

Human  
Rights  
Law  
Centre.



Submission to the *Whistleblower Project*  
*Discussion Paper*

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## Human Rights Law Centre

We take fearless human rights action for a fairer future for everyone. We work in partnership with people and communities to advance human rights. We use strategic legal action and advocacy to defend hard-won human rights progress.

In 2023, the Human Rights Law Centre launched the Whistleblower Project, Australia’s first dedicated legal service to protect and empower whistleblowers who want to speak up about wrongdoing. We provide legal advice and representation to whistleblowers, as well as continuing our longstanding tradition of advocating for stronger legal protections and an end to the prosecution of whistleblowers. The Human Rights Law Centre is a member of Whistleblowing International Network.

The Human Rights Law Centre acknowledges the Traditional Owners of the lands across Australia, including the lands of the Wurundjeri, Boon Wurrung, Gadigal, Ngunnawal, Cammeraygal, Darug, Wadawurrung, Turrbal and Jagera people where we work from. We pay our respect to Elders past and present. This land always was, and always will be Aboriginal and Torres Strait Islander land. Sovereignty has never been ceded.

We acknowledge the role of the colonial legal system in establishing, entrenching, and continuing the oppression and injustice experienced by First Nations peoples and that we have a responsibility to work in solidarity with Aboriginal and Torres Strait Islander people to undo this. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

## Transparency International Australia

Transparency International Australia is the national chapter of Transparency International, a global coalition against corruption operating in over 100 countries. Each chapter is independent and unique, and together we aspire to a unified vision: a world free of corruption. Through research, policy reform, and collaboration with diverse stakeholders, we shine a light on corruption risks and champion practical solutions to build a fairer, more transparent Australia.

We focus on evidence-based advocacy to strengthen integrity and accountability, with a key emphasis on whistleblower protections. Our whistleblowing work is guided by our national whistleblower advisory group—consisting of former whistleblowers who advise, advocate and educate on proposed whistleblower protection reforms.

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# Introduction

The Human Rights Law Centre (the **Centre**) and Transparency International thank the Independent Commission Against Corruption South Australia (**ICAC**) for the opportunity to make a submission to its review of the *Public Interest Disclosure Act 2018* (SA) (the **PID Act**).

The Centre launched the Whistleblower Project in August 2023, to address a gap in the legal services landscape where whistleblowers in the public and private sectors across Australia were unable to seek specialised pro bono legal help to navigate Australia’s complex whistleblowing laws. Since launching, we have been contacted by over 500 people seeking advice on whistleblowing nation-wide, given legal advice to over 170 clients, and represented over 40 clients on an ongoing basis; this has included numerous clients in relation to the *PID Act*.

This submission responds to the issues and prompt questions in the ICAC’s *Whistleblower Project Discussion Paper (Discussion Paper)*. We are heartened that the Discussion Paper references the Centre’s legal service – the Whistleblower Project – and our work and advocacy to date. This submission draws on the Whistleblower Project’s extensive casework experience advising clients across Australia, including under the *PID Act*.

We have formulated our recommendations to balance best practice principles with practical considerations around the most effective and feasible ways to achieve the objects of the *PID Act*; to encourage and facilitate the disclosure of information about wrongdoing in the public interest.

Since the *PID Act* was enacted in 2018, there have been significant changes in whistleblowing standards across Australia and comparable international jurisdictions. Most Australian states and territories now lag well behind in implementing best practice reforms to recognise the crucial role that whistleblowers play in safeguarding transparency and accountability in the public sector. The current review provides South Australia with the opportunity to return to its position as a national leader in whistleblower protections.

Our submission draws on our advocacy and research to date, including:

- *The Cost of Courage: Fixing Australia’s Whistleblower Protections*,<sup>1</sup> which reviewed every whistleblower case to proceed to judgement across Australia, finding no single successful decision for a whistleblower under public sector whistleblowing laws across Australia.
- *Protecting Australia’s Whistleblowers: The Federal Roadmap*,<sup>2</sup> which outlines a comprehensive, 12-step roadmap for better protecting and empowering whistleblowers under

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<sup>1</sup> Kieran Pender, *The Cost of Courage: Fixing Australia’s Whistleblower Protections* (Report, 2023) <<https://www.hrlc.org.au/reports/cost-of-courage/>> (“Cost of Courage”).

<sup>2</sup> A J Brown and Kieran Pender, *Protecting Australia’s Whistleblowers: The Federal Roadmap* (Report, 2022) <<https://www.hrlc.org.au/reports/protecting-aus-whistleblowers-federal-roadmap/>> (“The Federal Roadmap”).

federal whistleblowing laws; many of which have identical relevance to South Australia's PID regime.

