PROTECTED DISCLOSURES BILL 2013

REGULATORY IMPACT ANALYSIS

Government Reform Unit
Department of Public Expenditure and Reform
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1. Policy Issue and Objectives

The term 'whistleblower' is a convenient shorthand way of describing a person who discloses information regarding concerns about some form of wrongdoing or misconduct that comes to the attention of others either inside or outside their organisation.

The public generally becomes aware of an incident of 'whistleblowing' when things have gone wrong – usually when the 'whistleblower' has been dismissed or has suffered some other detriment. When it appears that the 'whistleblower' has been motivated by genuine and well-founded concerns, public opinion tends to support the 'whistleblower' on the grounds that s/he has done his/her public duty. Unfortunately however, the message that emerges from media reports of 'whistleblowing' tends to be negative - that those who put their heads above the parapet and speak out are liable to be penalised in some way.

The raising of genuinely held concerns about issues of public importance is to be encouraged and it therefore follows that workers who wish to raise concerns about wrongdoing in the workplace ought to be shielded from the retributive actions of employers who would seek to suppress the disclosure of such information. Similarly, it is equally important in providing protection for workers that an appropriate balance is maintained that does not result in the unnecessary public disclosure of genuinely confidential information. In addition it should not provide a mechanism for private employment-related grievances which are properly dealt with under existing, long-established and tested industrial relations mechanisms.

Whistleblowing Protection Legislation in other Jurisdictions

The issue of whistleblowing and the detriment suffered by persons who made disclosures in relation to wrongdoing attracted a lot of attention in the United Kingdom in the mid to late 1990's. This resulted in the introduction of a Private Member's Bill by a Conservative member of the House of Commons, but supported by the then Labour Government, in 1997. The Protected Disclosures Act (PIDA) 1998 inserted provisions into the *Employment Rights Act 1996* and provided workers with protection against dismissal or detriment for making a "protected disclosure". A government order in 1999 brought the legislation into operation in Northern Ireland and a subsequent amendment brought all UK Police forces within its ambit.

An overarching cross-sectoral approach to whistleblowing legislation has also been adopted in other common law countries. New Zealand introduced its Protected Disclosures Act in 2000, the Republic of South Africa introduced its Act in the same year and a number of Australian states have also introduced their own legislation.

Background to Whistleblowing Protection Legislation in Ireland

The Whistleblowers Protection Bill, 1999 was introduced in the Dáil as a Private Members Bill on 24 March 1999. In June 1999 the Government agreed to accept the Bill, in principle, at Second Stage, subject to amendments proposed following consultations with interested parties and following on the advice of the Attorney General. The Bill passed Second Stage in the Dáil on 16 June 1999 and was referred to the Dáil Select Committee on Enterprise and Small Business.

At its meeting on 27 July 2001, the Government approved the re-drafting and amending of the Whistleblowers Protection Bill 1999. The Government raised a number of detailed and complex amendments which, according to the advice of the Office of the Parliamentary Counsel would require substantial re-drafting. Further progress on re-drafting the Bill was overtaken by the dissolution of the Dáil in April 2002 and the General Election in May 2002. The Government decided in June 2002, to restore the 1999 Bill to the Dáil Order Paper and it became part of the Government legislative programme. On 2 November 2004, the then Taoiseach indicted to the Dáil that the Whistleblowers Protection Bill, 1999 was no longer a Government priority.

The Government decided on 7 March 2006 (decision number S180/20/10/0237A) to address the issue of "whistleblowing" on a sectoral basis and to include, where appropriate, "whistleblowing" provisions in all future draft legislation. It also decided to remove the Whistleblowers Protection Bill 1999 from the Dáil Order Paper. The Whistleblowers Protection Bill, 1999 was reintroduced as a Private members Bill in the Dáil on 28 January 2010 as the Whistleblowers Protection Bill 2010 but fell on the dissolution of the 30th Dáil in February 2011. An equivalent Whistleblowers Protection Bill 2011 was introduced in the 31st Dáil by the Independent Group of Deputies.

Sectoral Whistleblowing Protections in Ireland

While a small number of statutes already contained whistleblowing provisions prior to the Government decision of 7 March 2006 that decision was reflected in the inclusion of whistleblower protection provisions in a number of statutes drafted subsequently. In overall terms these provisions demonstrate certain broad similarities in their approach to whistleblowing but there are also important differences.

The main similarities between the sectoral provisions are: –

- a differentiation between "persons" and "employees";
- a separate provision for immunity against civil liability for "persons" who report breaches of the legislation in question;
- a distinct set of protections for persons described as "employee" who make disclosures under the legislation in question; the protections include a prohibition on employers from penalising employees and the provision of redress, through the industrial relations machinery for employees who suffer such penalisation;

- in some, but not all, cases a specific reference is made to a person who suffers dismissal as a consequence of having communicated one of the wrongdoings listed as having recourse to the Unfair Dismissals Acts.

The main differences between the sectoral provisions concern the lack of consistency between the various statues in terms of the nature and content of reports that attract protection and the extent to which criminal offences are created. Most, but not all, of the sectoral statutes provide for the criminalisation of employees who deliberately make false or misleading reports while some of the more recent statutes also provide for the criminalisation of employers who breach the prohibition on penalisation of employees.

A list of those states containing protected disclosure type provisions is set out in Annex 1.

Programme for Government Commitment

The Programme for Government makes a clear commitment to the introduction of "whistleblower" protection legislation. The Minister for Public Expenditure and Reform subsequently reiterated this commitment on a number of occasions in undertaking to introduce overarching legislation which would provide protection for workers in all sectors. The Government approved the drafting of the Protected Disclosures Bill at its meeting of 21 February 2012.

International Recommendations on Whistleblowing Protection

A number of authoritative international bodies have made recommendations and set out guiding principles for legislators when considering the introduction of whistleblowing legislation. In overall terms, these advocate that whistleblowing legislation should:-

- relate to employment-based relationships;
- apply across all sectors of the economy adopting an overarching as opposed to sectoral approach;
- encompass a broad range of possible wrongdoing;
- provide robust and comprehensive protections for whistleblowers;
- make provision for "good faith" reporting where good faith is defined as an honest belief;
- provide protection from any form of discriminatory or retaliatory personnel action for having reported wrongdoing in the workplace;
- provide adequate redress for workers who report wrongdoing;
- adopt a broad approach to the definition of workers covered by the legislation;
- impose the burden of proof on employers rather than on worker;
- protect as much as possible the whistleblower's identity;
- create sufficient and appropriate reporting channels; and
- not seek to sanction misguided reporting.

Some of the most significant international recommendations are set out below –

The United Nations

Perhaps the most significant international instrument on anti-corruption and whistleblowing is the United Nations (UN) Convention Against Corruption (UNCAC). It was adopted in December 2005 and ratified by Ireland in November 2011. Article 33 on the "Protection of witnesses, experts and victims" provides for protections of witnesses and experts and their relatives from retaliation including limits on disclosure of their identities. Article 33 on "Protection of reporting persons" envisions countries adopting protections for reporting of corruption by any person and states -

"Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention."

Transparency International's Prague Principles

Following a workshop held in Prague in 2009 Transparency International (TI) a leading international anti-corruption advocacy organisation developed a recommended set of draft principles intended as guidance to any jurisdiction developing whistleblower legislation.

TI suggests that these principles can be used as guidance to legislators who are in the process of drafting new whistleblowing laws or improving existing laws, as a definition of the current consensus among experts regarding best practice in this field and for the benefit of lawyers, researchers and others as a tool to examine the adequacy of legislation. The set of recommended draft principles agreed by TI at the Prague workshop in 2009 is set out at Annex 2.

European Parliamentary Assembly Resolution no. 1729 of 29 April 2010

On 29 April 2010 the European Parliamentary Assembly, recognising the importance of whistleblowing in both the public and private sectors, passed a resolution inviting all member states to review their legislation concerning the protection of whistleblowers keeping in mind a number of guiding principles. Those principles are set out at Annex 3.

G20 Anti-Corruption Plan and the protection of whistleblowers

At the Seoul Summit in November 2010, G20 Leaders identified the protection of whistleblowers as one of the high priority areas in their global anti-corruption agenda. Recognizing the importance of effective whistleblower protection laws point 7 of the G20 Anti-Corruption Action Plan, called on G20 countries:

"To protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption, G-20 countries will enact and implement whistleblower protection rules by the end of 2012. To that end, building upon the existing

work of organisations such as the OECD and the World Bank, G-20 experts will study and summarise existing whistleblower protection legislation and enforcement mechanisms, and propose best practices on whistleblower protection legislation."

In response to a call by the G20 Leaders the OECD published a study in May 2012 on Whistleblower Protection Frameworks - Compendium of Best Practices and Guiding Principles for Legislation. The set of guiding principles contained in that study is set out at Annex 4.

Assessments of and Recommendations on Whistleblowing Protections in Ireland

The Transparency International National Integrity Systems (NIS) Country Study on Ireland - 2009

This study noted that -

"Ireland's legislative framework has also been the source of potential weakness in the country's NIS. […] Comprehensive legal safeguards for ***whistleblowers*** *have yet to be introduced, contributing to a 'culture of silence' in both public and private sector bodies.*

and made the following recommendation –

"Protect whistleblowers. Anticorruption safeguards can also be reinforced through the introduction of whistleblower protection for all private and public sector employees. A timetable for the introduction and full implementation of whistleblower legislation should be published as a priority. Such a measure would help instill public confidence in the ability of the State and business to effectively prevent and control the abuse of power and corruption."

An Addendum to the NIS Country Study on Ireland published in 2012 noted -

"While whistleblower protections are included in numerous individual laws and in a range of sectors, there is currently no single overarching law providing for comprehensive pan-sectoral safeguards. In the context of Ireland's banking crisis, it is notable that only a small number of individuals with knowledge of serious malpractice and corporate governance failures came forward with information. Although cultural factors may have contributed to this silence, there is also substantial evidence to suggest that fear of retaliation is a significant factor inhibiting people from speaking out in the public interest."

Final Report of the Mahon Tribunal

At paragraph 1.57 of Chapter 18 (page 2531) of the Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal) the view was expressed that whistleblower protection plays an important role in the detection of corruption offences and that the protection offered to prospective whistleblowers should be as robust as possible. In particular, it recommends that protection be extended to protect independent contractors from penalisation where they blow the whistle on a

person to whom they are providing services and that limits on the amount of compensation which may be awarded to those penalised for whistleblowing be removed.

At paragraph 2.2 (page 2542) the Final Report commented that to be successful, top-down initiatives to combat corruption must be mirrored by bottom up demands coming from a public which is fully engaged in and committed to combating corruption –

"These demands help to strengthen and reinforce political will to confront corruption. In addition, the willingness of the public to engage in anti-corruption efforts through whistleblowing as well as voicing concerns and demands is likely to greatly enhance attempts to uncover corruption when it occurs and to undo its effects."

The report noted that there is no pan-sectoral protection for whistleblowers in Ireland and that protection for those who blow the whistle on corrupt transactions is an important element in ensuring their detection and sanctioning. It further noted that –

"Corruption is frequently an offence committed by wealthy and/or powerful members of the Community and those reporting it may well fear the consequences of doing so for their own careers and employment prospects. Whistleblower protection may help alleviate those fears, thus facilitating the reporting of corruption offences." (para.7.45).

The Tribunal went on to urge the government to reconsider its approach to whistleblower protection and to bring in a general law protecting all whistleblowers at the earliest opportunity. (para.7.51 – page 2661).

It further recommended the extension of existing whistleblower protection under the Prevention of Corruption (Amendment) Act 2010 to - a) protect independent contractors who report suspicions of corruption from penalization and b) remove the existing limit on the amount of compensation which may be awarded to those penalised for whistleblowing (ref : page 2659).

