



Whistleblower Project

Discussion Paper

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**Make a submission by
Monday, 10 November 2025**

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Overview

Whistleblowers play a vital role in the exposure of wrongdoing in public administration and, therefore, the maintenance of public integrity.

Whistleblowing is commonly defined 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

Wrongdoing in public administration is notoriously difficult to detect and investigate. It is usually well concealed and has no direct victim motivated to complain. The importance of those with insider knowledge identifying and reporting alleged conduct of this nature is readily apparent. In *Protecting Australia's Whistleblowers: The Federal Roadmap*, Professor A J Brown and Kieran Pender reported that

Australian research confirms it is people within organisations – the officials and employees – who really know what goes on and remain the single most important way in which wrongdoing is brought to light.²

Insiders will often be both particularly well-placed to shed light on the suspected conduct of their colleagues, and particularly vulnerable to repercussions, by virtue of their position. For this reason, a comprehensive whistleblower protection regime is fundamental to any effective public integrity framework.

In 1993, South Australia was the first Australian jurisdiction – and among the first in the world – to enact laws to facilitate disclosures of, and protect those who disclose, information in the public interest. The Bill, which became the *Whistleblower Protection Act 1993* (SA) was heralded as an “integral part of the Government’s comprehensive anti-corruption programme”³ and a “weapon against corruption”.⁴ It was said to strike a balance between protecting whistleblowers and maintaining government integrity by ensuring justifiable confidentiality was not placed at risk.⁵

In 2018, following a review by former Commissioner Bruce Lander KC, the *Whistleblower Protection Act 1993* (SA) was repealed and replaced with the *Public Interest Disclosure Act 2018* (SA).⁶ It was hoped that the new laws would bring the regime more in line with contemporary attitudes about disclosure of wrongdoing in public administration.⁷

More than six years have passed since South Australia’s *Public Interest Disclosure Act* came into force, and several Australian jurisdictions appear to have enacted comparatively more robust whistleblower protection regimes. South Australia’s position in the vanguard has slipped.

¹ M Miceli M and J Near, “The relationships among beliefs, organisational position, and whistle-blowing status: a discriminant analysis” (1984) 27(4) *Academy of Management Journal* 687, 705.

² AJ Brown and K Pender, *Protecting Australia's Whistleblowers: The Federal Roadmap* (Report, 2022) 2.

³ South Australia, *Parliamentary Debates*, House of Assembly, 23 March 1993, 2520 (Terry Groom, Minister of Primary Industries).

⁴ *Ibid* 2521.

⁵ *Ibid*.

⁶ The *Public Interest Disclosure Act 2018* (SA) came into force on 1 July 2019 (“SA PID Act”).

⁷ South Australia, *Parliamentary Debates*, House of Assembly, 16 May 2018, 440 (Vickie Chapman, Attorney-General).

Moreover, research suggests that while much suspected wrongdoing is reported in Australia, many individuals remain reticent to come forward.⁸ Concerningly, data from the Commission's 2024 *Public Integrity Survey* indicates that there remains in South Australia a disinclination to "blow the whistle", in part due to fears that reports would not be treated confidentially and fears of repercussions,⁹ notwithstanding the provisions in the *Public Interest Disclosure Act*.

This is broadly consistent with research examining the factors which motivate, and impede, public interest whistleblowing at a federal level. The overwhelming reason given for not reporting suspected wrongdoing has been found to be a belief that no action will be taken, with fear of reprisal also being identified as a significant barrier to whistleblowing.¹⁰ Evidently, strong legislative protections, complemented by facilitative organisational climates, are essential to the efficacy of our whistleblower regime.

It is timely to examine the adequacy of South Australia's regime to encourage, support and protect those who provide information about suspected wrongdoing in public administration. The Commission's Whistleblower Project aims to do just that. The project joins an existing conversation about whistleblower protections. Reviews examining equivalent schemes have been undertaken in several Australian jurisdictions in recent years.

The Commission is calling for submissions about the adequacy of the regime created by the *Public Interest Disclosure Act*. Respondents may wish to address some or all of the prompt questions detailed below. Respondents are encouraged to identify issues and, where possible, provide suggestions for improvements to the current regime. To assist, an overview of that regime, as it relates to potential issues of corruption, misconduct or maladministration in public administration, can be found at Appendix A.