- *A Fair Go for Speaking Up: Design Principles for a Whistleblower Protection Authority*,<sup>3</sup> which makes the case for an independent whistleblower protection body at the federal level to fill the current gaps in institutional oversight, which is applicable to oversight of functions in the South Australian context.
- *Women Speaking Up Report*,<sup>4</sup> a report published by the Centre's Whistleblower Project, which analysed the first year of client data at the Whistleblower Project, to consider gender dynamics in the Australian whistleblowing landscape. Our data collection and analysis for this report has informed the statistics and empirical evidence used throughout this submission.

One thing is clear; whistleblowers in Australia are paying a high price for accountability and transparency. Our research and casework experience to date demonstrates that Australia's whistleblower protection laws are failing when it comes to protecting those who speak out about wrongdoing in the public interest.

## Recommendations:

We make the following specific recommendations in response to the questions in the Discussion Paper:

**Recommendation 1:** The scope of eligible whistleblowers should be expanded to cover: (i) the wider category of individuals presently protected under the Corporations Act 2001 (Cth) (**Corporations Act**); (ii) workers performing public services on behalf of government and certain grant recipients; (iii) prospective employees and contractors; and (iv) unpaid workers, including volunteers, trainees, and students on placement.

**Recommendation 2:** The *PID Act* should explicitly state that subcontractors are eligible recipients.

**Recommendation 3:** Consideration should be given to how best to protect people in other contexts including people who are in state care or detention.

**Recommendation 4:** The definition of 'corruption' should be broadened, references to specific offences should be removed, and there should be discretions to ensure trivial conduct does not have to be investigated or necessarily trigger the protections.

**Recommendation 5:** Disclosures that solely relate to personal workplace grievances and that do not have implications beyond the discloser should be expressly excluded from being disclosable conduct.

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<sup>3</sup> Transparency International Australia, Human Rights Law Centre and Griffith University, *A Fair Go for Speaking Up: Design Principles for Australia's Federal Whistleblower Protection Authority* (June 2025) <<https://transparency.org.au/a-fair-go-for-speaking-up/>>.

<sup>4</sup> Human Rights Law Centre, *Women Speaking Up: Gender Dynamics in Australia's Whistleblowing Landscape* (Report, August 2025) <<https://www.hrlc.org.au/reports/women-whistleblowing-report/>> ("Women Speaking Up").

Disclosures that involve a mix of personal workplace grievance and public interest information should trigger investigation and protection obligations.

**Recommendation 6:** The *PID Act* should continue to govern disclosures of information, by any person, that raise potential issues of substantial risks to the environment or to the health and safety of the public.

**Recommendation 7:** Whistleblowers who incorrectly assess that certain wrongdoing raises a potential issue of public interest information should still be protected under the *PID Act*.

**Recommendation 8:** The scope of relevant internal authorities should be expanded so that investigation and protection obligations are triggered when whistleblowers make disclosures to: (i) any appropriate and reasonable body, no matter the nature of the public administration information contained in their disclosures; and (ii) any person who directly or indirectly supervises that whistleblower.

**Recommendation 9:** The scope of eligible recipients should be amended to include: (i) legal practitioners; (ii) medical and mental health professionals; and (iii) professional associations and unions, for the purposes of advising, assisting and supporting the whistleblower, or acting on their behalf.

**Recommendation 10:** The scope of eligible external recipients should be expanded from journalists and members of Parliament, other than a Minister, to include any person, other than a foreign government official.

**Recommendation 11:** The grounds for making an external disclosure should be expanded to include avenues for: (i) emergency disclosures where there is imminent danger to the health and safety of a person or to the environment; and (ii) public disclosures where it is otherwise reasonable and in the public interest, having regard to all of the circumstances.

**Recommendation 12:** The ‘reasonable suspicion’ threshold should be amended to suspicion on reasonable grounds that the information shows or tends to show disclosable conduct. The requirement should also be amended to include an exclusively objective test, such that a disclosure would be protected if the information shows or tends to show public interest information irrespective of the whistleblower’s belief or suspicion.

**Recommendation 13:** A presumption that a whistleblower has satisfied the ‘suspicion on reasonable grounds’ requirement should be implemented.

**Recommendation 14:** The *PID Act* should expressly specify that disclosures can be made anonymously.

**Recommendation 15:** The *PID Act* should provide protections to any disclosures that substantially comply with the technical requirements.

**Recommendation 16:** The *PID Act* should allow all eligible recipients to provide confirmation to whistleblowers that they are protected under the *PID Act*. This confirmation should be admissible in civil and criminal proceedings as evidence that the disclosure is protected under the *Act*.

**Recommendation 17:** The *PID Act* should also allow all eligible recipients to deem a disclosure an appropriate disclosure, even if it otherwise would not have been.

