

**Committee on Finance, Public Expenditure and Reform, and Taoiseach:**  
**ICCL Opening statement for the pre-legislative scrutiny hearing on the**  
**Protected Disclosures (Amendment) Bill 2021**

ICCL welcomes the opportunity to appear before the Committee today to discuss this important draft legislation and we thank the Committee members for their invitation to attend. ICCL has previously made a written submission on the draft heads of Bill and I will use this opening statement as an opportunity to offer a summary of this submission for the committee.

Article 19 of the Universal Declaration of Human Rights guarantees the right to seek, receive and impart information and ideas through any media and regardless of frontiers. The International Covenant on Civil and Political Rights enshrines the same rights in its article 19, which emphasizes that the freedom applies to information and ideas of all kinds. These key human rights instruments form the basis of ICCL's submission on the bill.

It is worth reiterating from the outset that Ireland already enjoys a high standard of protection for whistle-blowers in a comparative perspective. While the 2014 Protected Disclosures Act is often cited in policy and academic literature as being an effective piece of legislation for the protection of whistle-blowers, Directive 2019/1937 offers an opportunity for the Oireachtas to go further in the protection of those who make protected disclosures. Whistle blowers however should be seen as the "regulators of last resort" in that effective oversight is a more responsible manner for the state to prevent wrongdoing.

It is the view of ICCL that a number of opportunities to strengthen the 2014 Bill have unfortunately been missed in the process of transposition thusfar and steps should now be taken to remedy this.

To this end, our submission contains a number of practical recommendations which can be made to improve the draft legislation which I will briefly outline here:

First, it is our recommendation that consideration is given in the Bill to an explicit recognition of the value of whistleblowing outside of the context of employment/work as per the UN Convention Against Corruption to which Ireland is a party. This could include, for example, patients who whistle-blow on wrongdoing carried out in a hospital or parents based on what they have witnessed in a school.

Second, we suggest that the existing text contained in the Draft Heads of Bill which seeks to amend section 10 of the 2014 Act should be altered to offer protection to those who seek to disclose wrongdoing or information which is in the public interest regardless of their relationship to the organisation they are reporting.

Third, ICCL recommends that the decision to derogate from the Directive and limit the requirement to establish internal whistle blowing channels to private sector firms with more than 49 employees is reversed.

Fourth, that head 8 of the Draft Heads of Bill is amended to ensure that legal entities are obliged to investigate and follow up on anonymous disclosures where sufficient evidence is provided to act.

Our final set of recommendations have been grouped together as they refer to the role of the proposed “Disclosures Office”

ICCL has submitted that further consideration is given to how this office could potentially examine protected disclosures that arise outside of work/employment. Failing this, the office should be required to report to the Minister each year on the number and type of disclosures that it has received, in addition to their investigative status, in order to assess the operation of the act.

Finally, we have recommended the Disclosures Office should be tasked with providing a “one stop shop” for whistleblowing information and support. This should serve to complement the existing resources offered by Transparency International Ireland and others. Article 20.3 of the Directive contains a specific commitment to the provision of psychological support for whistle-blowers in the final text of the Bill, it is the view of ICCL that a commitment to resourcing these supports should be made.

In choosing to derogate from a number of areas of the Directive the Oireachtas is passing up the opportunity to set the gold standard for protected disclosure internationally and are choosing to ignore a number of key provisions of international conventions which Ireland is party to, including the UNCAC, the ICCPR and the ECHR.

It is the position of ICCL that every effort should be made to ensure that this Bill respects those conventions which Ireland is a party to and is amended in such a way that ensures that the right to freedom of expression is to the forefront of an enhanced whistle-blower protection regime.