While the Commission's focus, given its statutory remit, is the management of disclosures about public administration information (rather than disclosures about environment and health information which are also governed by the current legislation) respondents may address all aspects of the scheme.

The Commission is interested in the views of all stakeholders, including members of the public, those who may have made or considered making disclosures, those who may have received or otherwise dealt with disclosures, public officers, government agencies, advocacy organisations, those who have conducted relevant academic research, commentators, members of the media, and any other individuals or groups with an interest in this area.¹¹

Please note that submissions will not attract the protections of the current regime. The Commission is not - generally speaking - a relevant authority to which disclosures may be made under the *Public Interest Disclosure Act 2018* (SA).¹² Nonetheless, all efforts will be made to handle information provided confidentially. Anonymous submissions will be received. Submissions will not be published without consent. Please indicate in the body of submissions whether or not consent is given.

⁸ Peter Roberts, A J Brown and Jane Olsen, *Whistling While They Work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations* (Report, 2011) 37.

⁹ South Australian Independent Commission Against Corruption, *Public Integrity Survey* (Report, 2024).

¹⁰ Richard Wortley, Peter Cassematis and Marika Donkin, *Who blows the whistle, who doesn't and why?* In *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU ePress, 2008) 54.

¹¹ Please note that the Commission cannot provide advice or make determinations in relation to individual cases involving the *Public Interest Disclosure Act 2018* (SA).

¹² In preparing submissions, respondents must be mindful of the prohibition on knowingly divulging the identity of informants in s 8 of the *Public Interest Disclosure Act 2018* (SA).

The preparation of a submission on this topic may be confronting. Resources are available should you require support, including the Commission’s Witness Welfare Officer (email: WhistleblowerProject@icac.sa.gov.au.)

Organisation	Services	Contact
Beyond Blue	Support for people experiencing anxiety and depression	1300 224 636 www.beyondblue.org.au
Employee Assistance Program (EAP)	SA Public Sector employees may have access to an employer-provided assistance program	Contact your employer
Lifeline	Crisis support and suicide prevention	13 11 14 www.lifeline.org.au
Mental Health Triage Service	24/7 service for support, triage and referrals for mental health emergencies	13 14 65
Suicide Call Back Service	24/7 phone and online counselling for people affected by suicide	1300 659 467 www.suicidecallbackservice.org.au

Issues for consideration

Issue 1: Threshold for obtaining protections

Stipulating which disclosures of information attract protection is a key component of any whistleblower protection legislation. Whistleblower protection schemes exist in each Australian jurisdiction, but they vary in terms of who may make a disclosure, the content of a disclosure, and to whom a disclosure may be made. A question arises whether the threshold for obtaining protections under our *Public Interest Disclosure Act* is fit for purpose.

Who should be able to make disclosures?

Presently, in South Australia only public officers¹³ may make an appropriate disclosure of public administration information.¹⁴ In other jurisdictions, disclosures made by a broader range of individuals – for example, former public officers, witnesses or any natural person – attract legislative protections.

In his 2023 review of Queensland’s whistleblower protection legislation, the Honourable Alan Wilson KC considered whether the class of eligible disclosers should be expanded. Ultimately, he recommended that it be restricted to those both capable of giving quality inside information and vulnerable to retaliation, including: public officers; former public officers in certain circumstances; trainees or students on work placements in public sector entities; and specified volunteers (including those in emergency services).¹⁵

Other categories of individuals who could potentially be brought within the class of eligible disclosers in our state include close relatives of public officers and those who interact with public officers but do not themselves come within the definition of a public officer – for example, unsuccessful applicants to a tender process, children in state care or prisoners.

Prompt questions:

- Should the class of individuals who may make an appropriate disclosure of public administration information be expanded beyond public officers? If so, to whom?
- Should there be any qualifications to this – for example:
 - a time limit for former public officers to make disclosures?
 - permitting only volunteers from certain kinds of organisations to make disclosures?

¹³ *SA PID Act* (n 6) s 5(1)(b). While it seems likely that it was intended that public officers disclosing information gained by virtue of their position be specially protected, there is no legislative requirement that there be any nexus between the discloser’s status and the information to be disclosed. It is not readily apparent why a public officer employed within one department disclosing information in relation to the conduct of those within an entirely different department ought to be protected but a member of the public disclosing that same information ought not.

¹⁴ See p 5 for a discussion of the meaning of the term “public administration information”.