Legislative Objectives

The objectives of the Protected Disclosures Bill 2013 closely mirror international best practice recommendations and can be summarised as follows:-

- insofar as possible, and consistent with international precedent and best practice guidance, to encourage the making of disclosures by workers relating to wrongdoing which comes to their attention in the workplace by ensuring the protection of such workers against reprisals from their employer;

- to provide for such protection for all sectors of the economy on a uniform basis;

- to adopt a wide definition of "worker" so as to ensure that as many individuals as possible who interact with the workplace have access to the protections to be made available;

- to promote an approach in which the vast majority of disclosures are made to the employer in the first instance whilst at the same time providing for a "stepped" disclosure regime in which a number of distinct disclosure channels are available to a worker where, having regard to the circumstances, disclosure to the employer is neither possible nor appropriate;

- to make certain that the protections available under the legislation will still be available to a worker even if the alleged wrongdoing to which the disclosure relates cannot be sustained, providing the disclosure conformed to the requirements included in the legislation.

- to remove any risk of potential criminalisation of a worker when he or she is considering making a protected disclosure;

- to ensure that the legislation becomes a vehicle for the disclosure of matters that are in the public interest rather than to replace existing HR and IR mechanisms and procedures for dealing with personal grievances in the workplace;

- to safeguard workers who make a disclosures in the public interest from being subject to occupational determinant and to provide immunity against civil liability in such circumstances;

- to make available certain remedies providing redress for workers who suffer detriment as a consequence of having made a protected disclosure;

- to ensure that employees who are dismissed from their employment following the making of a protected disclosure are entitled to the protections of the Unfair Dismissals Acts, regardless of the length of their service;

- to bring workers who make disclosures under the sectoral acts within the ambit and protections of the overarching legislation so as to provide a uniform standard of protection for all workers who make such disclosures;

- to design a protected disclosure regime under which the regulatory burden placed on responsible employers is minimised

- to make special arrangements for the disclosure of information which, although of public interest, could have an adverse effect on law enforcement or which relates to security, intelligence, defence and international relations matters.

- to provide clarity in the law in relation to protected disclosures

2. Legislative Options

Option 1 – Do Nothing and continue with sectoral legislation

The commitment in the Programme for Government to introduce whistleblowing legislation together with subsequent Ministerial commitments to introduce overarching legislation established a clear goal on the part of Government to move away from the sectoral approach.

The sectoral approach resulted in a number of separate protected disclosure provisions across a number of statutes. While there are similarities between these provisions there are also significant differences. This uncoordinated approach led to an unsatisfactory patchwork of sector specific provisions which are potentially confusing in nature and which fail to provide clarity in the law relating to protected disclosures.

The continuation of such a policy, even on a coordinated basis, would take some considerable time to ensure a sufficiently broad sectoral coverage. Such an approach would not be in accordance with best international practice and would also militate against the generally recommended concept of a robust and comprehensive pan-sectoral approach. Option 1 is not recommended on that basis.

Option 2 – Introduce legislation covering the public sector only

It is not unusual in some jurisdictions to introduce protected disclosures legislation for the public sector only. An example of this can be found in Canada where The Public Servants Disclosure Protection Act (PSDPA) came into force in April 2007. Although any person may make a disclosure under the PSDPA such disclosures must relate to wrongdoings in the public sector only. In addition, the reprisal complaints process is in respect of the public sector only.

In the context of international best practice recommendations, the main criticism leveled against the Canadian legislation is that the scope is very narrow in that, for example, public misconduct involving the private sector cannot be investigated properly and the law does not address private sector misconduct at all.

Similar criticisms arise in Australia where again although any person may make a disclosure, whistleblowing legislation such as the State of Victoria Whistleblowers Protection Act of 2001 and the Australian Capital Territory Public Interest Disclosures Act of 2012 restricts the nature of the disclosure to improper conduct by a public body or official.

The adoption of a legislative whistleblowing model that restricts whistleblowing disclosures solely to the activities of the public sector is neither in accordance with current Government proposals or considered as best international practice. Option 2 is not recommended for these reasons.

Option 3 – Introduce legislation which provides whistleblower protections for all

Disclosures under whistleblowing legislation in Canada and Australia can be triggered by any person and there is no requirement for an institutional or employment connection between the complainant and the organisation or alleged wrongdoer. However, the whistleblowing protections are in the main restricted to public service employees.

Many of the sectoral statutes in Ireland which contain protected disclosure type provisions provide for immunity from civil liability for 'persons' who report breaches of the Act in question. The foregoing examples raise the question as to whether overarching pan-sectoral legislation should seek to provide protections for all persons. This question goes to the heart of what is meant by the term 'whistleblowing'.

One definition describes whistleblowing as -

"the disclosure by organisation members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action."[1]

In its Recommended Draft Principles for Whistleblowing Legislation Transparency International, defines whistleblowing as "*The disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action."*

The OECD report of October 2011 prepared for the G20 points out -

"*There is no common legal definition of what constitutes whistleblowing. The International Labour Organization (ILO) defines it as "the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers."*

In the context of international anti-corruption standards, the 2009 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) refers to protection from *"discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities..."*

The UNCAC refers to *"any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention."*

The Council of Europe Civil Law Convention on Corruption refers to *"employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities."*

[1] Janet Near and Marcia Miceli, 'Organisational Dissidence: the case of whistleblowing' (1985) 4 *Journal of Business Ethics* 1, 1- 4.

Similar language has also been applied in national whistleblowing legislation. For example, the U.K.'s PIDA refers to *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following…*" (the provision continues by listing a series of acts, including in relation to the commission of criminal offences).

Key characteristics common to whistleblowing could therefore include: i) the disclosure of wrongdoings connected to the workplace; ii) a public interest dimension, e.g. the reporting of criminal offences, unethical practices, etc., rather than a personal grievance; and, iii) the reporting of wrongdoings through designated channels and/or to designated persons. However, insofar as definitional differences exist the most significant common thread running through the definitions is that an institutional or employment connection is in fact crucial to the position of a whistleblower.

Two reasons are advanced in support of this position:-

- Firstly because of their role in employment within an organisation whistleblowers have information which may tend to show wrongdoing that would not be available to a person outside of the workplace;

- Secondly, because of their employment status and the risk of sanctions from, for example, breaching the duty of confidentiality owed to an employer, employees who whistleblow require specific legal protections in order to encourage them to come forward.

Other complainants who are members of the public are generally unlikely to have the same access to information and insights and do not usually need the same level of legislative protection before they will report, because they are not normally subject to the same organisational loyalties and risks of reprisal that affect an organisation's own employees.

As two recognised international whistleblowing experts Brown and Latimer[2] express it -

"There is little question that where it appears, the provision for 'any person' to be able to make a disclosure as if they were a whistleblower – including those who are not – dilutes the purpose and focus of the legislation, confuses its operation, and leads to other problems such as narrowed interpretations of the type of matters that can be reported in order to control or prevent floods of disclosures from public complainants. The reputation of the legislation suffers because it can be used by complainants who are not actually whistleblowers, as an alternative avenue for pursuing non-whistleblowing grievances. Such complainants themselves may end up unhappy, because the legislation was never actually designed to help them, but also gave a strong illusion that it could."

[2] A J Brown and Paul Latimer, *Symbols or Substance? Priorities for the Reform of Australian Public Interest Disclosure Legislation*, NYU Law School, June 2007

and

"…… it should equally be recognised that other complainants are entitled to protection against reprisals or harassment for having made their complaint; simply that this is not best provided for in legislation intended to protect whistleblowers. Instead, standard provisions in other legislation such as the criminal code or the enabling legislation of investigative agencies should ensure that it is an offence to harass or intimidate any complainant or witness, in a manner consistent with offences relating to perversion of the course of justice. This does not require the same sorts of detailed systems and legal mechanisms needed to encourage public interest whistleblowing……"

In view of the international recommendations and expert analysis relating to this issue, option 3 is therefore, not recommended.

Option 4 – Introduce overarching legislation but confine to "employees" only

The policy objective is to ensure that as many individuals in employment type situations as is practically feasible are covered by protections provided in the Act. For the purposes of the legislation this has the effect of requiring an extension to the generally defined term of 'employee' under Irish employment law.

In its pre-legislative scrutiny report on the General Scheme of the Bill[3] the Joint Oireachtas Committee on Finance, Public Expenditure and Reform observed -

"That consideration be given to extending the protections provided for in the Bill to everybody who is at work, so that the protection is not confined to employees. The legislation should ensure that "atypical workers" including agency workers, interns or those employed for less than six months are covered. Those who may wish to come forward and report their concerns in the workplace must enjoy protection from the commencement of their employment, regardless of the construction of their contracts of employment or contracts for services."

The Terms of Employment Act 1994 contains the following definition -

*"*employee*" means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956 , shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act, 1941 , a harbour authority, a*

[3] Houses of the Oireachtas Joint Committee on Finance, Public Expenditure and Reform; Report on Hearings in relation to the scheme of the Protected Disclosures in the Public Interest Bill, 2012; July 2012; ref :31/fper/010

health board or a vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be;

The Unfair Dismissals Act of 1997 contains the following definition –

*"*employee*" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment and, in relation to redress for a dismissal under this Act, includes, in the case of the death of the employee concerned at any time following the dismissal, his personal representative;*

The Unfair Dismissals Act goes on to specifically exclude particular groups from the application of the legislation. Among these are persons who have not been in continuous employment for less than twelve months, members of the Defence Forces, members of An Garda Síochána and various other classes of persons who are engaged in employment situations. While there are certain exclusions to the twelve month rule, in general the excluded persons cannot make claims under the Unfair Dismissals Acts.

While there are sound policy reasons for the restriction of and exclusions from the scope of Unfair Dismissals Act, in the case of whistleblowing - given the public interest in the exposure of wrongdoing in the workplace regardless of the specific employment status of the worker making the report – the aim is to broaden the classes of persons who can avail of protections against unfair dismissal to the greatest extent practicable. The same principle informs access to the redress mechanisms provided under the Bill in the case of penalisation falling short of dismissal.

Option 4 does not, therefore, conform to the policy objective and international best practice and is not recommended.

Option 5 – Introduce overarching legislation for "workers" (retaining the protections in sectoral legislation if they extend beyond what is provided in the Protected Disclosures Bill)

Option 5 is the recommended policy approach. In summary, the public interest in the exposure of wrongdoing in the workplace is best served by the extension of protection to persons who genuinely expose wrongdoing in the workplace to as wide a group as is practically feasible. For these reasons the legislative option of restricting protected disclosure protection to 'employees' as generally defined in current labour law is supplemented by the introduction in the Bill of a further definition of 'worker' which is intended to encompass, insofar as possible, a wider population of persons in the workplace and who can seek the protections available under the Bill for making a protected disclosures.

As highlighted above, adoption of the sectoral approach led to a situation in which protections were provided in which some sectors but were not provided in very many other sectors, resulting in a fragmented and uncoordinated outcome with an uneven standard of protection causing confusion among anyone seeking to rely on the

protections. The adoption of a sectoral approach to whistleblower protection clearly reflected the view that although the principle of an overarching cross-sectoral whistleblowing regime might be appropriate, in practice there were considerable legal obstacles to providing uniform and consistent protection in view of the multiplicity of circumstances in which the whistleblower protection might be expected to apply.

The search for a unified overarching approach, therefore, raises the question of how to deal with the legacy of that approach manifested in the significant number of subsequent whistleblowing protection provisions in sectoral legislation.

