on its website on who can make a disclosure, what conduct can be disclosed, how to make a disclosure and has published an Agency Guide to promote best practice administration of the PID Scheme.⁵ OCO has specific responsibilities to assist principal officers, authorised officers, public officials within agencies, and former public officials who once belonged to agencies, in relation to the operation of the PID Act.⁶ OCO may also determine standards relating to agencies' administration of the PID Scheme.⁷
9. Under the Ombudsman Act, OCO may undertake own motion investigations into administrative actions concerning the PID scheme. OCO's recent *Investigation into compliance with the Public Interest Disclosure Act 2013* published in October 2022 found that agencies could improve their practices around:
 - the content and level of detail in investigation reports
 - the content and level of detail in Authorised Officer decision records
 - the handling of reprisal risk assessments
 - record keeping, and
 - communication with disclosers.
10. Finally, OCO prepares an annual report on the operation of the PID Act. The report includes details of the number of PIDs received and investigated by each agency, the kinds of disclosable conduct alleged, and the actions taken in response to report recommendations.⁸ See footnote for links to annual reports for 2020-21 and 2021-22.⁹

Implementation of Moss Review recommendations

11. The Bill would implement 21 of the 33 recommendations of the Moss Review. Attachment A sets out OCO's assessment of the Bill against the Moss Review recommendations.

³ Section 5A of the *Ombudsman Act 1976* deems that disclosures allocated to OCO under s 43 of the PID Act are actions relating to a matter of administration. Where the disclosure is allocated to OCO, the discloser is taken to have made a complaint to OCO in respect of that action.

⁴ *PID Act* s 62(b).

⁵ Available at:

https://www.ombudsman.gov.au/_data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf

⁶ *PID Act* s 62(a).

⁷ *PID Act* s 74.

⁸ *PID Act* s 76.

⁹ [Commonwealth Ombudsman Annual Report 2020-21](#), Part 4; and [Commonwealth Ombudsman 2021-2022 Annual Report](#), Part 4.

Carve out of personal work-related conduct

12. As flagged in the Moss Review, a public official may allege wrongdoing that can be categorised as disclosable conduct under the PID Act yet is not significant or serious enough to warrant protection or investigation under the PID Act. The Moss Review recommended that the scope of disclosable conduct be redefined to focus on fraud, serious misconduct and corrupt conduct.
13. Schedule 1, Part 1 of the Bill seeks to carve out ‘personal work-related conduct’ from the PID scheme, unless the personal work-related conduct relates to systemic wrongdoing or constitutes reprisal action in relation to a disclosure under the PID Act. The Bill proposes that personal work-related conduct would not be disclosable conduct unless the conduct:
 - would constitute taking a reprisal against another person, or
 - is either of such significant nature it would undermine public confidence in, or has other significant implications for, an agency (or agencies).
14. The proposed amendments may not have the desired effect of re-focusing the PID Act on integrity related wrongdoing due to the broad nature and subjectivity of the exceptions. Many disclosers express concerns when making disclosures about perceived reprisals. Many disclosers make disclosures because they believe the conduct in question is significant and could undermine public confidence in an agency. The proposed amendments may not necessarily reduce the volume of personal work-related disclosures made under the PID Act.
15. This is not a simple matter to address in law though. Other jurisdictions are also grappling with excluding personal work-related conduct from public interest disclosure schemes.¹⁰ While authorised officers will have more scope under the proposed amendment to decline to treat matters as disclosures under the PID Act, we will probably see an increase in complaints by disclosers who disagree with such decisions. The broad nature and subjectivity of these kinds of definitions and exceptions means that high quality guidance is key to supporting compliance by the regulated population.
16. Subject to passage of the Bill, OCO will develop additional guidance about personal work-related conduct to assist agencies and disclosers. This guidance alongside the proposed changes may give authorised officers more scope to decide that purported disclosures that do not qualify as disclosures under the PID Act.