¹⁵ Alan Wilson, *Review of the Public Interest Disclosure Act 2010* (Report, June 2023) 68-83.

What should disclosures be about?

The breadth of conduct to which disclosures may relate varies across Australian jurisdictions. In South Australia, disclosures of public administration information – defined to mean information that raises a potential issue of corruption, misconduct or maladministration in public administration – trigger legislative protection.¹⁶ Corruption, misconduct and maladministration is defined to have the same meaning as in the *Independent Commission Against Corruption Act 2012* (SA) and the *Ombudsman Act 1972* (SA). In some jurisdictions, disclosures concerning any criminal conduct at all engaged in by a public officer in their capacity as a public officer, trigger protection. Transparency International's *A Best Practice Guide for Whistleblowing Legislation* recommends that laws attempt to capture as wide a range of wrongdoing as possible but counsels against exhaustive lists which risk omission.¹⁷

Prompt questions:

- Should the definition of public administration information be broadened to capture a wider range of conduct? If so, how? Should disclosures of conduct constituting victimisation be expressly included?
- If disclosers incorrectly assess that alleged conduct raises a potential issue of corruption, misconduct or maladministration in public administration, should they be protected nonetheless?
- Should some kinds of disclosures – such as those related only to personal workplace grievances – be expressly excluded from the definition of public administration information?
- Should our Public Interest Disclosure Act continue to govern disclosures of information that raise potential issues of substantial risks to the environment or to the health or safety of the public, or are there sufficient existing channels for disclosures of that kind?

Who should be able to receive disclosures?

In South Australia, a disclosure of public administration information must be made to a relevant authority to attract protection. Section 5(5) of the *Public Interest Disclosure Act* provides that a disclosure is made to a relevant authority if it is made to any of the listed entities, including, for example, the Office for Public Integrity or, where the information relates to a public officer – a person who is responsible for the management or supervision of the public officer.

Perhaps surprisingly, the Commission is not ordinarily¹⁸ a relevant authority. It is undesirable to disadvantage disclosers for selecting an incorrect reporting pathway, particularly where legislation is complex.

¹⁶ *SA PID Act* (n 6) ss 5(4), 4.

¹⁷ Transparency International, *A Best Practice Guide For Whistleblowing Legislation* (Report, 2018) 8-9.

¹⁸ In some limited circumstances, the Commission may be a relevant authority – for example, where a disclosure of public administration information about a public officer employed by the Commission is made to a person responsible for their management or supervision at the Commission: *SA PID Act* (n 6) s 5(5)(a)(ii).

Prompt question:

- Should the definition of ‘relevant authority’ be broadened, including to ensure disclosers are not denied protections because they inadvertently report to an agency or individual not captured by that definition?

Some jurisdictions provide for external disclosures to a broader range of individuals and in broader circumstances when compared with South Australia. Here, in limited circumstances,¹⁹ a disclosure can be made to a journalist or member of Parliament and attract the protections. By contrast, at the federal level, external public interest disclosures may be made to *any* persons other than foreign officials in certain circumstances.²⁰

Research confirms that whistleblowing is frequently a stressful experience.²¹ The fragmented patchwork and complexity of legislation governing whistleblowing at various levels of government and in the corporate sphere no doubt contributes to that stress. Expanding the categories of individuals to whom external disclosures may be made could better enable would-be disclosers and disclosers to access support – for example, legal or health advice – without exposing themselves to liability. Categories of individuals which could potentially be brought within the class of eligible recipients of external disclosures might include medical practitioners, lawyers and union officials.

Prompt questions:

- Should the categories of people to whom an external disclosure may be made in certain circumstances be expanded beyond journalists and members of Parliament? If so, should any safeguards be put in place to ensure information is treated appropriately?
- Should the grounds for making external disclosures be expanded? If so, how?

Reasonable suspicion requirement

Presently, in South Australia, a discloser must “reasonably suspect” that the information to be disclosed raises a potential issue of corruption, misconduct or maladministration in public administration to qualify for legislative protection.²² This involves both a subjective and objective assessment.

In Tasmania, it is sufficient if a discloser has a subjective belief that the conduct has occurred, is occurring or will occur.²³ In the Northern Territory, it is sufficient if the information objectively tends to show that the conduct has occurred, is occurring or will occur.²⁴

¹⁹ Namely, where an appropriate disclosure of substantially the same information has already been made, the identity of the discloser has been made known to the person to whom that disclosure was made, and the discloser has not received either of the notifications required by the legislation: s 6.