A list of those Acts containing protected disclosure and protected disclosure type provisions is set out in Annex 1. In assessing how to reconcile these provisions with the concept of overarching pan-sectoral legislation regard has been had to the observation of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform on the matter -

"The Joint Committee note the point made by IBEC in regard to the multifarious pieces of legislation that abound in the area of disclosures. The new legislation will coexist with the existing legislation. The Draft Heads refer to 16 Acts that deal with whistleblowing. If the new legislation were to be added to these, how would they all work together? There clearly is a need for a 'joined-up approach' such that there is in place one piece of legislation clarifying and codifying protections and obligations alike."

It was concluded that there are strong policy reasons for restricting the "protected disclosure" to whistleblowing meeting the very specific and precise conditions in the Protected Disclosure legislation. The alternative approach where each type of sectoral whistleblowing is conferred with the status of a protected disclosure under Protected Disclosure Bill would create a large number of additional types of protected disclosures each of these essentially comprising the communication of a possible breach of a single Act and meeting conditions (under each the sectoral statutes) that are quite specific and restricted to individual statutes. This would lead to an outcome in which the legacy protections represented an atypical class or category of protected disclosures which diverged in significant respects from the mainstream policy approach embodied more generally in the legislation.

Cognisant of these matters, detailed discussions with the Office of the Parliamentary Counsel highlighted significant difficulties with the approach contained in the draft heads of bringing the sectoral enactments entirely within the ambit of the Bill. The current partial and inconsistent legal framework for protecting workers who make whistleblowing complaints rendered it extremely difficult to identify any single legal and drafting solution capable of adequately resolving those inconsistencies whilst at the same time ensuring that exiting protections are not diluted or potentially extinguished.

The approach adopted in the draft Bill is therefore to amend each relevant sectoral provision so that any disclosure falling within the meaning of the Protected Disclosures Bill will be dealt with under the Bill. The effect is to provide a discloser with all of the

(generally stronger) protections available in the Bill whilst at the same time ensuring that in the unlikely event that his/her disclosure does not fall within the meaning of overarching Protected Disclosures Bill the protections of the sectoral provisions will continue to be available.

Criminalisation of false reporting and victimisation of whistleblowers

The issue of the potential criminalisation of employers for having breached the prohibition on the penalisation of workers (as contained in many of the sectoral statutes) together with the potential criminalisation of a worker for having made a false disclosure requires careful examination.

International best practice suggests workers should be encouraged to make disclosures and that one of the best ways of doing this is to provide clear and robust protections against potential penalisation in, or dismissal from, employment on the grounds of having made such a disclosure. It is essential that workers should feel that genuinely held concerns reported to their employers will be investigated and they will not be penalised for having raised the concern in the first instance. It is therefore all the more important that a worker should not be discouraged from reporting a genuinely held concern in relation to wrongdoing for fear that he/she may be penalised if the matters reported on subsequently turn out not to be true.

The potential for a worker to be criminalised for having made a false report represents a very significant impediment against reporting particularly where a worker, although having a genuine reasonable belief in relation to the matters reported might not necessarily be certain of the facts. Even though the potential for criminalisation could be said to arise only where a report is knowingly false, or was made recklessly, the mere existence of the potential, of itself, acts as a disincentive to report.

Since one of the primary objectives of the legislation is to encourage workers to come forward and disclose concerns, any potential, however remote, for that action to result in criminal prosecution is undesirable. In addition, any potential criminalisation of a worker in the absence of an equivalent criminalisation of an employer for having penalised a worker (as is the case in a number of the sectoral Acts) is unlikely to be perceived as securing balance in the treatment of employees and employers under the legislation.

In view of the objective of encouraging disclosures of wrongdoing and taking into account the uneven treatment of the matter of criminalisation both within and across the span of sectoral statutes the proposed legislation does not therefore include any provision for the criminalisation of workers for having made false disclosures or for the criminalisation of employers who breach the prohibition on penalisation.

Good faith reporting

The requirement contained in the General Scheme published in 2012 that a disclosure should be made in good faith was included on the basis of the UK precedent at that time, reflecting the principle consistent with best practice guidance that in order to attract the

protections available under the legislation a disclosure, even if untrue, should be made 'honestly'.

In the Bill a disclosure is no longer subject to an explicit good faith test in order to qualify as a protected disclosure. This is in line with recent changes in the UK legislation responding to recommendations of the Shipman inquiry, UK whistleblowing case law and practical experience of the legislation. The good faith test had led to the introduction of scope for legal argument regarding the motive of the whistleblower. This is believed to represent a significant obstacle to the effective working of whistleblowing protection legislation. This issue was also discussed in the Oireachtas Finance, Public Expenditure and Reform Committee's pre-legislative scrutiny report on the General Scheme which drew attention to the need for a discloser to have a 'bona fide belief in the correctness of the information' and that 'reporting in bad faith should not detract from the substance of what is being reported'.

In practice, notwithstanding the intention that good faith is equated with an honest belief, it has been successfully argued in the context of the UK legislation that it must mean something beyond that and the UK Court of Appeal held that a worker can fail the good faith test and lose PIDA protection where a tribunal finds that their predominant motive for making the disclosure was unrelated to the public interest objectives of the Act (for example, if it was motivated by malice). Consequently the Shipman Inquiry concluded that "if employers are able to explore and impugn the motives of the 'messenger'..., many 'messages' will not come to light" and concluded on that basis that the good faith requirement should be removed from the UK PIDA. It is important to note that the Bill requires a disclosure to be based on a worker's reasonable belief which does not diverge markedly from the 'honest belief' the term good faith was intended to capture.

Compensation

In view of the proposed elimination of an explicit good faith requirement for making a protected disclosure in the Bill, new provisions have been included allowing for the reduction of compensation payable under the legislation to be reduced by up to 50 per cent where the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the disclosure. This approach is consistent with that recently adopted in the UK legislation where a disclosure is not made in good faith.

3. Main Potential Impacts

There is a strong consensus regarding the potential benefits that can arise from putting in place appropriate arrangements to promote whistleblowing. By their very nature these benefits can be difficult to quantify. The costs associated with the introduction of comprehensive whistleblower protection are similarly difficult to establish with any degree of precision.

Consideration of the impacts of proposed Protected Disclosures legislation in this section focuses on a number of potentially relevant impacts as follows:–

- potential Exchequer costs
- the effect on national competitiveness, employment and economic markets
- compliance costs
- citizens' rights

Potential Exchequer costs

It is important to state at the outset that the legislative proposals, as presented, do not envisage the introduction of any significant new institutional structures. The eventual instance of protected disclosures is unpredictable in nature and having regard to the current state of the public finances the creation of new institutional arrangements to deal solely with matters arising from such disclosures would not seem appropriate particularly given the significant number of public bodies with investigatory, regulatory and enforcement responsibilities in relation to the matters defined as relevant wrongdoing under the Bill.

Where a worker chooses to disclose to a person other than his employer and believes the information contained in the disclosure to be substantially true the proposed legislation contains a provisions for a report to be made to a 'prescribed person'. For this purpose the Minister will prescribe a wide list of persons (i.e. public bodies) whose roles and responsibilities as defined by law are, in his opinion, appropriate to receive and investigate matters arising from disclosures relating to any of the wrongdoings in relation to which a disclosure may be made.

While provision is made for the appointment of a Disclosures Recipient to accept external disclosures in relation to matters concerning certain law enforcement, security, intelligence, defence and international relations matters it is not anticipated that the number of disclosures made to the Disclosures recipient will necessarily be large. It is hoped that the volume of reports to the Disclosures Recipient will be minimised by virtue of the structure of the legislation which is designed to encourage reporting to an employer in the first instance. In such circumstance it is considered that the cost associated with the appointment of a Disclosures Recipient will not give rise to significant costs to the Exchequer.

The protection of workers from the retributive actions of employers is essential to encourage the reporting of misconduct, fraud and corruption and the risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. As the OECD puts it in its study on behalf of the G20 –

"This applies to both public and private sector environments, especially in cases of bribery: Protecting public sector whistleblowers facilitates the reporting of passive bribery, as well as the misuse of public funds, waste, fraud and other forms of corruption. Protecting private sector whistleblowers facilitates the reporting of active bribery and other corrupt acts committed by companies."

The benefits accruing to the Exchequer from any strengthening of anti-corruption measures are indisputable.

National competitiveness, employment and economic markets

As discussed above, whistleblower protection legislation has been recommended by a number of authoritative international bodies as an important element of the prevention of corruption. In addition, there is evidence that in addition to their positive reputational effects, strong national integrity systems are underpinned by effective whistleblowing legislation which in turn help to support the attraction of inward investment, economic growth and development more generally.

In its presentation to the Joint Committee on Finance, Public Expenditure and Reform IBEC outlined the importance of protecting Ireland's international reputation as Ireland exports over 80% of all produce and services and is heavily reliant on our international reputation for foreign direct investment. In this context, the IBEC representatives made the point that the proposed legislation needs to be careful in terms of the creation of the potential for a leak into the wrong hands of information of a very commercially sensitive nature. In its pre-legislative scrutiny report on the General Scheme the Oireachtas Finance, Public Expenditure and Reform Committee responded as follows:-

"The Joint Committee is of the view that, if anything, our 'international reputation' has been damaged by not having such legislation in place. The Committee regards this issue as one that merits consideration in that robust legislation will enhance rather than threaten Ireland's international reputation.

With regard to commercially sensitive information, the Joint Committee notes that no evidence or studies were referred to that explained how commercial or intellectual property rights would be negatively affected by this Bill, or indeed how investment into the country would be affected."

Consideration of the impact of the proposed legislation on economic markets must recognise the negative influence of the cultural resistance to whistleblowing as manifested in the context of the banking crisis. Although the speed and severity of the crisis was exacerbated by world-wide economic events the report into the causes of the crisis

by the Commission of Investigation into the Banking Sector in Ireland[4] was clear in its identification of this culture as a specifically Irish societal contributory factor.

At paragraph 5.6.6 the Commission stated –

"The very limited number of warning voices was largely ignored. Attempts by banking insiders during the period to send cautionary signals to market participants about escalating property values were dismissed as ill-informed and wrong. Doubters (the few that identified themselves as such to the Commission) in the main grew unsure over the years when nothing seemed to go wrong. It also appears that some stayed silent in part to avoid possible sanctions. The Commission suspects, on the basis of discussions held with a wide number of people, that there may have been a strong belief in Ireland that contrarians, non-team players, fractious observers and whistleblowers would be informally (though sometimes even publicly) sanctioned or ignored, regardless of the quality of their analysis or their place in organisations."

The introduction of significant protection for workers who raise concerns is clearly an important step in promoting a culture which values, supports and acts upon concerns raised.

In addition to providing protections for workers the legislation would be expected to provide impetus, for all organisations to mitigate the risk of whistleblowing arising under legislation by introducing effective whistleblowing policies as a key element of their overall risk management strategy. This would enable employees to report perceived wrongdoing on a no-fault basis. In such a situation, concerns can ideally be addressed before they develop into a more serious issue. This would be expected to militate against the potential and necessity for external whistleblowing.

Compliance Costs

It is not expected that any significant or disproportionate compliance burden will be placed on employers by the introduction of this legislation. The legislation will provide a framework for the safeguarding of workers who suffer penalisation and/or dismissal at the hands of employers for having made a protected disclosure, but only following the commission of such an event. The legislation does not come into play where concerns are raised and the worker does not find it necessary subsequently to seek redress on account of victimisation or penalisation for having made a protected disclosure. In the main the protections will be provided through the medium of the existing industrial relations machinery.

