

Submission on the Exposure Draft of the
Public Interest Disclosure and Other
Legislation Amendment
(Whistleblower Protections) Bill 2025

Attorney-General's Department

Submission by the Acting Commonwealth Ombudsman, Sarah Bendall

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Introduction and summary

I welcome the opportunity to comment on the exposure draft of the Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025 (the Bill) to reform the Commonwealth Public Interest Disclosure Scheme (PID Scheme) through amending the *Public Interest Disclosure Act 2013* (PID Act).

As outlined in the Ombudsman's previous submission in response to the Attorney-General's Department's 2023 Consultation Paper, titled '*Public sector whistleblowing reforms: Stage 2 - reducing complexity and improving the effectiveness and accessibility of protections for whistleblowers*', the Office of the Commonwealth Ombudsman (the Office) strongly supports the development of a stronger pro-disclosure culture in the Australian Public Service (APS). The Bill seeks to support this aim by establishing a new Whistleblower Ombudsman within the Office, with the aim to increase oversight and ensure disclosures are being made and responded to appropriately. The establishment of a new office would also provide opportunities for more guidance and best practice to be promulgated. Further, the new Whistleblower Ombudsman would also be supported with new dispute resolution powers and a more explicit jurisdiction to deal with reprisals. However, the effectiveness of the reforms will heavily depend on the Office receiving sufficient resourcing to perform this function.

There also remain opportunities for the PID Act to be further simplified so that it is more accessible for whistleblowers and agencies to understand.

Background

The purpose of the Office is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly; and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independent and impartial consideration of complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive, and



- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

Decentralised nature of the PID Scheme

The PID Scheme currently operates in a **decentralised** way, with principal officers of each agency responsible for ensuring:

- disclosures about their agency are encouraged
- disclosures are properly handled – including being investigated and responded to as appropriate
- disclosers belonging to their agency are supported and protected from reprisal.¹

The Inspector-General of Intelligence and Security (IGIS) and the Commonwealth Ombudsman have powers overseeing administration of the PID Scheme and supporting compliance with the PID Scheme.

I note there are calls to adopt a centralised model, which in part argues that without strong and capable central enforcement, protections lack effect and routinely remain unavailable or inaccessible².

The decentralised approach, however, is not necessarily a flawed one. As observed by previous Commonwealth Ombudsman, Professor John McMillan as far back as 2005:

whistleblowing lends itself to being primarily managed within the agency that is actually involved with the disclosure...for two reasons. First, whistleblowing sometimes relates more to human resource management than it does to administrative law. Cases commonly involve instances of people complaining about their non-promotion or treatment in the workplace. Secondly, many whistleblowing complaints focus on issues of internal management and resource allocation...[they are] of a kind that require the attention and

¹ The explanatory memorandum to the original PID Bill provided that a key purpose of the Bill is to 'ensure that Commonwealth agencies properly investigate and respond to public interest disclosures' [Revised Explanatory Memorandum for the Public Interest Disclosure Bill 2013](#), p 2.

² Transparency International Australia, [A Fair Go for Speaking Up: Design principles for Australia's Federal Whistleblower Protection Authority](#), 2025.



understanding of the senior management of that agency. Agency heads also have extensive employment and management powers that can be used to ensure that improper reprisals do not occur.³

The nature of disclosures observed by the Office continue to be of a type that can be, or *should* be, brought to the attention of senior management for resolution and response. In the most recent PID Scheme Report⁴, the Office observed the most common type of conduct that is reported under the PID Scheme remains ‘maladministration’, ‘conduct that contravenes a law’, ‘conduct resulting in the wastage of money or property’ and ‘conduct that may result in disciplinary action resulting in termination.’

The risks of such an approach are ones common to any decentralised system: information silos, duplication of effort and inconsistency in application. However, these risks are not insurmountable and can be addressed with clear legislation and mechanisms to support compliance and best practice, such as effective oversight and clear avenues to hold those with responsibilities under the PID Scheme to account.

Current role of the Commonwealth Ombudsman in relation to the PID Scheme

As outlined in previous submissions about PID Scheme reform,⁵ the Commonwealth Ombudsman has a role overseeing and reporting on the operation of the PID Scheme. These functions include:

- investigating **complaints** about how an agency handled a disclosure under the PID Act
- receiving **internal disclosures** from public officials who believe it would be appropriate for the Ombudsman to investigate. From this point the Ombudsman may decide to
 - undertake investigation of the disclosure directly, or

³Commonwealth Ombudsman, [Freedom of Information and Whistleblower Legislation: An Australian perspective](#), 2005, p 10.