²⁰ *Public Interest Disclosure Act 2013* (Cth) s 26 (“*Cth PID Act*”).

²¹ Rodney Smith and A J Brown, *The good, the bad and the ugly: whistleblowing outcomes in Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU ePress, 2008) 131-134.

²² *SA PID Act* (n 6) s 5(4).

²³ *Public Interest Disclosures Act 2002* (Tas) s 6 (“*Tas PID Act*”).

²⁴ *Public Interest Disclosure Act 2008* (NT) s 4.

An exclusively objective test would seem to risk exposing disclosers who report information in good faith to liability. In other Australian jurisdictions, satisfaction of either a hybrid subjective test with an objective component (akin to South Australia’s “reasonable suspicion” test), or an exclusively objective test (along the lines of the “tends to show” tests referred to above), is sufficient.²⁵

The New South Wales legislation also contains a presumption that disclosers honestly believe their disclosures show or tend to show serious wrongdoing where they expressly or impliedly so indicate.²⁶

Prompt questions:

- Does the requirement in South Australia that a subjectively held suspicion be objectively reasonable remain appropriate in light of the stated purposes of the legislation? In other words, should it be enough that a discloser suspects or believes the information raises potential corruption, misconduct or maladministration in public administration?
- Should South Australia introduce a presumption akin to that in the New South Wales legislation with respect to suspicion or belief?

Further prompt questions relevant to Issue 1:

- Should it also be sufficient to qualify for legislative protection in South Australia that the information disclosed tends to show potential corruption, misconduct or maladministration in public administration, irrespective of the discloser’s state of mind?
- Should provision be made for substantially compliant disclosures to trigger protection, in order to prevent disclosers from being penalised for technical failures to comply with the legislation?
- Should the legislation expressly specify that disclosures may be anonymous?

²⁵ See, for example, Cth PID Act (n 20) s 26(1); *Public Interest Disclosure Act 2012* (Vic) s 9(1) (“*Vic PID Act*”); *Public Interest Disclosure Act 2010* (Qld) s 13(3) (“*Qld PID Act*”).

²⁶ *Public Interest Disclosures Act 2022* (NSW) s 26(5) (“*NSW PID Act*”).

Issue 2: Early certainty about status

The stress so often experienced by whistleblowers is no doubt compounded by the fact that there is currently no mechanism for a binding decision to be made about whether or not a disclosure meets the threshold, and therefore engages the legislative protections, at an early stage.

Whether or not a disclosure triggers the protections can only be formally determined if proceedings are commenced asserting, for example, that the whistleblower has breached a duty of confidentiality or that another person has victimised the whistleblower.

Not unreasonably, potential whistleblowers may wish to know with confidence whether or not they will be protected at a much earlier time. A question arises as to whether South Australia's current regime provides prospective whistleblowers and whistleblowers with sufficient certainty in this regard.

Prompt question:

- Should a new or existing authority be able to formally confer whistleblower status to provide potential disclosers with greater certainty that statutory protections will apply to them, potentially even before they report?

Issue 3: An independent statutory authority to support whistleblowers

The Commission understands, anecdotally, that would-be disclosers and disclosers — as well as, on occasion, recipients of disclosures — in this state often contact the Office for Public Integrity seeking advice but the Office has neither the statutory authority to guarantee informants protections nor the resources to provide comprehensive advice, beyond basic information about the provisions of the legislation that might apply. Potential whistleblowers and whistleblowers should not be left to navigate complex legislation, at a time when they are often experiencing significant stress and isolation, without support and advice.

At the federal level, the Senate Legal and Constitutional Affairs Committee recently conducted an inquiry into the Whistleblower Protection Authority Bill 2025 (Cth). The Bill sought to establish a new independent statutory authority — with jurisdiction over all federal whistleblower laws — to provide information, advice, assistance, guidance and support to whistleblowers.²⁷ The bill envisaged that a Whistleblower Protection Commissioner would be established with a range of functions including providing, or arranging for the provision of, legal advice and representation to whistleblowers, and investigating as well as commencing proceedings in relation to reprisals.²⁸ Ultimately, the Committee recommended that the Bill not be passed but that the evidence received be considered as part of the Australian Government's consideration of existing proposed reforms.²⁹