**Recommendation 18:** A whistleblower support unit be established within the South Australian Ombudsman or the Office for Public Integrity, with the power to receive and refer disclosures, provide independent and confidential information and advice to current and prospective whistleblowers on the *PID Act*, and investigate and take remedial action on detrimental acts and omissions, ranging from victimisation to detrimental failures in support and protection.

**Recommendation 19:** A program be established for whistleblowers to access (a) funding for legal support (to an appropriate cap) to seek advice in relation to their rights concerning potential or actual disclosures and steps to vindicate their rights and seek remedies, and (b) funding for welfare costs including psychological support and career transition costs where appropriate.

**Recommendation 20:** An investigatory and enforcement function for whistleblower remedies should be established within one of the oversight bodies of the PID regime, which would operate independently and separate to other PID-related functions, and investigate and take action to remedy potential cases of detrimental acts and omissions, ranging from victimisation to detrimental failures in support and protection.

**Recommendation 21:** Authorities charged with prosecuting breaches of the *PID Act* should be given adequate mandate and resources to do so.

**Recommendation 22:** The requirement under section 6(b)(ii) should be removed.

**Recommendation 23:** Immunities under section 5 should be extended to preparatory conduct that is reasonable in association with the making of an appropriate disclosure

**Recommendation 24:** A provision should be included to allow whistleblowers to be provided with undertakings that their disclosure will not be used in evidence against them, where that evidence pertains to the whistleblower's past conduct.

**Recommendation 25:** The onus of proof should be reversed in prosecutions or actions for remedies relating to detrimental acts and omissions.

**Recommendation 26:** Section 9(1) should be broadened to include language such as 'attempting, conspiring or inducing' to cause detriment, and so that it includes detrimental conduct that is done where the making of an appropriate disclosure was a *contributing* factor, rather than a substantial factor in causing that detrimental conduct.

**Recommendation 27:** A wider range of remedies, including injunctive relief, should be provided.

**Recommendation 28:** A 'no cost' provision for whistleblowers commencing actions for remedies should be provided.

**Recommendation 29:** Introduce a positive duty on agency principal officers and authorised officers to assess and proactively manage risks of detriment, support whistleblowers, and protect whistleblowers from adverse outcomes, including but not limited to direct retaliation. The duty should

be made enforceable through a statutory right to remedies if support and protection obligations are not fulfilled.

**Recommendation 30:** The government strengthen the oversight of the *PID Act*, in particular, establishment and/or strengthening of monitoring, coordination and education functions of OPI.

**Recommendation 31:** Regulators, oversight bodies and agencies should publish plain English guides and ‘self help’ resources to facilitate community legal education about the operation of the *PID Act*.

**Recommendation 32:** The use of the term ‘appropriate disclosure’ should be replaced with ‘public interest disclosure’.

**Recommendation 33:** The immunities set out in section 5 of the *PID Act* should make explicit that a person who makes an appropriate disclosure will not be subject to any liability including criminal, civil or administrative liability.

**Recommendation 34:** The immunities at section 5 should explicitly exclude a discloser’s own wrongdoing.

**Recommendation 35:** The term ‘whistleblower’ or ‘whistleblowing’ should be included in the title of the Act.

**Recommendation 36:** Amendments to the *PID Act* should aim to achieve greater harmonisation in line with other whistleblowing laws across Australian jurisdictions.

**Recommendation 37:** The ICAC should consider the merits of whistleblower reward models in South Australia, in the context of the need for greater recognition and support for whistleblowers who provide regulators with valuable information on wrongdoing to be left no worse off for having blown the whistle.

**Recommendation 38:** Issue more comprehensive Public Interest Disclosure Guidelines with greater practical requirements and guidance for public sector agencies on proactively encouraging reporting of wrongdoing and identify and managing risks of detrimental outcomes, with recognition of the varied capacities of different sized and resourced agencies.

# 1. Threshold for obtaining protections

## 1.1. Who should be able to make disclosures?

The class of individuals who may make an appropriate disclosure of public administration information should be expanded from its current form in order to ensure that any person working in, or in collaboration with, the public sector is afforded protections under the *PID Act*. However, the class of eligible disclosers should remain restricted to those who are capable of giving quality insider information, while being vulnerable to detriment for their whistleblowing.

### 1.1.1. *Former public officers and relatives*

The scope of the *PID Act* should be extended to align with the wider approach to coverage in s 1317AAA of the *Corporations Act*, to the extent practicable. As a priority, former public officers should be eligible to make disclosures. Due to the professional risks associated with whistleblowing, public officers often only make disclosures after they have left the public service. While this means that the risk of experiencing detriment decreases significantly, they may still incur civil, criminal, and administrative liability for whistleblowing. Given that confidentiality obligations endure even after employment relationships are terminated, the risk that a former public officer incurs civil liability by making a disclosure is very high. It is critical that former public officers are provided protections under the *PID Act*.