Periodic review of the PID Act

17. Item 21 of the Bill provides the PID Act should be reviewed after 5 years. The implementation of 21 of the 33 Moss Review recommendations through the Bill constitutes a significant change to the legislation and the operation of the PID scheme. It will be important to evaluate the effectiveness of the changes made by the Bill sooner rather than later. Noting the timing and nature of the review may be impacted by the second stage of PID reform, the Committee may wish to consider whether the next review of the PID scheme should commence 3 years after the second stage of reforms have been enacted.
18. Further, as noted in the Explanatory Memorandum, the Moss Review considered regular reviews (every 3 to 5 years) were necessary to enable the PID Act’s operation to be assessed. The Government’s reform process presents an opportunity to replace the current obligation

¹⁰ For example, see s 26 of the *Public Interest Disclosures Act 2022 No 14* (NSW) and s 8 of the *Public Interest Disclosure Act 2012* (ACT).

for a once-off statutory review with a requirement for periodic reviews. The Committee may wish to consider whether an obligation for periodic statutory review would better enable governments to monitor the operation of the PID scheme. Periodic reviews would provide regular opportunities to revisit important elements of the scheme, including interactions with other legislative frameworks and new case law.

Improvements to PID scheme oversight

19. Currently, OCO has limited visibility of how Commonwealth agencies handle disclosures. Under the Ombudsman Act, OCO may receive and investigate complaints about an agency's handling of a disclosure and any investigation undertaken. The Ombudsman can also decide to commence an own motion investigation into matters including agencies' administration of the PID Scheme as occurred in 2022. This gives OCO oversight of the PID Scheme on a case-by-case basis rather than as a system.
20. OCO also receives notifications and statistics from agencies which provide quantitative information rather than real visibility of and insights into the operation of the PID scheme. OCO only receives notifications from agencies when an agency allocates a disclosure (s 44(1A)(a)), and when an agency exercises its discretionary power not to investigate a disclosure, or not to investigate a disclosure further (s 50A). Additionally, OCO receives the following statistics from each PID agency for our annual report:
 - the number of disclosures received by authorised officers
 - the kinds of disclosable conduct to which those disclosures relate
 - the number of disclosure investigations conducted, and
 - the actions taken by principal officers in response to recommendations in investigation reports.¹¹
21. Item 28, clause 51 of the Bill introduces a requirement for an agency to provide OCO with a copy of a disclosure investigation report within a reasonable period.¹² This would give effect to recommendation 3 of the Moss Review. The intention of the proposed change is designed to provide a level of assurance over how agencies are handling the disclosures they process.
22. Clause 51 works alongside clause 55, item 34, which requires agencies to notify OCO of the completion of a disclosure investigation report. This notification empowers OCO to review the handling of the disclosure investigation, if OCO chooses to. Clause 55(4) provides that for the purposes of OCO's review of the disclosure investigation, OCO can obtain information and documents from the agency and make inquiries as OCO sees fit. A note under clause 55(2) suggests OCO could choose to use the powers in clauses 55(3)-(6) as well powers under the Ombudsman Act.
23. The ability for OCO to make inquiries and obtain information through existing own motion powers will help to get around the fact that neither the PID Act nor the Bill require agencies to include detailed information about their handling of the disclosure investigation in their report. For example, there is no requirement to include details about the initial handling of a disclosure by a supervisor, an authorised officer's decision to not allocate some allegations or a decision to not investigate or not further investigate some allegations in accordance with s 48 of the PID Act. Currently, a disclosure investigation report must include the allegations, evidence considered, findings, recommendations, reprisal allegations and

¹¹ PID Act s 76.

¹² Public Interest Disclosure Amendment (Review) Bill 2022 (PID Bill), Item 28, clause 51(4).

actions taken by an agency in response any reprisal allegations. A disclosure investigation report should also explain how the evidence informed the findings, but detail varies across agencies. The Bill also enables agencies to delete material in reports provided to OCO that can identify any person or would contravene a designated publication restriction.¹³ Providing redacted disclosure investigation reports to OCO may improve visibility of the number of investigations and investigation outcomes, but it will not necessarily provide insight into how agencies have handled their disclosure investigations. Absent OCO making further inquiries of an agency, the provision of a redacted report would be unlikely to provide a sound basis for making a recommendation¹⁴ to an agency about its handling of the PID. Achieving the policy intention may therefore be a resource intensive undertaking for OCO.