In light of what is known about the financial impact of whistleblowing,³⁰ publicly funded support and advice services may well have a role to play in facilitating disclosures of information in the public interest in this state. At present, the Human Rights Law Centre operates a nationwide service which provides free legal advice and representation to potential whistleblowers and whistleblowers, but which is subject to the constraints typical of philanthropically funded organisations.³¹

Prompt questions:

- Should an independent statutory authority be established with — or the functions, powers and resources of an existing South Australian agency be extended to include — the ability to, for example:
 - Provide information and support to potential whistleblowers and whistleblowers?
 - Provide legal advice and representation to potential whistleblowers and whistleblowers?
 - Receive — and potentially refer or investigate — disclosures?
 - Investigate — and potentially refer or prosecute — alleged victimisation?

²⁷ Whistleblower Protection Authority Bill 2025 (Cth) cl 10(1)(a).

²⁸ Ibid cls 10(1)(j), 10(1)(n), 10(1)(o).

²⁹ Legal and Constitutional Affairs Legislation Committee, Whistleblower Protection Authority Bill 2025 (Report, August 2025) 43.

³⁰ A J Brown, Paul Latimer, John McMillan and Chris Wheeler, *Best-practice whistleblowing legislation for the public sector: the key principles* in *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU ePress, 2008) 270.

³¹ [Whistleblower Project - Human Rights Law Centre](#). The New South Wales Ombudsman's recently established Whistleblower Support Team is a further example of a service aimed at increasing the support available to would-be whistleblowers and whistleblowers in that jurisdiction.

Issue 4: Confidentiality obligations

Ensuring disclosures of public administration information are treated confidentially is critically important to both whistleblower welfare and encouraging the making of disclosures.

Presently, in South Australia, it is a criminal offence, punishable by a fine or up to two years' imprisonment, for a person to whom an appropriate disclosure of public interest information is made, or a person with knowledge of such a disclosure, to knowingly divulge the identity of a discloser without their consent.³² The obligation to maintain confidentiality applies despite any other laws.³³

Notwithstanding this, a number of respondents to the Commission's 2024 *Public Integrity Survey* indicated that they remained reluctant to report wrongdoing in public administration because they had little faith that their report would be treated confidentially. In particular, many referred to the challenges unique to small workplaces where things "spread like wildfire" and the identity of a reporter can be readily deduced.

Prompt questions:

- What, if any, reforms to the *Public Interest Disclosure Act* should be considered to ensure disclosures are treated confidentially and to provide would-be disclosers with confidence that they will be so treated?
- To what extent do public authorities and other recipients of disclosures have the systems and capabilities required to protect the confidentiality of whistleblowers? What, if any, changes are needed?

³² *SA PID Act* (n 6) s 8(1). Exception is made where the preservation of confidentiality is incompatible with the proper investigation of the matters to which the information relates or where necessary to prevent or minimise an imminent risk of serious physical injury or death to any person: ss 8(1)(a)-8(1)(b), South Australia, Public Interest Disclosure Guidelines, 4 April 2022, Guideline 3.

³³ *SA PID Act* (n 6) s 8(2).

Issue 5: Immunities & remedies

Those who report wrongdoing in public administration, in the public interest, should be shielded from liability flowing from the making of the report. Equally, detriment caused to those who report such wrongdoing as a result of the making of a report should be remedied.

A comprehensive suite of immunities and remedies ensures individual whistleblowers are adequately protected, encourages others to report wrongdoing in public administration when they see it, and helps to deter those who might otherwise be inclined to retaliate.

Immunities

In South Australia, public officers who make appropriate disclosures of public administration information receive immunity from liability as a result of that disclosure.³⁴ Liability is defined to include disciplinary action.³⁵ Immunity applies despite any duty of secrecy or confidentiality or any other restriction on disclosure applicable to the person.³⁶ Those who knowingly make false or misleading disclosures are not protected.³⁷

In some jurisdictions this immunity is extended to witnesses who provide assistance in relation to disclosures.³⁸ Provision is also made in one Australian jurisdiction for disclosers to be provided with undertakings that their disclosures will not be used in evidence against them where they include references to their own past conduct.³⁹

Prompt questions:

- Are the immunities in our Public Interest Disclosure Act adequate and effective?
 - Should immunity be extended to witnesses or any other groups?
 - Should preparatory acts associated with the making of a disclosure (for example, accessing information believed to be relevant to the disclosure) be immunised? If so, what limitations should be placed on such immunity?
 - What process should be followed where a person the subject of disciplinary proceedings wishes to claim immunity on the basis that their conduct amounted to an appropriate disclosure of public administration information?
 - Do you have any experience or knowledge about the effectiveness or otherwise of the current provisions relating to immunity?