It is to be expected that the legislation would provide an impetus for all significant employers in both the public and private sectors, if they have not done so already, to put in place arrangements which would allow their workers to report matters of concern on a

[4] Misjudging Risk: Causes Of The Systemic Banking Crisis In Ireland - Report Of The Commission Of Investigation Into The Banking Sector In Ireland; March 2011

no fault basis. However, other than requiring every public sector organisation to establish and maintain procedures for the making of protected disclosures by its workers the proposed legislation does not prescribe the actual arrangements to be made.

Although the proposal is not prescriptive in nature the Minister is nonetheless conscious of a requirement for some form of guidance for employers who do not already have arrangements in place for the handling of reports of wrongdoing when brought to their attention by their workers. With this in mind the Minister for Jobs, Enterprise and Innovation has, following a request from the Minister for Public Expenditure and Reform, asked the Labour Relations Commission to prepare a Code of Practice, covering both the public and private sectors, setting out the manner in which organisations should deal with disclosures made by their employees.

The development of this Code of Practice will require close consultation with the relevant bodies, including employer and employee representative organisations. The process will help ensure that that the views of all relevant parties including concerns regarding the potential compliance/administrative burden are taken into account in the practical implementation of the legislation. Allowing for the content of the Code of Practice it will be a matter for individual employers to determine their own procedures. Ultimately however a failure to respond adequately to an internal disclosure could leave the employer exposed to the potential of disclosure to another party and any consequential reputational difficulties that might arise.

Notwithstanding the very significant benefits expected to accrue by encouraging workers to raise concerns regarding possible wrongdoing in the workplace, the introduction of legislation providing significant employment protections and means of securing redress to workers who making a disclosure qualifying as a protected disclosure raises the question of the potential for misuse of the legislation. This risk might be expected to arise in situations that reflect other difficulties in the employment relationship (which may be attributable primarily to either or both of the employee's or the employer's conduct) where the employee may pursue their grievance and seek to strengthen their own position and disadvantage the position of the employer by making what they claim is a protected disclosure. This could, in theory, extend to an employee making an external disclosure to the media that has the potential to cause serious reputational damage.

While it is, of course, not possible to rule out this scenario in assessing the likelihood of this situation it is important to recognise that the legislation establishes a clear set of criteria for determining whether a disclosure qualifies as a protected disclosure and in particular introduces significant conditionality for an external disclosure to secure protection. In order to attract the protections provided under the Bill a worker who makes an external report must have a reasonable belief that the matters reported on are 'substantially true'. This is a much higher standard than that associated with an internal report to an employer. On this basis disclosure to an employer is therefore to expected to be availed of most frequently thus giving the employer the opportunity to ameliorate any wrongdoings reported at the earliest possible opportunity. The early resolution of issues

giving rise to protected disclosures can only be to the benefit of both the employer and the employee concerned.

In addition, the reports in respect of which the protections will be available all relate to matters of public rather than private interest. The reporting of personal grievances or complaints is generally in the private rather than public domain and the protections in the proposal will not be relevant in such a case. It is to be assumed that all significant employers already have mechanisms in place for dealing with personal grievances and the proposed legislation is not intended to subvert or otherwise replace existing grievance mechanisms. Where, following investigation, workers are found to have made deliberately false reports it is also to be assumed that existing disciplinary processes and procedures will apply, as has always been the case.

In summary while it may be the case that an employee might seek to use the legislation inappropriately to strengthen a bargaining position, the legislation is drafted to minimise the scope for its misuse for a private rather than in the public interest, for example, to pursue a personal employment-related grievance. The resolution of such difficulties should remain matters that are appropriate to other human resource management and industrial relations systems.

Citizens Rights

Whistleblowing protection is increasingly seen as an essential anti-corruption mechanism and a key factor in promoting a culture of public accountability and integrity. The introduction of the Protected Disclosures Bill represents a significant strengthening in the rights of workers. The focus is to ensure that all workers have the ability to raise genuine concerns regarding potential wrongdoing in the workplace and to ensure that those who do so even if the report made subsequently turns out to be untrue or misguided, are protected from the retributive actions of employers. The absence of such legislation potentially leaves such persons vulnerable and militates against the development a broader culture of openness and transparency.

There is however a delicate balance to be achieved in relation to the making of allegations of wrongdoing. Insofar as a whistleblower may make allegations of wrongdoing such allegations can also have an adverse effect on an individual's right to their good name if false reports are made against them.

There are particular tests included in the Bill that must be applied to the making of a disclosure that are intended to minimise the risk or harm where potentially defamatory reports have been made. While no cause of action in civil proceedings will lie against a person in respect of the making of a protected disclosure this does not apply in the case of a defamation action within the meaning of the Defamation Act 2009. The relevant balances in the Defamation Act are however maintained in this legislation.

Notwithstanding that a defamation action can potentially be taken against a person who has made a protected disclosure the Bill provides that person with a qualified privilege

under the Defamation Act. This qualified privilege will, in common with all other cases of qualified privilege set out in the Defamation Act, fail if the person taking the action can prove that the whistleblower acted with malice.

4. Consultation Process

Publication of the General Scheme

The General Scheme of the Protected Disclosure Bill was published on the Department of Public Expenditure and Reform website on 27 February 2012. In publishing the General Scheme the Minister stated that the intention of publication was to inform public debate on the matter. In addition to the General Scheme a detailed information note which set out the context within which the General Scheme was developed together with the main features of the proposed legislation was also published.

Pre-legislative Scrutiny Process

In furtherance of the Governments objective of promoting the role of Oireachtas Committees in a pre-legislative scrutiny role the Minister for Public Expenditure and Reform presented the draft heads and legislative proposals to the Joint Oireachtas Committee on Finance, Public Expenditure and Reform on 18 April 2012. In presenting the proposals the Minister indicated that while he wished to fulfill the Government's commitment to introducing whistleblowing legislation he had an open mind in relation to the detail and would be happy to hear the views of the Committee and those of other interested parties in relation to the proposals

The Joint Committee subsequently engaged in a series of Public hearings which were held on the 23 May, 5, 6, 12, and 13 June to discuss issues of concern with interested parties and those with specialist knowledge in the field of whistleblowing. Witnesses from the Irish Congress of Trade Unions (ICTU), the National Union of Journalists (NUJ), The Irish Business and Employers Confederation (IBEC) and Transparency International Ireland together with a number of other individual witnesses were heard. The Committee published its Report [5] in July 2012.

In publishing the report on its pre-legislative scrutiny of the General Scheme the Joint Committee did not make a series of recommendations. Rather, in recognition of how pre-scrutiny can add value to the legislative process the Committee considered that the best approach was to publish, in the report, the issues which the Committee and those invited to address the Committee considered should be addressed in the legislation. The Report of the Joint Committee copy is included at Annex 5 for reference.

[5] Houses of the Oireachtas Joint Committee on Finance, Public Expenditure and Reform; Report on hearings in relation to the scheme of the Protected Disclosures in the Public Interest Bill, 2012; July 2012 ref :31/fper/010

Other Consultations

The Department of Public Expenditure and Reform also consulted with a number of bodies and other interested parties. Separate meetings were held with ICTU and IBEC at which the proposals were explained in detail and a number of queries were answered. Both organisations made observations and suggestions in relation to the detail which were considered further during the course of the drafting process.

The Minister also invited the Irish Human Rights Commission (IHRC) to submit its views on the legislative proposals and the IHRC submitted a detailed submission in the matter. A comprehensive review of the international and academic literature was also undertaken and all of these matters were considered during the detailed drafting process.

Key issues which emerged from the consultation process

In general the proposals contained in the General Scheme were welcomed by all parties who were consulted or made submissions. A range of issues, some of which were complementary and others which were contradictory in nature were raised. Among the key issues which arose across the consultative process as a whole were:–

- the need to ensure that the proposed protections would apply to all workers including contractors;
- the role of the legislation in terms of Ireland's international reputation;
- the reconciliation of the existing sectoral protections with the single overarching legislative proposal;
- the nature of the stepped disclosure process and whether as an alternative it should be cumulative rather than discrete;
- that the protections do not replace existing grievance mechanisms;
- the maintenance of corporate confidentiality;
- the maintenance of the confidentiality of the person making the disclosure;
- whether anonymous reporting should be allowed;
- the need to ensure that disclosures are made in good faith;
- the need to ensure that the protections apply even if a disclosure made in good faith and with a reasonable belief subsequently turn out to be untrue;
- the assignment of the burden of proof;
- the necessity for clarity in relation to the making and handling of disclosures;
- the speedy handling of complaints made by penalised workers;
- the payment of uncapped compensation to penalised/dismissed workers;
- the status of criminalisation provisions;

- the potential regulatory / compliance burden.

These and each of the other issues raised in the various submissions made, together with the observations made by the Joint Oireachtas Committee were each considered in detail during the course of the drafting of the Bill.

5. Review Mechanisms

The Minister believes that it is important that the operation of the legislation be reviewed within a reasonable period of time. With this in mind the legislation contains a provision that the operation of the Act shall be reviewed within a five year period and a report made to each House of the Oireachtas on the findings of the review.

6. Assessment

The revised (June 2009) Regulatory Impact Assessment (RIA) Guidelines state that an RIA should contribute to achieving the six principles of Better Regulation identified in the Government White Paper Regulating Better (Department of the Taoiseach, 2004) and that these principles should always be taken into account when evaluating different options and deciding whether a particular regulatory option should be pursued.

This section of the RIA assesses in overall terms how the proposal to introduce overarching public interest disclosure legislation is aligned with the six principles of Better Regulation.

Necessity

The necessity for the proposed Protected Disclosures in the Public Interest Bill 2013 proposals is underpinned by:-

- the relevant proposal contained in the Programme for Government;
- the advocacy by authoritative international bodies of the introduction of legislation in this area;
- the case made for the introduction of legislation in this area to strengthen the legislative framework to prevent corruption in Ireland;
- the relevant recommendations contained in the final report of the Mahon Tribunal
- the uneven and fragmented framework of existing sectoral protections
- a need to ensure that similar and consistent protections are available to as many workers as possible

The G20, OECD and other authoritative international bodies have highlighted the strong rationale for the introduction of legislation which provides protection for workers who

might wish to make protected disclosures. The introduction of such legislation would, therefore, represent an important step in strengthening Ireland's international credentials in preventing corruption.

Effectiveness

Simply stated, the purpose of this legislation is to provide a framework for the protection of workers in all sectors of the economy against reprisals in circumstances that they make a disclosure of information relating to wrongdoing which comes to their attention in the workplace. The legislation is drafted to cover as broad a population of persons in the workplace environment as is feasible. The extent of the 'wrongdoings' on which protected disclosures can be made is sufficiently broad to ensure that a wide range of possible wrongdoings can be reported.

Proportionality

The adoption of a proportionate approach to the promotion of protected disclosures has been a major priority in the development of the legislative proposals. The proposed legislation contains a significant number of provisions specifically designed to ensure that the regulatory regime operates in a balanced and proportionate manner including, for example, the stepped disclosure regime which will ensure that the majority of disclosures will be made directly to the employer in the first instance. No significant regulatory or other compliance burdens have been imposed on either employers or workers and in the main the protections will be provided under the existing industrial relations machinery. The operation of the legislation will be reviewed after a period of five years. The potential to be protected in one's employment for having made a disclosure in relation to wrongdoing in the workplace must therefore be viewed as a significant, appropriate and ultimately proportionate preventive measure against corruption.

Transparency

As set out above, the proposals contained in the Bill have been developed through a fully open and transparent process.

Accountability

The legislative proposals contained in the Bill have been developed to ensure that there is a high level of clarity regarding the circumstances under which the protections of the legislation can be availed of. A worker who wishes to avail of the protections will have the benefit of clear guidance under the legislation and also the Code of Conduct to be developed by the Labour Relations Commission for its implementation (as well as if working in a public body the whistleblowing policy of that public body). Where a worker wishes to claim penalisation or unfair dismissal he or she will be able to do so by engaging with processes and procedures used in the current and well established industrial relations machinery.