⁴Commonwealth Ombudsman, [Public Interest Disclosure Scheme 2023–24 Annual Report](#), 2024, p 15.

⁵Commonwealth Ombudsman, [Public Sector Whistleblowing Reforms Stage Two](#), 2024, p 3.

- allocate the disclosure to another agency, including the agency from which the discloser originates, for that agency to undertake a PID investigation
- consenting to another agency **allocating a PID to us** for investigation
- receiving **statutory notification of allocation and investigation decisions** from agencies, including copies of investigation reports, with the power to review and make recommendations about these decisions
- promoting **awareness and understanding** of the PID Act
- **assisting** current and former public officials (in other words, actual or potential whistleblowers) in relation to the operation of the PID Act
- **assisting** principal officers and public officials in relation to the operation of the PID Act
- determining **mandatory standards** relating to agencies' administration of the PID Scheme
- preparing **annual and 6 monthly reports** on the operation of the PID Act.
 - Both reports require the inclusion of details such as the number of disclosures received and investigated by each agency, the kinds of disclosable conduct alleged, and the actions taken in response to report recommendations.

Under the *Ombudsman Act 1976*, I may also undertake **own motion investigations** into administrative actions concerning the PID Scheme.

The Ombudsman's ability to carry out these functions effectively is tied directly to available funding. As the Office did not receive ongoing funding upon the establishment of its PID functions, or the most recent expansion of the Office's functions and powers following reforms in 2023, the ability of the Office to assist in realising the objects of the PID Act remains subject to prioritisation against the other statutory functions of the Office.

Comments on the Bill

Establishing a Whistleblower Ombudsman

The proposals in the Bill do not change the underlying decentralised approach to whistleblowing in the Commonwealth public sector. The receipt and investigation of disclosures, as well as responsibilities to protect against reprisal, remain the primary responsibility of agencies.



However, the Bill would provide the Commonwealth Ombudsman with a new statutory function of Whistleblower Ombudsman. The function would build on existing powers the Commonwealth Ombudsman has under the PID and Ombudsman Acts. The Bill would provide the following functions to this new role:

- handling complaints, disclosures and enquiries
- conducting investigations into complaints and disclosures including complaints and disclosures in relation to reprisal allegations
- conducting own motion investigations in relation to the PID Scheme⁶
- education and training on the PID Scheme⁷
- developing Model PID procedures,⁸ PID standards⁹ and guidelines¹⁰ to assist disclosers and agencies navigate the PID Scheme
- conducting alternative dispute resolution¹¹ and restorative engagement¹² sessions to resolve complaints and disclosures under the PID Scheme
- overseeing investigations under the PID Act¹³
- intervening in certain legal proceedings.¹⁴

Of these functions, the two new functions are:

- the ability to resolve a complaint or disclosure through alternative dispute resolution or restorative engagement

⁶ Proposed new 21AZZE(3) of the Ombudsman Act.

⁷ Proposed new 88(b) of the PID Act.

⁸ Proposed new 99 of the PID Act.

⁹ Proposed new 95 of the PID Act.

¹⁰ Proposed new 94 of the PID Act.

¹¹ Proposed new 21AZZ to 21AZZB of the Ombudsman Act.

¹² Proposed new 21AZZC of the Ombudsman Act.

¹³ Supported by mandatory reporting requirements set out in proposed new 73 to 76 of the PID Act.

¹⁴ Proposed new 88(d) of the PID Act.



- the ability to intervene in legal proceedings as an intervener or amicus to the court.

The Whistleblower Ombudsman's power to investigate PID related matters about other agencies, whether via a complaint, disclosure, or through an own motion investigation, would also be moved entirely into the Ombudsman Act and powers to investigate reprisal made clearer.

The creation of a new Whistleblower Ombudsman with a specific focus addressing reprisal could provide whistleblowers with more effective options for resolving concerns about, and mitigating against the risk of, reprisal. With appropriate resourcing and a clearer jurisdiction, the Whistleblower Ombudsman could be more proactive and make better use of existing powers to review, investigate and remedy agency action or inaction without needing to change from being an oversight body into a regulator or other type of enforcement body.