³⁴ Ibid s 5(1)(b).

³⁵ Ibid s 4.

³⁶ Ibid s 5(2).

³⁷ Ibid s 10(2).

³⁸ See, for example, *Cth PID Act* (n 20) s 12A.

³⁹ *NSW PID Act* (n 26) s 41.

Remedies

Currently in South Australia, an act of “victimisation” – a person causing detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information⁴⁰ – is a criminal offence, punishable by a fine or up to two years’ imprisonment.⁴¹ Such an act may also be dealt with as a tort or under the *Equal Opportunity Act 1984*.⁴²

Detriment is defined to include: loss or damage (including damage to reputation); injury or harm (including psychological harm); intimidation or harassment; discrimination, disadvantage or adverse treatment in relation to employment; or threats of reprisal.⁴³ Principal officers of public sector agencies are also obliged to ensure that a procedure exists for the making of, and dealing with, disclosures, which includes risk management steps for assessing and minimising detrimental action.⁴⁴

In respect of victimisation offences, when compared with South Australia, in some other Australian jurisdictions:

- The definition of the term “detriment” is more expansive⁴⁵ and may include attempting, conspiring or inducing another to cause detriment⁴⁶
- That a person has made or intends to make a disclosure need only be a contributing, as opposed to substantial, reason for the detrimental action⁴⁷
- The onus of proof is reversed with respect to the requirement that detriment be caused on the ground, or substantially on the ground, that the person has made, or intends to make, a disclosure⁴⁸
- The maximum penalty for an offence of victimisation is more severe in one Australian jurisdiction,⁴⁹ though equivalent or less in other jurisdictions
- A wider range of remedies, including injunctive relief where a discloser apprehends a risk of detrimental action, is available (including some protection from costs orders)⁵⁰
- A positive duty to protect disclosers from acts of reprisal is placed upon agency principal officers and authorised officers.⁵¹

⁴⁰ *SA PID Act* (n 6) s 9(1).

⁴¹ *Ibid* s 9(5).

⁴² *Ibid* s 9(2).

⁴³ *Ibid* ss 9(7)-(8).

⁴⁴ *Ibid* s 12(5).

⁴⁵ See, for example, *Cth PID Act* (n 20) s 13(2), *NSW PID Act* (n 26) s 32.

⁴⁶ See, for example, *Qld PID Act* (n 25) s 40.

⁴⁷ See, for example, *NSW PID Act* (n 26) s 33(1)(b).

⁴⁸ See, for example, *NSW PID Act* (n 26) s 35(4).

⁴⁹ 200 penalty units or imprisonment for 5 years or both: *NSW PID Act* (n 26) s 33(1).

⁵⁰ See, for example, *Cth PID Act* (n 20) ss 14, 15, 16, 17, 18, 19A.

⁵¹ See, for example, *NSW PID Act* (n 26) s 61(2).

Prompt questions:

- Are remedies under our *Public Interest Disclosure Act* adequate?
- Do you have any experience or knowledge about the effectiveness or otherwise of the current provisions relating to victimisation?
- Are the obligations to inform and update disclosers of various matters in relation to disclosures made by them adequate? Do the timelines fixed in the Guidelines (see Appendix A) remain appropriate?
- Should there be an ability to opt in/opt out of parts of our *Public Interest Disclosure Act* given that some public officers, particularly those whose official role it is to identify and report wrongdoing in public administration (sometimes referred to as 'role-reporters'), may not wish to receive updates and the obligation to provide updates may be burdensome?

Issue 6: Oversight

Oversight by independent agencies of the operation of our whistleblower protection laws is an important measure to ensure the efficacy of the regime.⁵² Mechanisms to meaningfully monitor and, where appropriate, intervene in the handling of disclosures by those to whom they are made or referred could result in better outcomes.