24. To efficiently manage this process, OCO will take a risk-based approach to the review of disclosure investigation reports. Depending on the quality of reporting, OCO may be able to identify, on the face of reports, systemic issues concerning the handling of disclosure investigations within or across agencies. Where OCO needs further information, the quality of reporting is poor or systemic issues are apparent, OCO could commence an own motion investigation under s 5(1)(b) of the Ombudsman Act and request the agency provide further information under s 8 of the Ombudsman Act.¹⁵ For example, OCO could seek source material such as witness statements and evidence to support our consideration of whether an agency's decision should be reviewed.
25. However, we wish to clarify that, contrary to paragraph 2.73 of the Explanatory Memorandum, the receipt of disclosure investigation reports would not enable OCO to determine whether to intervene in an agency's decision-making to protect an individual or remedy an error. An agency would only provide a disclosure investigation report to OCO upon completion of its disclosure investigation and therefore after investigatory decisions had been made.
26. A notable gap is that OCO would not have visibility of how agencies handle allegations where a decision is taken not to investigate (s 48), including where this is because a parallel investigation is occurring. Currently, OCO only receives a notification from an agency of an allocation decision¹⁶ or if the agency decides under s 48 or 49 not to investigate a disclosure¹⁷ (including a brief reason for the decision – this could simply be that a parallel investigation is occurring). While the Bill prescribes additional information that agencies must provide to OCO about their decision not to investigate a disclosure, the information is not sufficient for OCO to oversee the agency's handling of that process. If the intention is that OCO have holistic oversight of agencies' handling of disclosures, including the actions of supervisors¹⁸ and the operation of the PID scheme, further amendments and funding would be required.

Implementation risk

27. The reform of the PID Act will occur in two stages. Stage one is the implementation of certain Moss Review and parliamentary committee recommendations through the current

¹³ *PID Bill*, Item 30, clause 51(6).

¹⁴ *PID Bill* s 55.

¹⁵ s 51 reports concern the handling of a disclosure which OCO considers to be a matter of administration. This enlivens OCO's own motion investigation powers at s 5(1)(b) of Ombudsman Act.

¹⁶ *PID Act* s 44(1A)(a).

¹⁷ *PID Act* s 50A(1)(a).

¹⁸ *PID Bill* s 55(3)(a).

Bill. The second stage of reform is proposed to address the underlying complexity of the PID scheme, accessible protections for disclosers and consultation on the need for a whistleblower protection authority or commissioner.¹⁹

28. OCO's education role in relation to the PID Act involves developing training and guidance materials to help agencies implement and comply with their PID Act obligations. OCO's experience is that even with support both disclosers and agencies find the PID process complex and challenging.
29. A rapid two-staged reform process presents regulatory burden for agencies who need to implement systems to comply with new obligations, which may be subject to further amendments within a year and may increase agencies' compliance risks. Should the Bill be passed, OCO will develop detailed guidance to help agencies comply with their new obligations. Following Stage 2 reforms in a year's time, OCO will further update education resources for agencies.
30. It could take OCO up to 6 months to develop the package of agency guidance and training to support each stage of the PID Act reform process. OCO therefore recommends the government consider a 6-month transition period ahead of the commencement of the stage 2 reforms.

Consideration of a whistleblower protection authority

31. On 30 November 2022, the Attorney-General flagged his intention to consider a whistleblower protection authority or commission.²⁰ While this is not a matter raised by the current Bill, we offer the following comments on the legislation as it currently stands.
32. On its face, the existing PID Act provides protections against various liabilities and reprisal action. For example, the PID Act protects current or former public officials who make a qualifying disclosure from criminal, civil, and administrative liability,²¹ and makes it an offence for persons to take or threaten to take reprisal action against a discloser or other person because of a proposed or suspected PID.²² A discloser can currently take civil action and seek injunctions, apologies and orders.²³ The Bill broadens certain whistleblower protections.²⁴
33. However, in OCO's experience, these protections are difficult to access by disclosers, and disclosers have reported that court-based remedies are not affordable, demonstrated by the fact these have very rarely been invoked, and prosecutions concerning reprisals are limited and difficult to achieve.²⁵ This practical reality may discourage prospective disclosers from coming forward and diminish public confidence in PID scheme.