The measures in the Bill also go some way to better integrating the PID Scheme with other parts of the Commonwealth integrity landscape. Of note are measures to protect disclosures of wrongdoing made to officers *other* than their supervisors or Authorised Officers, and the prescription of several additional investigative agencies allowing disclosures to those bodies to also be protected. This is an outcome that underpins several of the recommendations in the 2016 *Review of the Public Interest Disclosure Act* by Phillip Moss AM (the Moss Review).¹⁵ It will be critical for pathways between integrity bodies *and* schemes to be clear to both would-be whistleblowers and agencies. Whistleblowers should be able to understand from the PID Act where their disclosure may go and what the consequences of that might be. In practice, it should be clear on the face of the Act how a disclosure may be moved in *or* out of the PID Scheme for handling and possible investigation. It should also be clear how that

¹⁵Phillip Moss AM, [Review of the Public Interest Disclosure Act 2013](#). Recommendation 2 of the review aimed at prescribing more investigative agencies to simplify the PID Act's interaction with other investigative and complaint scheme and to strengthen the investigative capacity under the PID Act; recommendations 5 and 6 aimed at refining the definition of 'disclosable conduct' to exclude solely personal employment-related grievances recognising that other existing frameworks are better suited to deal with these matters; recommendations 31 to 33 aimed at simplifying interactions with other investigatory regimes,



moving in or out would impact the discloser in terms of the information, notifications, immunities or access to support and legal protections they would receive.

The Bill represents a step forward in clarifying and improving the PID Scheme, however, there remain matters that could be improved with further consideration.

Funding

The goal of establishing an effective Whistleblower Ombudsman will require ongoing funding for the Office at adequate levels to practically deliver changes to improve the operation of the PID Scheme.

The Office's most recent own motion investigation into the PID Scheme in 2022 found that agencies needed to improve in the following areas:

- 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
- communication with disclosers.

There is a practical need to improve training and education about the PID Scheme across the APS so that whistleblowers and agencies can engage with the PID Scheme effectively.

Any proposals to strengthen oversight by the Office will risk remaining theoretical without dedicated funding to ensure the Office can conduct regular investigations of the PID Scheme as a system as well as individual complaints about PID handling, investigation and prevention of reprisals.

Delegation powers

The 2023 reforms expanded the range of persons that the Commonwealth Ombudsman could delegate their functions and powers to include a public official belonging to the Office (s77 of the PID Act), and in particular, to contracted service providers.¹⁶ This flexibility appears to have been lost in the draft Bill¹⁷

¹⁶ [Public Interest Disclosure Amendment \(Review\) Act 2023](#).

¹⁷ Proposed new subsection 32(4B) of the PID Act, and existing section 31 of the Ombudsman Act



which allows the Commonwealth Ombudsman to delegate only to persons engaged under the *Public Service Act 1999*. The ability to delegate powers to a contracted service provider, similarly to other agencies under the PID Act, has been used by the Office to manage potential conflicts of interest in sensitive PID matters. This power should be retained and provided for in the Bill.

Immunities and external disclosures

Immunities

The PID Scheme should make it clear when, how and what immunities apply to a whistleblower. This includes what immunities can apply when a person:

- makes a complaint, as opposed to a disclosure to the Whistleblower Ombudsman under the Ombudsman Act,¹⁸ or
- assists the Whistleblower Ombudsman in any investigations or inquiries made under the Ombudsman Act in relation to a PID.¹⁹

There should ideally be no differences in the immunities that can be provided. This would ensure an investigation by the Whistleblower Ombudsman can provide the same immunities as an investigation of a PID by another agency or investigative authority. What differences there may be in treatment should be clarified in the Bill or at the very least in the Explanatory Memorandum.

Definitions

Public interest disclosure

The proposed new s17 of the PID Act would substantially amend the framework by which an external disclosure could be made by.

Firstly, paragraph 17(1)(i) would remove the existing public interest test and replace it with the requirement that a whistleblower would need to:

¹⁸ Proposed new 21AZQ of the Ombudsman Act.

¹⁹ As set out in proposed new ss21AZZK, 21AZZH and 21AZZI of the Ombudsman Act and proposed new s30 of the PID Act.



reasonably believe that the disclosure of information would not do any of the following:

- (i) cause damage to the security, defence or international relations of Australia or to the relations between the Commonwealth government and the government of a State or Territory*
- (ii) endanger a person's life or physical safety or endanger public safety;*
- (iii) prejudice the fair trial of any person or the impartial adjudication of a matter*
- (iv) disclose Cabinet information, except Cabinet information that is already lawfully publicly available*

This test is less ambiguous than the current public interest test, however, in articulating the circumstances where external disclosure may be allowed, this could potentially narrow the circumstances when an external disclosure could be made in comparison to the existing provisions.