As it stands, oversight of the South Australian *Public Interest Disclosure Act* is minimal. Provision is made for the Commission to publish guidelines⁵³ and provide training to designated responsible officers.⁵⁴ Those who take action in relation to disclosures must also provide the Office for Public Integrity with information at various points.⁵⁵

By comparison, there is far greater independent oversight in some other Australian jurisdictions. For example, in some, oversight agencies approve procedures established by investigating entities in accordance with published standards,⁵⁶ assume conduct of investigations of disclosures in certain circumstances,⁵⁷ review complaints about the handling of disclosures by investigating entities⁵⁸ and prepare regular reports for presentation to Parliament about the operation of the legislation.⁵⁹

Prompt questions:

- What gaps, if any, exist in the current oversight framework for South Australia's whistleblower protection laws?
- Which existing or new agencies should be tasked with filling any such gaps? Why?

⁵² Indeed, a stated purpose of the *SA PID Act* is to ensure that there is appropriate oversight of public interest disclosures about corruption, misconduct and maladministration in public administration: *SA PID Act* (n 6) s 3(b).

⁵³ *Ibid* s 14. South Australia, Public Interest Disclosure Guidelines, 4 April 2022.

⁵⁴ Public Interest Disclosure Guidelines, 4 April 2022, r 4.

⁵⁵ *SA PID Act* (n 6) ss 7(1)(c), 7(3)(b).

⁵⁶ See, for example, *Vic PID Act* (n 25) ss 60, 61; *Tas PID Act* (n 23) s 38(1)(d).

⁵⁷ See, for example, *Tas PID Act* (n 23) s 69.

⁵⁸ See, for example, *Cth PID Act* (n 20) ss 55(3)-55(8); *NSW PID Act* (n 26) s 74; *Qld PID Act* (n 25) s 59(b).

⁵⁹ See for example, *Cth PID Act* (n 20) ss 76, 76A; *NSW PID Act* (n 26) ss 76(1)(c), 76(4), 78; *Qld PID Act* (n 25) s 61; *Vic PID Act* (n 25) ss 67-68; *Public Interest Disclosure Act 2003* (WA) ss 22, 23(1)(f); *Public Interest Disclosure Act 2012* (ACT) s 30.

Issue 7: Accessibility & clarity

All laws should be accessible and comprehensible. This is especially so in the case of whistleblower protection laws — those with the greatest need to digest such laws are likely to be experiencing significant stress, are unlikely to be legally trained and are unlikely to be in a position to freely discuss the matter or seek advice from others.

Those who receive and handle disclosures, too, have an interest in whistleblower protection laws being easily navigable and clear. All those who engage with South Australia's *Public Interest Disclosure Act* should be able to readily understand their rights and duties.

Arguably, our laws are unduly complex. For example, those seeking to interpret our *Public Interest Disclosure Act* must grapple with overlaid concepts such as whether the discloser 'reasonably suspects' that the information raises 'a potential issue of corruption, misconduct or maladministration in public administration'. The latter requires an understanding of the elements of various criminal offences and is, consequently, itself not straightforward.

A greater focus on plain language and simple format drafting could promote the stated purposes of our *Public Interest Disclosure Act* insofar as it would assist to encourage and facilitate disclosure of information. Inevitably, a balance must be struck between providing sufficient clarity on the one hand and not overwhelming with detail on the other.

Equally, it is essential that the legislation's target audience know about its existence and that the legislation can be easily found.

Prompt questions:

- What changes — whether in format, language, level of detail or some other way — should be made to our *Public Interest Disclosure Act* to make it easier to understand?
- What measures could be implemented to increase awareness of the existence of our *Public Interest Disclosure Act*? Would a return to the language of whistleblowing in the title of the legislation go some way towards increasing visibility and accessibility?
- Should there be greater harmony between whistleblower protection laws in other Australian jurisdictions and our laws? Why or why not?

Issue 8: Incentives

Some international jurisdictions have adopted various financial reward models to incentivise whistleblowing. In the United States of America, a range of schemes exist through which individuals who provide valuable information may receive rewards.

Some research suggests that “a cash-for-information scheme has the potential to deliver valuable outcomes in the fight against economic crime...by incentivising whistleblowers to come forward with actionable intelligence about concealed economic crimes” but that this is “not possible unless a reward programme is integrated into a comprehensive whistleblower framework.”⁶⁰

No Australian jurisdiction has implemented such a financial reward scheme to date. In his 2014 review of the legislation that our *Public Interest Disclosure Act* replaced, former Commissioner Bruce Lander KC considered the issue and ultimately recommended that no such scheme be implemented in this state, both because of the absence of a financial pool from which rewards could be drawn (whereas in the United States of America rewards could be paid from hefty fines which could be issued to corporate offenders) and because of the impact such a scheme could potentially have on the ethos of the public sector.⁶¹

Prompt questions:

- Is there a place for a financial reward scheme to incentivise whistleblowing in South Australia today? Why or why not? If so, do you have any views about the form such a scheme should take?