Consistency

The introduction of a comprehensive and overarching protected disclosures legislation in Ireland applying uniformly across all sectors of the economy and replacing the uncoordinated, fragmented and often confusing sectoral protections (where they exist) is expected to support a very substantial degree of consistency in the practical implementation of the legislation.

7. Conclusion

The analysis underpinning the legislative proposals, the academic literature, and in particular the feedback from the consultation process, significantly informed the detailed drafting of the Bill. The proposals seek to minimise the administrative and compliance burden and do not introduce any new regulatory structures or confer new powers on existing public bodies with regulatory responsibilities. While principally intended to provide protection for workers the legislation embodies a balanced approach in that workers will be incentivised through the legislation to raise their concerns with their employer in the first instance.

The Bill provides a legislative framework for the protection of workers who are threatened with or suffer detriment at the hands of their employers for having made a disclosure in accordance with the provisions of the legislation. It is not a replacement for existing mandatory reporting regimes nor does it provide a wide ranging permissive authority for workers to recklessly make false allegations of wrongdoing.

In summary the Protected Disclosures Bill 2013 strong reflects not only best international practice but also a fair, balanced and proportionate approach which will ensure that Ireland's international reputation in preventing corruption is significantly enhanced.

ANNEX 1

ACTS CONTAINING PROTECTED DISCLOSURE AND PROTECTED DISCLOSURE TYPE PROVISIONS

Item (1)	Short title, number and year (2)
1	Labour Services Act 1987 (No. 15 of 1987)
2	Protections for Persons Reporting Child Abuse Act 1998 (No. 49 of 1998)
3	Prevention of Corruption (Amendment) Act 2001 (No. 27 of 2001)
4	Standards in Public Office Act 2001 (No. 31 of 2001)
5	Competition Act 2002 (No. 14 of 2002)
6	Communications Regulation Act 2002 (No. 20 of 2002)
7	Health Act 2004 (No. 42 of 2004)
8	Employment Permits Act 2006 (No. 16 of 2006)
9	Consumer Protection Act 2007 (No. 19 of 2007)
10	Chemicals Act 2008 (No. 13 of 2008)
11	Charities Act 2009 (No. 6 of 2009)
12	National Asset Management Agency Act 2009 (No. 34 of 2009)
13	Inland Fisheries Act 2010 (No. 10 of 2010)
14	Criminal Justice Act 2011 (No. 22 of 2011)
15	Property Services (Regulation) Act 2011 (No. 40 of 2011)
16	Protection of Employees (Temporary Agency Work) Act 2012 (No. 13 of 2012)

ANNEX 2

Transparency International Recommended draft principles for whistleblowing legislation

Whistleblowers can play an essential role in detecting fraud, mismanagement and corruption. Their actions help to save lives, protect human rights and safeguard the rule of law. To protect the public good, whistleblowers frequently take on high personal risks. They may face victimisation or dismissal from the workplace, their employer may sue (or threaten to sue) them for breach of confidentiality or libel, and they may be subject to criminal sanctions. In extreme cases, they face physical danger.

The whistleblower's right to speak up is closely related to freedom of expression, freedom of conscience and to the principles of transparency and accountability. It is increasingly acknowledged that effective protection of whistleblowers against retaliation will facilitate disclosure and encourage open and accountable workplaces. International conventions [6] commit the signatory countries to implementing appropriate legislation and ever more governments, companies and non-profit organisations are willing to put related regulations in place.

The principles take experience with existing whistleblowing legislation into account. They are meant to be guiding principles which should be adapted to individual countries' specific contexts and existing legal frameworks. These principles are still under review and any contribution to their further development is welcome.

Definition

1. *Whistleblowing* – the disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action.

Guiding principles

2. *Disclosure of information* – whistleblowing legislation shall ensure and promote the disclosure of information in order to avert and sanction harm.

3. *Protection of the whistleblower* – the law shall establish robust and comprehensive protection for whistleblowers, securing their rights and ensuring a safe alternative to silence.

[6] E.g. The UN Convention against Corruption (UNCAC) (article 33), the Council of Europe Civil Law Convention on Corruption (article 9), the Inter-American Convention Against Corruption (article 3), the African Union Convention on Preventing and Combating Corruption (article 5), the Anti-Corruption Action Plan for Asia and the Pacific (pillar 3), the Southern African Development Community Protocol Against Corruption (article 4), etc.

Scope of application

4. *Broad subject matter* – the law shall apply to disclosures covering wrongdoing including, but not limited to, criminal offences, breaches of legal obligation, miscarriages of justice, danger to health, safety or the environment, and the cover-up of any of these.

5. *Broad coverage* – the law shall apply to all those at risk of retribution, including both public and private employees and those outside the traditional employee-employer relationship (e.g. consultants, contractors, trainees, volunteers, temporary workers, former employees, job seekers and others). For the purpose of protection, it shall also extend to attempted and suspected whistleblowers, those providing supporting information, and any individuals closely associated with the whistleblower.

6. *Requirement of good faith limited to honest belief* – the law shall apply to disclosures made in good faith, limited to an honestly held belief that the information offered at the time of the disclosure is true. The law shall stop short of protecting deliberately false disclosures, allowing them to be handled through the normal labour, civil and criminal law mechanisms.

Disclosure procedures

7. *Incentivise internal reporting* – the law shall encourage the establishment and use of internal whistleblowing systems, which are safe and easily accessible, ensure a thorough, timely and independent investigation of concerns and have adequate enforcement and follow-up mechanisms. [7]

8. *Ease of external reporting* – at all times, the law shall provide for easy external disclosure, including, among others, to regulatory bodies, legislators, professional media and civil society organisations. If there is a differentiated scale of care in accessing these channels[8], it shall not be onerous and must provide a means for reporting on suspicion alone.

9. *National security* – where disclosure concerns matters of national security, additional procedural safeguards for reporting may be adopted in order to maximise the opportunity for successful internal follow-up and resolution, without unnecessary external exposure.

10. *Whistleblower participation* – the law shall recognise the whistleblower as an active and critical stakeholder to the complaint, informing him or her of any follow-up and outcomes of the disclosure and providing a meaningful opportunity to input into the process.

[7] For a guide to the establishment and operation of internal whistleblowing systems, see *PAS Code of practice for whistleblowing arrangements*, British Standards Institute and Public Concern at Work, 2008.

[8] For example, see Public Interest Disclosure Act (UK).

11. *Rewards systems* – depending on the local context, it shall be considered whether to include further mechanisms to encourage disclosure, such as a rewards system or a system based on qui tam which empowers the whistleblower to follow up their allegations. [9]

Protection

12. *Protection of identity* – the law shall ensure that the identity of the whistleblower may not be disclosed without the individual's consent, and shall provide for anonymous disclosure.

13. *Protection against retribution* – the law shall protect the whistleblower against any disadvantage suffered as a result of whistleblowing. This shall extend to all types of harm, including dismissal, job sanctions, punitive transfers, harassment, loss of status and benefits, and the like.

14. *Reversed burden of proof* – it shall be up to the employer to establish that any measures taken to the detriment of a whistleblower were motivated by reasons other than the latter's disclosure. This onus may revert after a sufficient period of time has elapsed.

15. *Waiver of liability* – any disclosure made within the scope of the law shall enjoy immunity from disciplinary proceedings and liability under criminal, civil and administrative laws, including libel, slander laws and (official) secrets acts.

16. *No sanctions for misguided reporting* – the law shall protect any disclosure that is made in honest error.

17. *Right to refuse* – the law shall allow the whistleblower to decline participation in suspected wrongdoing without any sanction or disadvantage as a result.

18. *No circumvention* – the law shall invalidate any private rule or agreement to the extent that it obstructs the effects of whistleblower legislation.

Enforcement

19. *Whistleblower complaints authority* – the law may create an independent body (or appoint an existing one) to receive and investigate complaints of retaliation and/or improper investigation. This may include the power to issue binding recommendations of first instance and, where appropriate, to pass on the information to relevant prosecutorial and regulatory authorities.

[9] Under *Qui Tam*, a citizen can sue on behalf of the government. Such a provision is used in the US False Claims Act.

20. *Genuine day in court* – any whistleblower who believes he or she has suffered injury to his or her rights shall be entitled to a fair hearing before an impartial forum with full right of appeal.
21. *Full range of remedies* – the law shall provide for a full range of remedies with focus on recovery of losses and making the complainant whole. Among others, this shall include interim and injunctive relief, compensation for any pain and suffering incurred, compensation for loss of past, present and future earnings and status, mediation and reasonable attorney fees. The law shall also consider establishing a fund for compensation in cases of respondent insolvency.

22. *Penalty for retaliation and interference* – any act of reprisal or interference with the whistleblower's disclosure shall itself be considered misconduct and be subject to discipline and personal liability.

Legislative structure, operation and review

23. *Dedicated legislation* – in order to ensure certainty, clarity and seamless application of the framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach.

24. *Whistleblowing body* – the law shall create or appoint a public body to provide general public advice on all matters related to whistleblowing, to monitor and review periodically the operation of the whistleblowing framework, and to promote public awareness-building measures with a view to the full use of whistleblowing provisions and broader cultural acceptance of such actions.

25. *Publication of data* – the law shall mandate public and private bodies of sufficient size to publish disclosures (duly made anonymous) and to report on detriment, proceedings and their outcomes, including compensation and recoveries, on a regular basis.

26. *Involvement of multiple actors* – it is critical that the design and periodic review of any whistleblowing legislation involves key stakeholders, including trades unions, business associations and civil society organisations.

27. *Protection of media sources* – nothing in the law shall detract from journalists' rights to protect their sources, even in case of erroneous or bad faith disclosures.

ANNEX 3

European Parliamentary Assembly Resolution 1729 of 29 April 2010 - Protection of "whistleblowers"

1. The Parliamentary Assembly recognises the importance of whistle-blowers – concerned individuals who sound an alarm in order to stop wrongdoings that place fellow human beings at risk – as their actions provide an opportunity to strengthen accountability and bolster the fight against corruption and mismanagement, both in the public and private sectors.

2. Potential whistle-blowers are often discouraged by the fear of reprisals, or the lack of follow-up given to their warnings, to the detriment of the public interest in effective management and the accountability of public affairs and private business.

3. A series of avoidable disasters has prompted the United Kingdom to enact forward-looking legislation to protect whistle-blowers who speak up in the public interest. Similar legislation has been in force in the United States of America for many years, with globally satisfactory results.

4. Most member states of the Council of Europe have no comprehensive laws for the protection of whistle-blowers, though many have rules covering different aspects of whistle-blowing in their laws governing employment relations, criminal procedures, media and specific anti-corruption measures.

5. Whistle-blowing has always required courage and determination and whistle-blowers should at least be given a fighting chance to ensure that their warnings are heard without risking their livelihoods and those of their families. Relevant legislation must first and foremost provide a safe alternative to silence and not offer potential whistle-blowers a "cardboard shield" that would entrap them by giving them a false sense of security.

6. The Assembly invites all member states to review their legislation concerning the protection of whistle-blowers, keeping in mind the following guiding principles:

6.1. Whistle-blowing legislation should be comprehensive:

6.1.1. the definition of protected disclosures shall include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies;

6.1.2. the legislation should therefore cover both public and private sector whistle-blowers, including members of the armed forces and special services, and

6.1.3. it should codify relevant issues in the following areas of law:

6.1.3.1. employment law – in particular protection against unfair dismissals and other forms of employment-related retaliation;

6.1.3.2. criminal law and procedure – in particular protection against criminal prosecution for defamation or breach of official or business secrecy, and protection of witnesses;

6.1.3.3. media law – in particular protection of journalistic sources;

6.1.3.4. specific anti-corruption measures such as those foreseen in the Council of Europe Civil Law Convention on Corruption (ETS No. 174).