¹⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 November 2022, 3924, (the Hon Mark Dreyfus KC MP, Attorney-General).

²⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 November 2022, 3924, (the Hon Mark Dreyfus KC MP, Attorney-General).

²¹ *PID Act* s 10(1).

²² *PID Act* s 19(1) and (3).

²³ *PID Act* s 15.

²⁴ *PID Bill*, Item 41 clause 13(1)(b), Item 44 clause 13(2), Item 46 clause 19.

²⁵ Joint Select Committee on National Anti-Corruption Commission – Hansard, 20 October 2022 (p. 29, Iain Anderson).

34. The PID Act also requires principal officers to establish procedures for dealing with disclosures relating to their agency including the assessment of risks that reprisals may be taken against individuals who make disclosures.²⁶ Principal officers must also take reasonable steps to protect public officials who belong to the agency from detriment, or threats of detriment, relating to disclosures by those public officials.²⁷
35. OCO currently has limited oversight of agencies' compliance with these obligations to protect staff who make public interest disclosures, and the Ombudsman Act provides that OCO does not have jurisdiction to investigate most matters relating to APS employment, including disciplinary action and termination of employment.²⁸ OCO's consideration of these matters in the PID Act context focuses on whether an agency has undertaken a reprisal risk assessment and adequately considered and responded to reprisal concerns.
36. In our recent *Investigation into compliance with the Public Interest Disclosure Act 2013*, we highlighted a need for agencies to complete a reprisal risk assessment as soon as possible after a PID is allocated for investigation and re-assess and update it throughout the investigation.²⁹ Our investigation found that:
- procedures for considering and responding to reprisal risk were not always applied in practice
 - at times, reprisal risk assessments were unclear and lacked detail about how a risk rating was reached and how any mitigating factors would help to manage risks identified
 - reprisal risk assessments often lacked detail about how mitigation strategies would be implemented and by whom
 - where mitigation strategies were actioned, this was not always recorded
 - when conducting a reprisal risk assessment, agencies did not always consult the discloser to discuss reprisal risks they perceived and their views on proposed mitigation strategies
 - where consultation with disclosers did occur, this was not always recorded
 - limited evidence of procedures being reviewed after the initial reprisal risk assessment was completed, and
 - where reprisal risk was reviewed, the analysis and outcomes were not always recorded.
37. Further, OCO has observed that whistleblowers do not feel supported and would probably benefit from more support.³⁰ While OCO is not currently empowered to provide this support, it is a function OCO could provide, subject to additional resourcing, if the government were so minded.
38. OCO looks forward to engaging in the government's proposed consultation on whistleblower protection.

²⁶ PID Act s 59(1)(a).

²⁷ PID Act s 59(3)(a).

²⁸ Ombudsman Act s 5(2)(d).

²⁹ Commonwealth Ombudsman, *Investigation into compliance with the Public Interest Disclosure Act 2013*, paragraph 3.32.

³⁰ Joint Select Committee on National Anti-Corruption Commission – Hansard, 20 October 2022 (p. 29, Iain Anderson).

ATTACHMENT A

1. The Bill implements 21 of the 33 Moss Review recommendations. The table below indicates which recommendations were implemented and which are outstanding.