The framework in the proposed new s17 of the PID Act then goes on to set out two new circumstances in which a protected external disclosure could be made.

Firstly, the proposed new s17(2) of the PID Act would allow for an external disclosure to be made if, following the completion of a PID investigation, the discloser has made a complaint to the Whistleblower Ombudsman about the inadequacy of the investigation, the Whistleblower Ombudsman has investigated the complaint, the discloser believes the Whistleblower Ombudsman's investigation was inadequate, and the conditions excerpted above are also met.

It will be important that the Office is appropriately resourced to respond to complaints made in these circumstances.

Secondly, the proposed new s17(3) of the PID Act would allow for an external disclosure where an investigation has not been completed within statutory timeframes, the discloser has made a complaint to the Whistleblower Ombudsman about the delay, and 30 business days from when the complaint was made—no further action as



prescribed in that provision has been undertaken by the agency or the Whistleblower Ombudsman.

In principle, allowing for lawful external disclosure on the reasonable belief that both the agency and the Whistleblower Ombudsman have not properly discharged their functions, or have failed to take timely action, seems sensible and proportionate.

As above, the expectation of the Office is that the likelihood of these provisions operating as intended will significantly depend on the adequacy of resourcing available to PID functions for both the Office and the public sector more broadly.

Disclosable conduct

The framework proposed in the Bill to define disclosable conduct is structurally complex.²⁰ There is an opportunity with this reform to simplify and modernise both the language and structure of an Act that many find difficult to navigate. The proposed new s20 of the PID Act would describe conduct as being disclosable conduct in multiple places. The section would provide a broad catch-all in proposed new s20(5) with further additional criteria against each different type of entity or person that could also engage in disclosable conduct.

While the Office can appreciate the complexity of this part of the legislation and the reason for the drafting approach, it may not be easy for everyone to engage with. I believe that whistleblowers may struggle to determine whether they are eligible to make a protected disclosure and whether a disclosure about the person and conduct they are concerned about, will attract the immunities and protections in the PID Act—at least, not without significant assistance from this Office among others. If the drafting proceeds as proposed it will be important for the intended operation of the provisions to be very clear in the Explanatory Memoranda and accompanied by supporting guidance tailored to different types of whistleblowers. Such guidance would need to be provided by the Office.

²⁰ Proposed new s20 of the PID Act.

Referrals and allocations

Referrals to investigative agencies

The PID Scheme currently uses **allocation and referrals** to move reports of wrongdoing to the most appropriate avenue for handling. Each type of action can determine key steps in a disclosure process. Allocation by an authorised officer signals the commencement of statutory timeframes for investigation.²¹ Referrals push a matter out of the PID Scheme for investigation under another law or power following a decision to not to allocate or investigate under the PID Act.²²

While an act of referral attracts some responsibilities such as providing written notice to the discloser, the Ombudsman or IGIS,²³ it does not require the receiving investigators to adhere to other requirements of the PID Scheme such as providing a discloser with a final investigative report. This is because once referred, the matter is dealt with under a different investigative law or power and not the PID Act and the information and notification requirements under those other laws will apply.

This approach would continue under the proposed reforms. However, the prescription of new investigative authorities may raise expectations from potential whistleblowers that those authorities will be conducting PID investigations under the PID Act. In addition, investigative authorities who directly receive disclosures will not need to notify the Whistleblower Ombudsman about how they handle the matter. It is assumed, but not clear if, complaints can be made to the Whistleblower Ombudsman about the actions of investigative authorities.

It will be important for agencies, investigative authorities and the Whistleblower Ombudsman to have good working relationships and clear policies and procedures governing hand off points within the system to ensure that reports of wrongdoing and the disclosers who make them are moved through the allocation and

²¹ Existing s52 of the PID Act.

²² Existing s44A of the PID Act.

²³ Existing s50A of the PID Act.



referral processes and to different investigative frameworks smoothly. This will be particularly essential to support the prescribing of additional investigative agencies.²⁴

Referrals from the Whistleblower Ombudsman to agencies

Currently, the Office can allocate a disclosure to an agency for investigation following consultation with an authorised officer in that agency. Under the proposed Bill the Whistleblower Ombudsman may only make recommendations, following a referral, to another agency as to whether they should investigate the disclosure. However, the Bill should ensure there is no need for further action by an agency prior to a PID investigation (for example, whether the disclosure needs to be reassessed for allocation by an authorised officer in the receiving agency). In practice, it should be no more difficult for this Office to send a disclosure to an agency for investigation under the PID Act than it currently is.