6.2. Whistle-blowing legislation should focus on providing a safe alternative to silence.

6.2.1. It should give appropriate incentives to government and corporate decision makers to put into place internal whistle-blowing procedures that will ensure that:

6.2.1.1. disclosures pertaining to possible problems are properly investigated and relevant information reaches senior management in good time, bypassing the normal hierarchy, where necessary;

6.2.1.2. the identity of the whistle-blower is only disclosed with his or her consent, or in order to avert serious and imminent threats to the public interest.

6.2.2. This legislation should protect anyone who, in good faith, makes use of existing internal whistle-blowing channels from any form of retaliation (unfair dismissal, harassment or any other punitive or discriminatory treatment).

6.2.3. Where internal channels either do not exist, have not functioned properly or could reasonably be expected not to function properly given the nature of the problem raised by the whistle-blower, external whistle-blowing, including through the media, should likewise be protected.

6.2.4. Any whistle-blower shall be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives.

6.2.5. Relevant legislation should afford bona fide whistle-blowers reliable protection against any form of retaliation through an enforcement mechanism to investigate the whistle-blower's complaint and seek corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone.

6.2.6. It should also create a risk for those committing acts of retaliation by exposing them to counter-claims from the victimised whistle-blower which could have them removed from office or otherwise sanctioned.

6.2.7. Whistle-blowing schemes shall also provide for appropriate protection against accusations made in bad faith.

6.3. As regards the burden of proof, it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistle-blower were motivated by reasons other than the action of whistle-blowing.

6.4. The implementation and impact of relevant legislation on the effective protection of whistle-blowers should be monitored and evaluated at regular intervals by independent bodies.

7. The Assembly stresses that the necessary legislative improvements must be accompanied by a positive evolution of the cultural attitude towards whistle-blowing, which must be freed from its previous association with disloyalty or betrayal.

8. It recognises the important role of non-governmental organisations in contributing to the positive evolution of the general attitude towards whistle-blowing and in providing counseling to employers wishing to set up internal whistle-blowing procedures, to potential whistle-blowers and to victims of retaliation.

9. In order to set a good example, the Assembly invites the Council of Europe to put into place a strong internal whistle-blowing procedure covering the organisation itself and all its partial agreements.

ANNEX 4

OECD COMPENDIUM OF BEST PRACTICES AND GUIDING PRINCIPLES FOR LEGISLATION ON THE PROTECTION OF WHISTLEBLOWERS

The following guiding principles and examples of best practices build on the preceding Study and provide reference for countries intending to establish, modify or complement whistleblower protection frameworks. In this sense, they are prospective and offer guidance for future legislation. They do not constitute a benchmark against which current legislation should be tested.

The guiding principles are broadly framed and can apply to both public and private sector whistleblower protection. To supplement these principles, a non-exhaustive menu of examples of best practices sets out more specific and technical guidance that countries may choose to follow.

Taking into account the diversity of legal systems among G20 countries, the guiding principles offer flexibility to enable countries to effectively apply them in accordance with their respective legal systems.

1. Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.

Examples of best practices in support of this principle could include, *inter alia***:**
- Enactment of dedicated legislation in order to ensure legal certainty and clarity, and to avoid a fragmented approach to establishing whistleblower protection;

- Requirement or strong encouragement for companies to implement control measures to provide for and facilitate whistleblowing (e.g. through internal controls, ethics and compliance programmes, distinct anti-corruption programmes, fraud risk management, etc.).

2. The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.

Examples of best practices in support of this principle could include, *inter alia***:**
- Protected disclosures include: a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or types of wrongdoing that fall under the term ―corruption, as defined under domestic law(s);

- Individuals are not afforded whistleblower protection for disclosures that are prohibited by domestic laws in the interest of national defense or the conduct of foreign affairs,

unless the disclosures are made in the specific manner and to the specific entity/entities those domestic laws require;
- Public and private sector employees are afforded protection, including not only permanent employees and public servants, but also consultants, contractors, temporary employees, former employees, volunteers, etc.;

- Clear definition of ―good faith or ―reasonable belief; although individuals are not afforded protection for deliberately-made false disclosures, protection is afforded to an individual who makes a disclosure based upon the individual's reasonable belief that the information disclosed evidenced one of the identified conditions in the statute, even if the individual's belief is incorrect.

3. The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.

Examples of best practices in support of this principle could include, *inter alia***:**
- Due process for both parties (the whistleblower and the respondent), including, *inter alia*, the need for protecting confidentiality;

- Protection from any form of discriminatory or retaliatory personnel action, including dismissal, suspension, or demotion; other disciplinary or corrective action; detail transfer, or reassignment; performance evaluation; decision concerning pay, benefits, awards, education or training; order to undergo medical test or examination; or any other significant change in duties, responsibilities, or working conditions;

- Protection from failure to take personnel actions, such as selection, reinstatement, appointment, or promotion;

- Protection from harassment, stigmatisation, threats, and any other form of retaliatory action;

- Protection from other forms of retaliatory conduct, including through waiver of liability/protection from criminal and civil liability, particularly against defamation and breach of confidentiality or official secrets laws;

- Protection of identity through availability of anonymous reporting;

- Clear indication that, upon a *prima facie* showing of whistleblower retaliation, the employer has the burden of proving that measures taken to the detriment of the whistleblower were motivated by reasons other than the disclosure;

- Protection against disclosures an individual reasonably believes reveal wrongdoing even if the whistleblower is incorrect‖;

- Protection of employees whom employers mistakenly believe to be whistleblowers.

4. The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.

Examples of best practices in support of this principle could include, *inter alia***:**
- Provision of protection for disclosures made internally or externally;

- Establishment of internal channels for reporting within the public sector;

- Strong encouragement for companies to establish internal reporting channels;

- Protection afforded to disclosures made directly to law enforcement authorities;

- Specific channels and additional safeguards for dealing with national security or state secrets-related disclosures;

- Allowing reporting to external channels, including to media, civil society organisations, etc.;

- Incentives for whistleblowers to come forward, including through the expediency of the process, follow-up mechanisms, specific protection from whistleblower retaliation, etc.;

- Positive reinforcements, including the possibility of financial rewards for whistleblowing;

- Provision of information, advice and feedback to the whistleblower on action being taken in response to disclosures.

5. The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.

Examples of best practices in support of this principle could include, *inter alia***:**
- Appointment of an accountable whistleblower complaints body responsible for investigating and prosecuting retaliatory, discriminatory, or disciplinary action taken against whistleblowers who have reported in good faith and on reasonable grounds suspected acts of corruption to competent authorities;

- Rights of whistleblowers in court proceedings as an aggrieved party with an individual right of action, and to have their ―genuine day in court‖;

- Penalties for retaliation inflicted upon whistleblowers, whether this takes the form of disciplinary or discriminatory action, of civil or criminal penalties.

6. Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.

Examples of best practices in support of this principle could include, *inter alia***:**
- Promoting awareness of whistleblowing mechanisms, provide general advice, monitor and periodically review the effectiveness of the whistleblowing framework, collect and disseminate data, etc.;

- Raising awareness with a view to changing cultural perceptions and public attitude towards whistleblowing, to be considered an act of loyalty to the organisation;

- Training within the public sector to ensure managers are adequately trained to receive reports, and to recognise and prevent occurrences of discriminatory and disciplinary action taken against whistleblowers;

- Requirement in the law that employers post and keep posted notices informing employees of their rights in connection with protected disclosures.

ANNEX 5

TITHE AN OIREACHTAIS

An Comhchoiste um Airgeadas+, Caiteachas Poiblí agus Athchóiriú

Tuarascáil maidir le héisteachtaí i ndáil leis an Scéim a bhaineann leis an mBille um Nochtadh Cosanta ar mhaithe le Leas an Phobail, 2012

Iúil 2012

HOUSES OF THE OIREACHTAS

JOINT COMMITTEE ON FINANCE PUBLIC EXPENDITURE AND REFORM

Report on hearings in relation to the Scheme of the Protected Disclosures in the Public Interest Bill, 2012

July 2012

31/FPER/010

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Appendices

1. Submissions to the Joint Committee can be accessed on the Oireachtas web site:-
   http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/fper-committee/reportsubmissions/

2. Transcripts of the public hearing can be accessed at Oireachtas web site:-
   http://www.oireachtas.ie/parliament/oireachtasbusiness/committees

3. The Draft Heads, Explanatory Memorandum and an Information note on the General Scheme of the Protected Disclosures in the Public Interest Bill, 2012 are available on the Department of Public Expenditure and Reform web site:-
   http://per.gov.ie/government-reform/

Chairman's Preface

The Heads of the General Scheme of the Protected Disclosures in the Public Interest Bill, 2012 were referred to the Joint Committee on Finance, Public Expenditure and Reform on the 27th February 2012. The Joint Committee, on the 18th April, met with Minister Brendan Howlin to discuss the provisions of general scheme.

Public hearings were held on the 23rd May, 5th, 6th, 12th and 13th June to discuss issues of concern with interested parties and those with specialist knowledge.

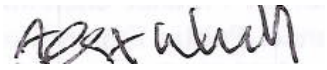
The hearings and submissions made by those attending raised some very important and interesting matters. It is apparent to the Joint Committee that this Bill also seeks to address certain of the recommendations included in the recent report of the Mahon tribunal which recommended the introduction of a cross-sectoral whistleblower protection Act in place of the existing sectoral approach. According to the Mahon tribunal report this fragmented approach has led to a complex and opaque system for protecting whistleblowers which is likely to deter at least some from reporting corruption offences.

It is important that all parties involved should work to find workable solutions to the questions raised and highlighted.

I would like to express my thanks to everyone who took part in this consultative process. All points raised in submissions have been noted and a report will be sent to the Minister as requested.

I look forward to the publication of the Bill and to further engagement with the Minister as the Bill progresses through the Houses.

I would like to express my appreciation to the Members of the Joint Committee, the Clerk, Mr. Ronan Lenihan and the Committee Secretariat Staff, Mr. Eoin Hartnett and Ms. Lorraine West for their commitment and dedication. I hope this work will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Alex White T.D.

Chairman

July 2012

Introduction

This Report forms part of the initial stages of a wider legislative process. It is representative of the submissions made to the Committee by those who participated in the consultation process. This Report does not purport to be, and should not be construed as being, a definitive statement of all the issues pertaining to the subject matter of the Bill/Act in question.

The Joint Committee wish, at outset, to the continued use of the term 'whistleblowers' as, in the opinion of the Joint Committee, this is a pejorative expression that does not properly reflect the nature and intent of the proposed legislation. The legislation refers throughout to 'protected disclosures' and this is the term which should be used, in the view of the Joint Committee.

The Programme for Government contains a commitment to introduce protected disclosure legislation. Following Government approval, the general scheme of a Bill was published at the end of February with a view to informing public debate on the measures and to give interested parties the opportunity to provide their input and observations on the proposed approach.

At the meeting of the 18th April with Minister Howlin, members were advised that officials in the Minister's Department had consulted with the Irish Congress of Trade Unions and Transparency International and that the initial feedback the Minister received on the legislative proposals had generally been positive. Minister Howlin stressed to members that these proposals meet the recommendation included in the recent report of the Mahon tribunal to introduce a cross-sectoral whistleblower protection Act in place of the existing sectoral approach. It was the opinion of the tribunal that this fragmented approach has led to a complex and opaque system for protecting whistleblowers, which is likely to deter at least some from reporting corruption offences.

