

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
Opening Statement by Philip Brennan, Managing Director Raiseaconcern

22 September 2021

Protected Disclosures (Amendment) Bill 2021.

Cathaoirleach and Members of the Committee, thank you for the opportunity to contribute to the pre-legislative debate on the Protect Disclosures (Amendment) Bill 2021.

Raiseaconcern is a small Irish-owned, Irish-based professional organisation that works with private sector employers and public bodies in the prevention, detection, investigation and remediation of workplace wrongdoing.

As our name suggests, we specialise in the area of whistleblowing, or employee disclosure, as we prefer to call it. We have practical experience of dealing with employers and workers in this area.

You will appreciate that the content of our work, who we work for and the identity of the Disclosers we engage with is extremely confidential, so you will understand why I will not be in a position to discuss specific cases with you. However, as you consider and debate the first set of amendments to the Protected Disclosures Act since its enactment in 2014, I welcome the opportunity to share some views with you and to take your questions.

Many elements of the adoption of the EU Whistleblowing Directive into Irish law are non-discretionary, so my submission only covers those limited areas where there is discretion under the Directive or indeed where you have general discretion as legislators to go beyond the provisions of the Directive.

We make four recommendations on the General Scheme of the Bill:

1. Grievances (Head 5)

It is proposed to insert a provision into the Act that matters concerning interpersonal grievances will not be within its scope. We agree with the intent but urge caution. In our experience, many employers regard claims of bullying, harassment and sexual harassment as interpersonal grievances.



We encourage you to ensure that in the drafting of the Bill to exclude interpersonal grievances that there is no ambiguity, and that it is explicit that it does not exclude disclosures regarding bullying, harassment and sexual harassment from protection.

2. Anonymous Disclosure (Head 8)

It is proposed to explicitly afford protection to workers who make anonymous disclosures if they are subsequently identified and suffer penalisation. It is also proposed to avail of a 'carve out' provided for in the Directive that recipients of anonymous disclosures are not obliged to accept or follow up on them.

It is our experience that concern about their identity being revealed is the single biggest fear that Disclosers have and is the most significant deterrent to disclosure. This is why Raise a concern provides the service of being a confidential recipient.

We have set out in our submission why we see no logic or justifiable reason as to why disclosures by named workers must be accepted and followed up by employers, whereas in contrast, the same obligation does not apply to disclosures made by anonymous Disclosers.

3. Internal Reporting Channels (Head 9)

It is proposed that the existing legislation will be amended to require all employers with 50 or more employees to establish internal reporting channels. While it is appropriate to minimise the compliance burden on micro or small enterprises, we feel there is no logic in excluding them from the requirement to put simple processes in place for receipt of employee disclosures. The risk of wrongdoing exists in micro and small enterprises just as it does in medium and large ones.

In the operation of other aspects of legislation, Ireland does not operate exemption or 'lite touch' provisions for micro or small enterprises. For example, they must all adhere to the same tax administration provisions, health and safety provisions and environmental protection provisions as medium and large enterprises.

Raise a concern's view is that our legislation should promote a workplace environment where all enterprises, small as well as big, act legally and properly. Government is required under Article 20 of the Directive to provide support on the design of policies and procedures and on their operation. There is nothing to prevent Government bodies, trade associations, voluntary bodies and others from making template policies, procedures and processes available at low or no cost to micro or small enterprises, thereby eliminating or at least minimising the cost of compliance.



4. Ministerial Reporting Channels (Head 11)

The Protected Disclosures Act 2014 currently permits Disclosers who are employed by a public body to make disclosures to a Minister of Government in certain circumstances.

The General Scheme of the Bill proposes to change this and introduce a range of new conditions that must be met for such disclosures, including that such disclosures will be referred to the new Protected Disclosures Office in the Office of the Ombudsman.

Raisea concern can understand that there are administrative benefits to having a central point, a Protected Disclosures Office, to which Government Departments can refer worker disclosures for evaluation and handling. However, the Bill proposes to introduce new and increased hurdles that Disclosers must meet in order to make a disclosure to a Minister. This seems to narrow the ability of Disclosers to claim protection and to be regressive. We encourage you to consider this further.

Additional areas where the Bill might be improved

Our submission sets down a further matter the Committee might consider. Where recipients of disclosures find on investigation that wrongdoing has occurred, we feel the legislation should require that the broader underlying root causes that prevailed which facilitated or enabled the wrongdoing to take place, should be identified. This should include why the wrongdoing was not identified by others before the disclosure was made. It is only by completing this final step and taking remedial action to address the root causes that similar future problems can be avoided at a general level.

There should be sharing of the learning, and indeed, in the case of public bodies, there may be scope to incorporate provisions in this regard into their annual reports. The Protected Disclosures Office could also play a vital role in this which would be in the public interest.

Possible implications/consequences arising from the Act

In our submission, Raisea concern has set out the reasons why adequate and appropriate resourcing of the new Protected Disclosures Office in the Ombudsman's Office will be critical to its success. The same applies to adequately resourcing the functions of '*prescribed persons*' on whom significant additional responsibilities will fall.

General and conclusion



Cathaoirleach, the proposed amendments to the Protected Disclosures Act will strengthen protection and redress for those who disclose wrongdoing and help ensure that their disclosures are acted upon and that they receive feedback. It will provide balance by ensuring that due process is also afforded to those who are the subject of disclosures. However, passing legislation alone is not enough. It is the view of Raise a Concern that this needs to be accompanied by a Government-backed initiative to promote a positive attitude towards this whole area. Ireland should promote a culture where we encourage, as well as offer legislative protection to workers who raise concerns about workplace wrongdoing.

This culture would create the environment within which Ireland's national and public interests would be best served by making it a better place to work, a better place to do business in, as well as a better place to do business with.

We encourage Government to align this amended legislation with a public awareness programme which promotes such a culture.

Thank you for the opportunity to address you.