#	Moss Review recommendation	OCO comments
1	That the PID Act be reviewed every three to five years to enable its operation to be assessed and regard to be given to new research and developments in similar state and territory legislation.	Clause 82A requires a “once-off” review of the PID Act to be conducted at the end of five years whereas the Moss Review recommended periodic reviews of the PID Act.
2	That the APS Commissioner, Merit Protection Commissioner, Integrity Commissioner, Parliamentary Services Commissioner, Parliamentary Services Merit Protection Commissioner and Inspector-General of Taxation be prescribed as investigative agencies to simplify the PID Act’s interaction with other investigative and complaint schemes, and to strengthen the investigative capacity under the PID Act.	Not implemented in the Bill. The Government has not indicated whether this recommendation would be addressed in the second stage of the PID reform.
3	That the PID Act be amended to require a Principal Officer to provide the Commonwealth Ombudsman or the IGIS with a copy of the investigation report within a reasonable period of time.	Clause 51(4) of the Bill requires Principal Officers to provide OCO with a copy of a disclosure investigation report. Clause 61(6) allows the redaction of identifying information and material that would contravene a designated publication restriction. This may impede OCO in assessing the adequacy of the report and investigation undertaken.
4	That the Commonwealth Ombudsman share information about the handling of or response to a PID with relevant investigative agencies.	Clause 65(3) of the Bill explicitly enables OCO to share information with other investigative agencies. This will facilitate investigative agencies being appropriately informed about matters that fall within their jurisdiction.
5	That the definition of ‘disclosable conduct’ in the PID Act be amended to exclude conduct solely related to personal employment-related grievances, unless the Authorised Officer considers that it relates to systemic wrongdoing.	Clauses 29(2) and 29A of the Bill implement this recommendation. However, the proposed amendments may not re-focus the PID Act on integrity related wrongdoing due to the broad nature and subjectivity of the exceptions. It is therefore likely that personal work-related disclosures will continue. To assist agencies and disclosers, OCO would develop additional guidance about personal work-related conduct.
6	If Recommendation 5 is adopted, that the PID Act be amended to include reprisal within the definition of disclosable conduct, whether or not the reprisal relates to personal employment-related grievances.	Clause 29A(2A) implements this recommendation.

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7	That disclosable conduct which constitutes 'disciplinary action' be amended to include only conduct which the Authorised Officer considers would, if proven, be reasonable grounds for termination or dismissal.	Clause 29(2A) implements this recommendation.
8	That the external and emergency disclosure provisions be considered in a future review of the PID Act, when further evidence about how they are being used is available.	This recommendation is not implemented in the Bill. The recommendation is agreed in the government response to the Moss Review. The government has not indicated whether it will consider this recommendation in the second stage of reform.
9	That the PID Act be amended to include situations where an Authorised Officer failed to allocate an internal PID, or a supervisor failed to report information they received about disclosable conduct to an Authorised Officer, as grounds for external disclosure.	This recommendation is not implemented in the Bill. The Government has yet to express if it intends to consider this recommendation in the second stage of the PID reform.
10	That the procedural requirements of the PID Act be amended in order to adopt a principles-based approach to regulation.	This recommendation was not agreed in the government response.
11	That the effectiveness of the principles-based approach to regulation be evaluated periodically to assess the experience of individuals, agencies and investigative agencies.	This recommendation was not agreed in the government response.
12	That the PID Act be amended to include statutory recognition of guidance material provided by the Commonwealth Ombudsman, similar to the recognition of guidance material in section 93A of the Freedom of Information Act 1982 (the FOI Act).	The recommendation is not implemented in the Bill. The Government has not indicated whether it intends to consider this recommendation in the second stage of the PID reform.
13	That the Commonwealth Ombudsman and the IGIS be appropriately resourced to enable them to monitor and scrutinise compliance with the PID Act by agencies within their remit.	OCO understands the government will consider appropriate resourcing
14	That the PID Act be amended to include a discretion for the Principal Officer or Authorised Officers of an agency to allocate a PID, or delegate a PID investigation, to the agency's portfolio department with the consent of that department.	Clause 43(8) of the Bill implements the recommendation.
15	That the PID Act be amended to recognise the Principal Officer's obligation to provide procedural fairness to a person against whom wrongdoing is alleged before making adverse findings about that person.	This recommendation is not implemented in the Bill. However, as this is a fundamental rule of the common law doctrine of natural justice, it may not need to be enshrined in legislation to achieve the desired outcome.
16	That the secrecy offences relating to the use or disclosure of information about a PID (protected information) be repealed as these offences unnecessarily limit agencies' ability to respond to alleged wrongdoing.	Implemented at clauses 64-66 of the Bill.
17	If recommendation 16 is accepted, that the PID Act be amended to clarify that existing secrecy offences, such as those in the Crimes Act 1914, the Australian Security Intelligence Organisation Act 1979 and the Intelligence Services Act 2001, continue to apply to the disclosure or use of information, unless it is a public interest disclosure under	This recommendation is not implemented in the Bill. The Government has commenced a review of Commonwealth