The Draft Heads, Explanatory Memorandum and an Information note on the General Scheme of the Protected Disclosures in the Public Interest Bill, 2012 are available on the Department of Public Expenditure and Reform web site - http://per.gov.ie/government-reform/

The Joint Committee, following its meeting with Minister Howlin, decided to invite to hearings those listed in Appendix 3, as the Joint Committee considered they had specialist knowledge in the area of protected disclosures. Those invited to address the Joint Committee were requested to make a submission on the Draft Heads and these submissions can accessed at the Oireachtas web site –
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees

The Joint Committee, in publishing this report is not making a series of recommendations. Rather, in recognition of how pre-scrutiny can add value to the legislative process the Joint Committee considers that the best approach is to publish, in this report, the issues which the Joint Committee and those invited to address the Joint Committee consider should be addressed in the legislation.

The Joint Committee wishes to express its thanks to all those who participated in this process and valued the opportunity to engage with interested parties.

Observations

General

It was acknowledged by all those who participated that this legislation is most welcome and that, generally, it addressed the challenge of establishing a fair and balanced regime governing protected disclosures.

The Joint Committee noted the emphasis placed by a number of contributors, including Dr. Elaine Byrne, on the cultural and historical aspects of disclosure in our society, and the reluctance there has often been to "speak truth to power". The Joint Committee shares the view that legal change alone, whilst essential, will not be sufficient; attitudes too will have to change. This was a point also made by Mr Paul Egan to the Joint Committee when he stated that the proposed new law should "*support the cultivation of a better attitude at work rather than one based on distinctions between what is legal or illegal."*

The introduction of workplace codes of practice, making it clear that workers and others will have nothing to fear from making disclosures in good faith, will greatly assist in bringing about this change of mindset. In addition, the Joint Committee is of the view that the legislation must be supported by an information campaign to address the fear and negative implications associated with whistleblowing.

In addition, the Joint Committee noted the point made by Dr. Byrne to the effect that disclosure has tended to be gender specific, and in this regard the legislation should be gender proofed to the greatest degree possible.

Detailed Observations

1. That consideration be given to extending the protections provided for in the Bill to everybody who is at work, so that the protection is not confined to employees. The legislation should ensure that "atypical workers" including agency workers, interns or those employed for less than six months are covered. Those who may wish to come forward and report their concerns in the workplace must enjoy protection from the commencement of their employment, regardless of the construction of their contracts of employment or contracts for services.

2. That the protections offered by this legislation must be real. A person who is unfairly dismissed can wait for up to two years to have his or her case heard. If various other appeals mechanisms have to be invoked, one can be three or four years down the line by the time one's case is finally resolved. It would be unacceptable for a person who has come forward to make a protected disclosure to have to carry such a burden for four years, even if he or she wins his or her case eventually. For this reason, the United Kingdom and many other jurisdictions provide for interim relief. This means that a person may

be reinstated in his or her job while waiting for the case to be heard. This provision has not caused any widespread disruption in the labour market or in workplaces in the United Kingdom and elsewhere. ICTU questions the reason interim relief has not been included in the Heads of Bill and strongly recommends the inclusion of such a provision.

In his response to a question from Deputy Sean Fleming at the Joint Committee on the 18th April, Minister Howlin advised that *"The gold standard we considered is the model in UK and that country was the ground breaker. The New Zealanders learned from that and introduced a refined and better model in 2000. Even since then there has been case law from which we have learned. We believe that when this is enacted, Ireland will represent the gold standard - that is our objective."*[10] ICTU noted that given that the stated intention is for the Bill to follow closely the provisions in the United Kingdom, its omission [legislative provision for interim relief] from the general scheme is obvious and glaring.

3. In regard to interim relief, Senator Hayden questioned whether it could not be incorporated into the legislation that if an applicant has made a disclosure to a particular body, that body should apply to the courts for interim relief on behalf of the complainant. In other words, the duty to make the application for interim relief, where a *prima facie* case is established, should be on the body to whom the complaint is made rather than on the individual.

4. That it would be helpful if the legislation could provide guidance (to employers and employees) as to the steps a person should take to make a protected disclosure in their workplace. In the event that a person is making a protected disclosure to a regulator or into the wider domain, it would be helpful if all involved were clear as to the steps he or she would be expected to take in order to keep within the protections of the legislation

   The IHRC have noted in their observations on the legislation that, in order to encourage persons in possession of relevant information to come forward, and so that potential whistleblowers are aware of the impact of the legislation, clear, readily accessible guidelines must be made available. It recommends that following the enactment of any legislation, such guidelines are produced and widely publicised.

5. The Joint Committee considers that the compensation provision under Schedule 4.3.(c) should be examined with a view to the deletion of all

[10] Seen at http://debates.oireachtas.ie/FIJ/2012/04/18/00005.asp

words after *'… … all the circumstances.'* The Joint Committee notes that the legislation proposes a maximum award of up to 2 years' remuneration. Given the potential loss of career and livelihood, setting the maximum at 2 year's remuneration could serve as a deterrent to prospective disclosures.

6. In evidence to the Joint Committee it was noted that it is also important to ensure that protection is provided for those who make protected disclosures and who may be threatened with disciplinary action short of dismissal. It was noted that the focus in the draft legislation would appear to be on actual outcomes, whereas sometimes the same result can be achieved by threatening an outcome, without implementing it. The employer can achieve the same result by threat without seeing it through. The concern is that employers may attempt to threaten to take such action, perhaps more in order to set an example to other employees about the consequences of making protected disclosures rather than necessarily punishing the particular individual. Therefore, the legislation should seek, as far as possible, to discourage that kind of behaviour.

7. In regard to the Health Sector it was noted that Section 103 of the Health Act 2007 inserted a new Part 9A in the Health Act of 2004. Part 9A allows for protected disclosure in the public health sector. However, it was considered that the experience has been that the remedy falls short. This is because the remedy comes after the event and one must prove one was adversely affected. Therefore, one would not proactively seek to open up areas that might raise issues that need to be brought to the Minister's attention. Accordingly, the provisions should be the same for private health sector employees and should include private hospitals, agencies and GP practices where it is very unlikely that an individual, on a one-to-one employment relationship basis, will make a protected disclosure. In this regard the legislation should provide real protection and echo the provisions of Part 9A. This should allow for an authorised person, as in Part 9A, outside of the employment to ensure the employee can make a confidential disclosure if there is something occurring in a particular workplace that affects the welfare of the people under care. The Bill proposes that confidential disclosure would be, for example, to a statutory body and currently, HIQA does not have any responsibility in private practice areas such as GP practices or private hospitals. Therefore, there is no body to which a person with a concern can go outside of the immediate employer. This may negate an individual making a disclosure.

It is important to note that agency staff are covered by Part 9A of the Health Act and are considered employees for the purpose of protected disclosures. This should follow into this legislation. The Joint

Committee were advised that it was the general experience that when issues have been raised, it has usually been done by individuals who are not working permanently in the environment – a relative or external service provider (hairdresser, chiropodist etc). Such external persons see issues or incidents as out of the ordinary, they are not accustomed to them and they raise concerns. In the private nursing home sector, where there is still a high dependency on workers who are visa dependent for residence, the likelihood of these workers making a protected disclosure that would put their right to reside in the State in jeopardy is limited, unless they have real protections. The Joint Committee was advised that an amendment should be proposed so that the disclosure can be made to the Minister, in this case the Minister for Health who has responsibility for the provision of health care, particularly in the private sector where public funds are being used, for example, in the form of subsidies for GPs and private hospitals in the provision of public care, and that the same principles should apply in the private health care sector as will apply in the public health care sector. Further, the issue of confidentiality versus anonymity must be examined. It is important in a small area of employment where there is a one-to-one relationship that the confidential disclosure is made to an authorised person, who may not necessarily be in that employment. That, it is noted, is not an anonymous complaint, but a confidential complaint or disclosure.

Further, the Joint Committee considers that a provision should be considered allowing for reports to be made to a relevant professional body or another third party designated for the purpose of receiving such reports, such as the IMO.

8. On the question of good faith reporting, this issue normally arises in circumstances where a person has made a report which is not accurate. The challenge is how to implement a system that looks at whether the incorrect report was made maliciously, or otherwise than in good faith. Was there good faith in making it, even though the information given was not accurate? In the Draft Heads there is a three tier approach, with the onus on a person to establish the facts being less onerous where the report is made internally than if it is to be made to a regulator or another person (It should be noted, however, that the explanatory note for Head 5 is not absolutely accurate in this regard). The Joint Committee considers that the balance is right in the Draft Heads and the Joint Committee commends the three tier approach which should not be changed. In noting this, the Joint Committee considers that there are many circumstances where a person will not know all of the facts. That is the point at which a person should make an internal disclosure and be protected from reprisals from colleagues or others.

9. Deputy Fleming questioned the concept of 'good faith reporting', as even reporting in 'bad faith' should not detract from the substance of what is being reported. Mr. Paul Egan in reply stated that "… … *a large proportion of disclosures is motivated by the desire for vengeance. However, a key point is there must be a bona fide belief in the correctness of the information. This is where the question of 'good faith' arises. In many cases people will disclose information in circumstances where they have been wronged but they should have a good faith belief in the truth of their accusations. We are trying to get away from the concept of being compliant… … our proposed law [should] support the cultivation of a better attitude at work rather than one based on distinctions between what is legal or illegal."*

   The Joint Committee note that the absence of any definition of 'good faith' in the UK Public Interest Disclosure Act has led to legal and practical difficulties for the courts, employers and workers. The Joint Committee considers that the existing statutory definitions of 'in good faith' used in section 61(3) of the UK Sale of Goods Act 1979 and section 90 of the UK Bills of Exchange Act 1882 could be applied. In both cases Parliament defined the term as follows: 'A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not'. Similar provisions are contained in US federal law.

   The Joint Committee regard this issue as one that merits consideration.

10. External, good faith reporting exists to defend workers; internal reporting – through acting as an essential part of good corporate governance – will serve the company and its officers. The Draft Heads propose that State organisations must have stated policies regarding internal treatment of information. This should be extended to include the private sector and the law should not discourage internal reporting.

    Vicarious liability should extend to employers where they have allowed whistleblowers to be bullied by co-workers. Transparency International, in its presentation to the Joint Committee, urged that the Minister consider a provision of vicarious liability of the employer for any detriment suffered by a worker as a result of informal or formal retaliation by co-workers.

11. On the issue of trade union protection it was noted that a person might seek advice on what he or she should do with what he or she might know. The person concerned should be able to have a discussion with a union representative because when people think about how they should approach their employer, their first point of call is normally

their shop steward; therefore, the discussion with the person's trade union should be protected.

The Joint Committee noted the comments by Transparency International who have suggested that a person considering a disclosure should be able to consult with a qualified professional who is a member of a body recognised by the Minister.

12. In regard to Head 4 (g) – Protected disclosures, the Joint Committee believes that consideration should be given to the insertion of the word 'negligent' between 'corruption' and 'or' to read as follows; *(g) that an unlawful, corrupt, negligent or irregular use of public monies has occurred, is occurring or is likely to occur.*

13. The Chairman noted that Head 4, sections (*f*) and (*g*) appear to be confined to public sector events. The Joint Committee considers that this should be examined to include the private sector and this may need to include the multinational sector and companies headquartered outside Ireland.

14. As a general rule, where there is an actionable wrong by reason of the activity of an individual who is an employee, the employer has vicarious liability. If an employee discloses misbehaviour by another employee, the disclosing employee is exempt from legal action that results but potentially the employer may have exposure. As the Bill is drafted, (see Head 13 in particular) the employer does not have the protection enjoyed by the disclosing employee or the immunity from being sued. Therefore, consideration should be given to the employer gaining that immunity.