⁶⁰ Eliza Lockhart, “The Inside Track: The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime” (SOC ACE Research Paper No 31, University of Birmingham, December 2024) 47.

⁶¹ Bruce Lander, *A review of the Whistleblower Protection Act 1993 (SA)* (Report, September 2014) 152, 153.

Issue 9: Organisational climate

It has been suggested that while a portion of reticence to report can be attributed to deficiencies in whistleblower protection laws, a more substantial portion of that reticence can be attributed to reporting climates within organisations.⁶²

In *Whistling while they work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*, Peter Roberts, Professor A J Brown and Jane Olsen observed

Legislative provisions and black-letter procedures can go only so far in creating an effective whistleblower reporting and protection regime. The research has shown that an essential ingredient in any whistleblowing program is the commitment from each organisation to encourage reporting, act on the reports where appropriate and to protect reporters from any adverse consequences.⁶³

Prompt questions:

- Do you have any experience or knowledge about the impact of organisational climates on willingness to “blow the whistle” or on whistleblower welfare?
- What, if any, additional measures should public sector agencies have in place to encourage the reporting of information and to support and protect those who report?

⁶² Roberts, Brown and Olsen (n 8) 37.

⁶³ *Ibid* 18.

Appendix A - Overview of the *Public Interest Disclosure Act 2018 (SA)* as it relates to public administration information

What is an 'appropriate disclosure' of public administration information?

The disclosure is made by a **'public officer'** as defined in the *Independent Commission Against Corruption Act 2012 (SA)*.



The information disclosed **raises**, and the public officer **reasonably suspects** it raises, a **potential issue** of **corruption, misconduct** or **maladministration** in public administration.

- Corruption is defined in the *Independent Commission Against Corruption Act 2012 (SA)*
- Misconduct and maladministration are defined in the *Ombudsman Act 1972 (SA)*.



The disclosure is made to a **relevant authority** which includes (among other things):

- in all cases - the **Office for Public Integrity**
- where the disclosure relates to a public officer – **a person responsible for managing or supervising the officer or a relevant responsible officer**
- where the information relates to an agency to which the *Ombudsman Act 1972 (SA)* applies – the **Ombudsman**
- where the information relates to a crime or suspected crime – a member of **South Australia Police**.

What protections are available to disclosers?

Protection of identity

Identity of informant is not to be disclosed except in limited circumstances.



Victimisation

Informant cannot be victimised or subject to detrimental action because they have made a disclosure.



Immunity from liability

Immunity from civil or criminal liability as a result of the disclosure.

What must the relevant authority do with the disclosure?

1. Assess disclosure and take action; notify informant and OPI

Who	What	When
Person who receives the disclosure	<p>Assess the information and take action in accordance with that assessment and the guidelines (unless there is reason not to take further action – see s7(2)).</p> <p>Take reasonable steps to notify the informant of the assessment and the action being taken (if the informant’s identity is known).</p> <p>Notify the Office for Public Integrity of assessment outcome in accordance with the guidelines.</p>	<p>As soon as reasonably practicable.</p> <p>If this has not occurred within 30 days after making the disclosure, the person may disclose the information to a journalist or member of parliament.</p>

2. Notify informant and OPI of the action taken

Who	What	When
<p>The person who takes the action decided in (1);</p> <p>or</p> <p>If that action was referring the disclosure, the person to whom it was referred.</p>	<p>Take reasonable steps to notify the informant of the outcome of the action taken (if the informant’s identity is known).</p> <p>Provide the Office for Public Integrity with information about outcome of action in accordance with the guidelines (see Guideline 2).</p>	<p>As soon as reasonably practicable.</p> <p>If this has not occurred within 90 days after making the disclosure, or other period specified, the person may disclose the information to a journalist or member of parliament.</p>

The Commission will receive submissions about whistleblower protection in South Australia until **Monday 10 November 2025**. The above topics and prompt questions are of particular interest, but all responses will be considered carefully.

Make a submission by Monday, 10 November 2025

- **By post:** GPO Box 11066, Adelaide SA 5001
- **By email:** WhistleblowerProject@icac.sa.gov.au

