

Legislative statement: Protected Disclosures (Protection of Whistleblowers) Bill

Overview

This Bill replaces the Protected Disclosures Act 2000 (the Act). The Bill continues the purpose of the Act, which is to promote the public interest by facilitating the disclosure and investigation of serious wrongdoing in the workplace, and by providing protection for employees and other workers who report concerns. All workplaces are covered, although some provisions apply specifically to public sector organisations and to public funds and functions.

The Bill as introduced amends the Protected Disclosures Act in the following ways:

- clarifies the definition of serious wrongdoing and extends its application to cover private sector use of public funds and authority:
- enables people to report serious wrongdoing directly to an appropriate authority at any time, provides more clarity about appropriate authorities, and clarifies the ability of those authorities to decline or refer the disclosure:
- strengthens protections for disclosers by specifying what a receiver of a disclosure should do:
- clarifies the internal procedure requirements for public sector organisations and requires them to state how they will provide support in the form of practical assistance and advice to disclosers:
- clarifies the potential forms of adverse conduct disclosers may face.

In addition, the Bill puts the current provisions of the Act into a more accessible form and changes terminology where required to make the scope and intent clearer. Because of the extent of changes between the Act and the Bill, the Bill as introduced was a complete redraft of the Act, not an amendment Bill.

The Government is taking a two-phased approach to strengthening our protected disclosures regime. The first is this Bill, addressing the key deficiencies in the (2000) Protected Disclosures Act. The Public Service Commission will investigate further possible amendments to the Act in a second tranche of work, including the potential for a 'one stop shop' for disclosures. Some policy proposals arising from the Select Committee process may also be progressed through a Supplementary Order Paper at the Committee of the Whole House stage.

Changes to the Bill for the second reading following Select Committee consideration

Officers of Parliament

In the Bill as introduced, the Parliamentary Commissioner for the Environment (PCE) is the only Officer of Parliament to fall within the definition of a "public sector organisation" – with the result that the PCE is the only Officer of Parliament to be excluded from several provisions. Select Committee recommends amending clause 4(b) so that an exception for all Officers of Parliament is added to the definition of "public sector organisation". As a result of amending clause 4, select

committee also recommends the removal of specific exclusions for the PCE in clauses 30(2), 31(3), and 32.

The process in clause 13 is also amended to specify that the Speaker, rather than a Minister, should be approached for disclosures in relation to Offices of Parliament.

Meaning of “serious wrongdoing”

Paragraphs (a) to (e) of clause 10 which list types of serious wrongdoing have been reordered for clarity. Paragraph (e) is amended to include wording proposed following submissions.

Disclosing to one’s organisation

Clause 11 provides for a discloser’s entitlement to protection when making a disclosure to their organisation. This has been simplified to make it clear that a discloser could approach the head of their organisation at any time.

What a receiver should do

Clause 12(1)(e) and 12(2)(d) have been amended to clarify that informing the discloser about the outcome of an investigation is included in informing them about any action taken.

Receivers deciding no action is required

Clause 14(1) is amended to require that the discloser be informed of the decision, and the reasons to it.

Protection of confidentiality and privacy

Clause 16 provides that every receiver of a protected disclosure must use their best endeavours to keep confidential any information that might identify the discloser. New subclause (3A) requires a receiver to inform the discloser if identifying information has been released for one of the reasons under clause 16(2)(c). New clause 16A clarifies the application of the Privacy Act 2020 to protecting confidentiality under clause 16.

Special rules for intelligence and security information

The Bill provides special rules for intelligence and security information (information that is classified or relates to activities of an intelligence and security agency). Amendments to clauses 15, 23, and 25 allow the Inspector-General of Intelligence and Security (IGIS) to refer disclosures involving intelligence and security information to other appropriate authorities, subject to classified information being either withheld or managed in accordance with government protective security requirements; and provide for escalation of disclosures relating to the IGIS itself.