15. Deputy Donnelly enquired as to what can be done to make people more aware of the legislation. In reply Dr. Elaine Byrne observed that *"The Standards in Public Office Commission has called for consolidation of the legislation so that we can find a way to show off the legislative architecture in place."* The Joint Committee suggests that in terms of rebuilding Ireland's reputation, the call by the Standards in Public Office Commission for the consolidation of the legislation has merit.

16**.** IBEC were of the view there should be a requirement to make an internal complaint (Head 5) before one has recourse to Head 6 unless there are exceptional circumstances. Mr. Kenan Furlong advised that there are similar criteria for a disclosure to qualify as a protected disclosure to an employer under Head 5 and to a relevant body under Head 6. The employer channel requires the disclosure be made in good faith and that the worker has a reasonable belief that the information disclosed shows or tends to show an impropriety which is captured by0

Head 4. The regulatory channel under Head 6 also requires good faith but the difference is that it requires that the worker reasonably believes the disclosure is substantially true. The worker effectively will have a choice on whether to report under the internal channel or the external channel, that is, to the regulatory body.

The nature of the type of disclosures attracting protection under Head 4 is particularly broad. It ranges from disclosures relating to a breach of the criminal law, a miscarriage of justice, a health and safety issue and damage to the environment. Second, there is no *de minimis* requirement for the level of information or the seriousness of information relating to any of these issues and there is no requirement to be reasonable.

Mr. Furlong noted that if "*… …a worker had a concern about several files lying around in a corridor of his workplace and that the worker held the view that this posed some sort of health and safety risk, under the Bill as currently drafted, that worker would be entitled to go directly to the Health and Safety Authority, HSA, with the concern and make a protected disclosure, even if there were adequate policies to deal with the matter internally. Similarly, if a worker was concerned about the absence of recycling bins on a particular floor of his building, then he would be entitled to go directly to the Environmental Protection Agency, EPA, with the concern, even if there was a perfectly valid and appropriate internal whistleblowing policy to deal with these issues… …the worker should be obliged to exhaust these procedures unless there are reasonable grounds for his not doing so.*"

Mr. Furlong offered another practical example "*… …If a worker hears an allegation regarding illegal dumping he or she is entitled to make a protected disclosure of this allegation to his or her employer without making any assessment of its truthfulness on the basis that this information would show or tend to show damage to the environment. Naturally, if the worker sought to disclose this information to the EPA via the external channel under head 6, then he or she would have to make an assessment as to its veracity before doing so to be satisfied that it was substantially true. If the requirement under head 5 was indeed for a worker to believe in the truth of the information then, surely, this would have the unintended consequence that the criteria for protection under the employer channel would be more onerous than those under the regulatory channel.*"

The Joint Committee regard this issue as one that merits consideration.

17. Mr. Furlong noted that the "*… …criminal immunity to be granted by this legislation should be confined to immunity for liability arising from the making of a whistleblowing report and should not extend to liability*

arising from a person's participation in the disclosed impropriety. … ...As currently drafted, the Bill notes that the full extent of the criminal immunity is yet to be determined. An international debate is under way over the extent of immunity that should be awarded to whistleblowers. There is a significant divergence in our national and international laws regarding the scope of immunity that should be granted to whistleblowers. I offer several examples to illustrate the point. Under the Dodd-Frank legislation in the United States a whistleblower can be awarded 30% of any financial sanction imposed by the US Securities and Exchange Commission arising from a whistleblowing report. Certain stringent criteria are attached to such an award and it is discretionary, but in the past two years the SEC has imposed fines ranging from $150 million to $550 million. This gives a sense of the potentially significant bounty that is available for the right whistleblower in the right circumstances."

The Joint Committee regard this issue as one that merits consideration and in that context also notes that under US legislation dating back to 1867 provision is made for rewards but not for blanket immunity. The Irish DPP, as is the case for many public prosecutors overseas, has discretion over a decision to grant immunity.

18. Mr. McErlean made the point that Head 16 of the draft Bill "*… …requires that every person to whom a protected disclosure is made should merely use his or her best endeavours to keep the identity of the whistleblower confidential. This is a very low threshold that is not reflected in the equivalent United States statute, for example, which by contrast states that the identity of an individual who makes a disclosure may not be disclosed. In addition, in other legislative provisions where confidentiality is perceived as important, for example, in regard to the Central Bank's confidentiality obligations, there is no such ambiguity or uncertainty. Consequently, from a practical point of view, as long as the draft legislation contains an element of uncertainty about the confidentiality of the process, there may not be any marked improvement in the willingness of individuals to come forward with important information."*

The Joint Committee regard this issue as one that merits consideration.

19. IBEC in presenting to the Joint Committee outlined the importance of protecting Ireland's international reputation as Ireland exports over

80% of all produce and services and is heavily reliant on our international reputation for foreign direct investment. In relation to five key sectors; 1) the ICT sector with Intel, Microsoft, Hewlett-Packard, Google, PayPal, eBay and, more recently, Twitter, LinkedIn

and Facebook - all ten of the major technology companies in the world have a base in Ireland. Many have European headquarters in Ireland. 2) The medical devices sector; eleven of the 13 major medical technology companies in the world have European headquarters in Ireland. 3) The pharmaceutical sector, eight of the ten largest pharmaceutical companies in the world have headquarters in Ireland and 12 of the 25 top-selling drugs in the world are produced and manufactured here, 4) The Agrifood sector and, finally 5) The international financial services sectors. IBEC made the point that the proposed legislation needs to be careful in terms of the creation of the potential for a leak into the wrong hands of information of a very commercially sensitive nature.

The Joint Committee is of the view that, if anything, our 'international reputation' has been damaged by not having such legislation in place. The Committee regards this issue as one that merits consideration in that robust legislation will enhance rather than threaten Ireland's international reputation.

With regard to commercially sensitive information, the Joint Committee notes that no evidence or studies were referred to that explained how commercial or intellectual property rights would be negatively affected by this Bill, or indeed how investment into the country would be affected.

20. IBEC raised the clear commitment in the programme for Government to subject important Bills to a regulatory impact assessment. It appears to the Joint Committee that this legislation should be subjected to a regulatory impact analysis which should be published.

21. The Joint Committee note the point made by IBEC in regard to the multifarious pieces of legislation that abound in the area of disclosures. The new legislation will coexist with the existing legislation. The Draft Heads refer to 16 Acts that deal with whistleblowing. If the new legislation were to be added to these, how would they all work together? There clearly is a need for a 'joined-up approach' such that there is in place one piece of legislation clarifying and codifying protections and obligations alike.

22. Transparency Ireland made a point in regard to protection for students and other categories of persons who they felt ought to be afforded protection against civil liability. They based this on precedent from

elsewhere, for example Norway, where there is protection against civil liability for students. This is particularly apposite where a student, in particular a research student, is working on an assignment where he or she may uncover wrongdoing. He or she may find it very difficult to secure other research opportunities in the future and may suffer from a legal action taken by the university.

The Joint Committee is of the view that the issue of protected disclosures for students and other apprentices or trainees is one that merits consideration.

23. Consideration should be given to including a provision in the legislation providing for remedies for persons who suffer future work-place discrimination (including unjust denial of work opportunities) on the grounds that they made a protected disclosure during the course of previous employment. In that regard the Joint Committee considers that this could be accommodated in an amendment to the Employment Equality Acts.

24. Head 10 - Disclosure to a legal adviser. Consider extending this provision to include trade union officials, auditors and independently accredited advisors such as ethics and compliance officers.

The Joint Committee considers that this merits consideration.

25. The Joint Committee considers it prudent and necessary to include a provision that requires a statutory review of the effectiveness of the legislation to be undertaken at five or ten year intervals. There should also be provision for Oireachtas oversight in regard to public bodies.

26. Head 22 – The inclusion of 'matters relating to Northern Ireland' is vague and it is unclear what the precise purpose of its inclusion is. The legislation requires clarity as to what matter/s relating to 'Northern Ireland' is being providing for.

APPENDIX I

List of Members of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform

Chairman: Alex White (LAB)

Deputies:
Richard Boyd-Barrett (IND)
Michael Creed (FG)
Jim Daly (FG)
Pearse Doherty (SF)
Stephen Donnelly (IND)
Timmy Dooley (FF)*
Sean Fleming (FF)
Joe Higgins (IND)
Heather Humphreys (FG)
Kevin Humphreys (LAB)
Peter Mathews (FG)
Pádraig Mac Lochlainn (SF)***
Mary Lou McDonald (SF)
Michael McGrath (FF)
Michael McNamara (LAB)**
Olivia Mitchell (FG)
Kieran O'Donnell (FG)
Arthur Spring (LAB)
Billy Timmins (FG)
Liam Twomey (FG) (Vice-Chair)

Senators:
Sean D. Barrett (IND)
Thomas Byrne (FF)
Senator Paul Coghlan (FG)*****
Michael D'Arcy (FG)
Aideen Hayden (LAB)
Tom Sheahan (FG)

Notes:
1. Deputies appointed to the Committee by order of the Dáil on 9 June 2011
2. Senators appointed to the Committee by order of the Seanad on 16 June 2011
3. *Deputy Timmy Dooley appointed on 21 June 2011 in place of Deputy Seán O' Fearghaíl
4. Deputy Alex White elected as Chairman on 23 June 2011
5. Deputy Liam Twomey elected as Vice Chairperson on 23 June 2011
6. **Deputy Michael McNamara appointed on 8 December 2011 in place of Deputy Thomas P. Broughan
7. ***Deputy Pádraig Mac Lochlainn appointed on 14 December 2011 in place of Deputy Jonathan O'Brien
8. ****Senator Denis O'Donovan appointed on 10 May 2012 in place of Senator Katherine Zappone
9. *****Senator Paul Coghlan appointed on 14 June 2012 in place of Senator Denis O'Donovan

APPENDIX II

Orders of Reference of the Joint Committee on Finance, Public Expenditure and Reform

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

(1) The Select Committee shall consider and report to the Dáil on—

(a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,

(c) Estimates for Public Services, and

(d) other matters

as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:

(a) matters of policy for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy in respect of bodies under the aegis of the Department,

(e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill published by the Minister,

(g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(*d*) and (*e*) and the overall operational results, statements of strategy and corporate plans of such bodies, and

(*j*) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:

(*a*) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and

(*b*) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.

(7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.

(8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(*a*) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(*b*) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(*c*) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.

(2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet

to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

(4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.

(5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(a) a member of the Government or a Minister of State, or

(b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

APPENDIX III

List of Witnesses

Mr. Brendan Howlin TD, Minister for Public Expenditure and Reform

Irish Congress of Trade Unions (ICTU):

Ms. Esther Lynch (ICTU)

Ms. Phil Ní Sheaghdha (INMO)

Mr. Matt Stauntan (IMPACT)

Mr. Seamus Shields (IBOA)

National Union of Journalists (NUJ):

Mr. Gerry Curran, Cathaoirleach, Irish Executive Council

Mr. Séamus Dooley, Irish Secretary

Mr. Paul Egan, Partner, Mason Hayes & Curran Solicitors

Dr. Elaine Byrne, Lecturer, Trinity College Dublin

Mr. Kenan Furlong, Partner, A&L Goodbody

Mr. Eugene McErlean, former AIB Internal Auditor

IBEC:

Mr. Brendan Butler, Director of Policy and International Affairs

Ms. Siobhan Masterson, Head of Public Services Organisation

Ms. Aoife Newton, Solicitor

Transparency International Ireland:

Mr. John Devitt, Chief Executive

Ms. Lauren Kieran, Advisor to Mr. Devitt