

**Submission
No 5**

INQUIRY INTO PUBLIC INTEREST DISCLOSURES BILL 2021

Organisation: Australia's Right to Know coalition of media organisations

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The Director
Portfolio Committee No. 1 – Premier and Finance
Parliament House
Macquarie St
SYDNEY NSW 2000
By email: portfoliocommittee1@parliament.nsw.gov.au

Dear Director,

Australia's Right to Know (ARTK) coalition of media organisations appreciates the opportunity to make a submission to the Portfolio Committee No. 1 – Premier and Finance inquiry into the *Public Interest Disclosure Bill 2021* (the Bill).

As the Portfolio Committee will be aware, in August 2016 ARTK made a submission¹ (as the Joint Media Organisations) to the statutory review of the *Public Interest Disclosure Act 1994* undertaken by the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission. That submission observed that the law restricts disclosures to the public via the media. Disappointingly we observe the same regarding the Bill which does nothing to expand the very limited opportunities to make public disclosures of malfeasance in the NSW government. The Bill continues to restrict disclosures to the public via the media, leaving the public in the dark about what's really going on within the NSW government including but not limited to potential corruption and maladministration.

Specifically, section 28 of the Bill only allows a protected disclosure to the media in very narrow circumstances and only after an internal disclosure process. We include section 28 here to illustrate the restrictions on disclosures to the media.

28. Voluntary public interest disclosures to members of Parliament or journalists

(1) A disclosure made to a member of Parliament or a journalist is a voluntary public interest disclosure only if, in addition to complying with sections 25–27—

(a) the disclosure is substantially true, and

¹ <https://www.parliament.nsw.gov.au/ladocs/submissions/55935/Submission%209%20-%20NSW%20Ombudsman.pdf>

- (b) the maker of the disclosure has previously made substantially the same 18 voluntary public interest disclosure (the *previous disclosure*) to a person mentioned in section 27(1)(a)–(d), and
- (c) the previous disclosure was not anonymous, and
- (d) the maker of the previous disclosure did not waive, in writing, the right to receive information under section 59 in relation to the previous disclosure, and
- (e) either—
 - (i) the maker of the previous disclosure has not, at the end of the investigation period, received from an agency the required information in relation to the previous disclosure, or
 - (ii) the maker of the previous disclosure has been notified by an agency, at any time, that the agency has made a decision mentioned in section 55(3) in relation to the previous disclosure.

(2) In this section—

investigation period, in relation to a previous disclosure, means—

- (a) the period of 6 months from the making of the previous disclosure, or
- (b) if the maker of the previous disclosure applies within 6 months of making the previous disclosure for internal review of an agency decision relating to the previous disclosure—the period of 12 months from the making of the previous disclosure.

member of Parliament does not include a Minister.

required information, in relation to a previous disclosure, means—

- (a) notice of the agency’s decision to investigate the relevant serious wrongdoing in accordance with Part 5, Division 2, and
- (b) a description of the results of the investigation of the relevant serious wrongdoing, and
- (c) details of the corrective action taken, proposed or recommended as a result of the previous disclosure or the investigation.

We also draw to the Committee’s attention the new section 28(c) that prohibits anonymous internal disclosures from being able to be made public via the media. This section is not in the current Act and is an unnecessary extension of an already restrictive regime for public disclosures of malfeasance in the NSW government.

We trust this is useful input to the Committee’s deliberation of the Bill, including whether this small but important aspect of the Bill serves the people of NSW well.

Kind regards

On behalf of Australia’s Right to Know coalition of media organisations