Reprisals

The Bill would amend the following provisions of the Ombudsman Act to insert references to the Whistleblower Ombudsman and PID Scheme:

- 35D (1)b(i) to (iv)
- 35E(1)(b)
- 35F(1)(c)(i) to (iv)
- 35F (2)(d)(i) to (iv)
- 35F(5)(a) to (d)

These provisions form part of a framework to deal with reprisals under the Overseas Students Ombudsman and National Student Ombudsman jurisdictions. They were inserted by the [Universities Accord \(National Student Ombudsman\) Act 2024](#) to deal

²⁴ Proposed s8 of the PID Act prescribes the Australian Public Service Commissioner, the Merit Protection Commissioner, The Parliamentary Service Commissioner, the Parliamentary Service Merit Protection Commissioner, the Inspector-General of Taxation and the Inspector-General of the Australian Defence Force as investigative authorities in addition to the IGIS and the Whistleblower Ombudsman to support Moss Review recommendation to better integrate PID Scheme into existing oversight frameworks.



with a practical gap in whistleblower protection where students (as members of the public) complained about their education providers (which are private entities) and would not be subject to the PID Act.

It is assumed that these provisions will ensure that public officials who make a complaint to the Whistleblower Ombudsman are protected from reprisal in the same way that they are protected from reprisal for making a disclosure to the Whistleblower Ombudsman (following new ss 37, 57 and 65 of the PID Act). If that is not the case it should be rectified—there should be no difference in what can be provided to ensure the handling of a reprisal arising from a complaint to the Whistleblower Ombudsman is treated the same as a reprisal arising from a disclosure under the PID Act. What differences there may be in treatment should be clarified in the Explanatory Memorandum.

Procedural fairness and facilitation of enforcement actions

The Bill embeds duties around procedural fairness and requires the Whistleblower Ombudsman to prepare reports if an opinion is formed that conduct is unlawful, unreasonable, unjust or otherwise wrong (among other criteria) and requires copies of reports to be provided to the principal officer of an agency. These are not new concepts or practices for the Office, and it is appropriate that these arrangements continue in relation to the new function of Whistleblower Ombudsman.

The Bill engages with the possibility that the matters disclosed to the Whistleblower Ombudsman will concern serious allegations about senior officers, including agency heads, and in keeping with the focus on reprisal, they will also potentially disclose concerns about criminal conduct. The reforms would not propose to give the Commonwealth Ombudsman regulatory or enforcement powers in keeping with the nature and purpose of an ombudsman, though at the same time, the value and effect of an investigation by the Office and related recommendations should not be discounted.

To the extent that enquiries or investigations by this Office uncover evidence of criminal conduct, serious or systemic corruption, or conduct that would constitute a breach of the APS Code of Conduct, it is the Commonwealth Ombudsman's expectation, consistent with current arrangements under the Ombudsman Act, that the information will be brought to the attention of or referred to relevant bodies in addition to being addressed in a report by this Office. Noting the potential for criminal investigation, the



Office suggests consideration is given to making the provision of a report to an agency head discretionary where it appears the unlawful action may have been taken by the principal officer.

Reporting and Review

The Bill would practically retain the requirement that the Office produce both annual and six-monthly reports on the operation of the PID Scheme.²⁵ The measure to require six-monthly reports on top of the annual reporting on the scheme commenced in 2023. The first of such six-monthly reports was released in 2024. In practice, the Office has found there have been no significant difference in effort or resources required to produce the six-monthly compared to an annual report. That is, the considerable effort and time that is usually required to develop an accurate and meaningful annual report has doubled.

The changes that have been made to the reporting requirements are welcomed and address some of the ambiguities in the current legislation. However, noting the comments above about resourcing the Office would encourage further consideration of the value of the six-monthly report. This is too short a period to identify any meaningful change in direction or trend.

It would also be preferable if the timing of the commencement of any reforms to the PID Act could take into consideration the impact on the information to be included in any 6-monthly or annual report.

Finally, the Bill proposes a review of the PID Act to commence as soon as practicable after 30 June 2028. Providing for a review 5 years after commencement of the new reforms would provide more useful insights. This is consistent with the review arrangements in the current PID Act.

²⁵ Proposed new section 90 and 91 of the PID Act.