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	section 26 of the PID Act, for the purposes of the PID Act, or to perform a function or exercise a power of the PID Act.	secrecy offences following the recommendation of the Parliamentary Joint Committee on Intelligence and Security.
18	That the PID Act be amended to simplify the offence about use or disclosure of identifying information by including within its exemptions: explicit reference to the protections for good faith actions or omissions by a public official exercising powers or performing functions under the PID Act (as in section 78); lawyers or other trusted professionals who disclose the information to provide professional advice or assistance to a discloser or potential discloser (as in section 67); and other existing exemptions.	Implemented at clause 20(4) of the Bill.
19	That the PID Act be amended to recognise implied consent as an exemption to the secrecy offence relating to identifying information.	Implemented at clause 20(3) of the Bill.
20	That the PID Act be amended to include a positive obligation upon a Principal Officer to support disclosers and witnesses involved in the PID process, in the same way they already have an obligation to protect disclosers from detriment.	Implemented at clause 59(2) of the Bill.
21	That the obligation on public officials to assist a Principal Officer in conducting a PID investigation should be broadened to include assisting an agency or public official to perform a function or role under the PID Act.	Implemented at clause 61(4) of the Bill.
22	That the PID Act be amended to include a positive obligation on Principal Officers to provide ongoing training and education to public officials who belong to their agency about integrity and accountability, incorporating the PID Act's protections and mechanisms to report concerns. This training should become more rigorous as a public official takes on supervisory role or is promoted.	Implemented at clauses 59(7)-(8) of the Bill.
23	That the PID Act be amended to include an obligation for supervisors who receive information from a public official about disclosable conduct to explain their existing obligation to report that information to an Authorised Officer.	Implemented at clause 60A(2)(b) of the Bill.
24	That the PID Act be amended to permit disclosures of security classified information (other than intelligence information) to a lawyer for the purpose of seeking legal advice about a public interest disclosure, without requiring the lawyer to hold the requisite security clearance.	Not implemented in the Bill. The Government has not indicated whether it intends to consider this recommendation in the second stage of the PID reform.
25	That the PID Act be amended to protect disclosures for the purpose of seeking professional advice about using the PID Act.	Not implemented in the Bill. The government has not indicated whether the recommendation would be pursued in the second stage of reform.
26	That the PID Act be amended to clarify that its provisions do not apply to reports about alleged wrongdoing by Senators, Members and their staff, or allegations made by them.	Implemented at clause 69(4)(c)-(d) of the Bill.

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27	That consideration be given to extending the application of the PID Act to members of Parliament or their staff if an independent body with the power to scrutinise their conduct is created.	Not implemented in the Bill. The Explanatory Memorandum states the PID scheme would not be the best vessel for this application. The government response to the Review did not support extending the PID Act to Parliamentarians and staff.
28	That a witness receives the same protections from reprisal, civil, criminal and administrative liability as a discloser. These protections should not affect a witness' liability for their own conduct and should apply regardless of whether the formal investigation of a PID had commenced when the witness provided information.	Implemented at clauses 12A(3) and 12B(5) of the Bill.
29	That the definition of 'agency' in the PID Act be replaced with the Public Governance, Performance and Accountability Act 2013 (PGPA Act) term 'entity' while retaining treatment of intelligence and security agencies as entities separate from their portfolio department.	Implemented at clause 8 of the Bill.
30	That the definition of 'contracted service provider' be amended to ensure that grant recipients are not subject to the PID Act.	Implemented at clause 30(4) of the Bill.
31	That the PID Act be amended to provide a discretion not to investigate disclosable conduct under that legislation if it would be more appropriately investigated under another legislative or administrative regime.	Implemented at clause 50AA(1)(c) of the Bill.
32	If recommendations 5 and 31 are adopted, that section 53(5) of the PID Act be repealed since it will be redundant.	The subsection has been repealed in the Bill.
33	That section 56(2) of the PID Act be amended to exclude from the mandatory obligation to notify police of evidence of an offence punishable by at least 2 years situations when the conduct relates to a corruption issue which has been notified to the Integrity Commissioner under s 19 of the Law Enforcement Integrity Commissioner Act 2006.	Implemented at clause 56(4)(b) of the Bill.