The Discussion Paper questions whether it is appropriate to impose a time limit for former public officers to make disclosures. We recognise that it is reasonable to create limitations for disclosures by former public officers, so that the class of eligible whistleblowers does not become unreasonably broad. In our view, there are two methods by which the eligibility of former public officers can be limited:

- (a) by imposing a time limit, such that after a specified amount of time, former public officers are no longer able to make disclosures; or
- (b) by requiring a nexus between the whistleblower's former employment and their disclosure.

The second method is preferable.

In our casework, it is not uncommon to see whistleblowers seeking to disclose wrongdoing they witnessed some time ago. Often, this delay between witnessing wrongdoing and making a disclosure is for legitimate reasons, including being preoccupied with related health and employment issues, and a fear of reprisal. At times, whistleblowers may not even realise that what they witnessed was substantial wrongdoing, until the impacts of the wrongdoing emerge years down the line. Provided there is a sufficient nexus between the wrongdoing disclosed and the former public officer's employment, there should be no reason to exclude them from accessing protections under the *PID Act*. In comparison, a proposed time limit may be arbitrary, and fails to take into account legitimate reasons for a delay in making a disclosure.

It is our view that agencies and relevant authorities will not be unreasonably burdened by expanding the eligibility criteria to including former public servants. Agencies still retain the discretion to decline

to investigate a matter, and can do so on the basis that a significant amount of time has passed since the wrongdoing occurred and it is no longer relevant to investigate.

Expanding the eligibility criteria to align with that of the *Corporations Act* would also mean that immediate relatives of eligible whistleblowers would also be eligible to make disclosures. While not a priority area for reform, we would welcome this development. While relatives may not be directly involved in public administration, they may still be privy to insider information by virtue of their relationship with public officers. Their disclosures also make themselves and their public officer relatives vulnerable to retaliation.

### **1.1.2. Public services on behalf of government and certain grant recipients**

The *PID Act* should be amended to allow people performing public services on behalf of government and certain grant recipients to make disclosures, as currently only contractors are eligible.

For example, the South Australia homeless alliances have a relationship with the South Australian Government that is described as a ‘partnership’ rather than a contractor relationship, meaning that a person working in one of the South Australian homelessness alliances may not be eligible to make a disclosure. However, due to their close collaboration with public officers and public bodies, they may realistically still be exposed to public interest information. They may also be exposed to wrongdoing within their own organisations that gives rise to issues of public money, public trust, and integrity.

### **1.1.3. Volunteers, trainees, and students**

Where Schedule 1 of the *Independent Commission Against Corruption Act 2012 (SA) (ICAC Act)* provides that employees of specified organisations are eligible whistleblowers, any person performing unpaid work in those organisations should also be an eligible whistleblower. This should include volunteers, trainees, and students on work placement.

Under the current *PID Act*, neither a student on placement at a public hospital, nor a trainee at a public school, nor a volunteer with a local government body would be able to make a disclosure. However, in the course of their roles, they may realistically be exposed to public interest information through their interactions with other public officials, being privy to policy and procedures, and being in environments and situations which may give rise to wrongdoing. While they may not earn an income from their role, unpaid workers remain vulnerable to other forms of detriment, including harassment and bullying, blacklisting from the industry, and being terminated from their role. They should therefore be eligible to make disclosures and be protected under the *PID Act*.

Unpaid workers can be found across the South Australian public sector, such as in conservation, emergency services, health, and heritage. There is no reason unpaid workers in some agencies should be protected and others should not be. In addition, volunteers, trainees, and students working with government contractors and subcontractors should also be explicitly included as eligible whistleblowers.

#### **1.1.4. Subcontractors**

The scope of eligible whistleblowers should be amended to explicitly include subcontractors. Currently, the eligibility criteria includes contractors, employees of contractors and those directly or indirectly performing work on behalf of a contractor. For clarity and accessibility, subcontractors should be explicitly included, given the high frequency with which subcontractors are engaged.

#### **1.1.5. Prospective employees and contractors**

While not a priority area for reform, the Commission should consider extending the scope of eligible whistleblowers to include job applicants and those who are in the course of becoming a contractor. Although they do not have the same access to information as an employee, they may still be exposed to wrongdoing in the hiring and tendering process. This may include, for example, collusive tendering, bribery, discrimination, and breaches of codes of conduct. Prospective employees and contractors may also be vulnerable to retaliation, including failing to be hired or contracted and being blacklisted within the agency or the industry.

The inclusion of prospective employees and contractors is cohesive with developing international best practice. For example, in the United Kingdom, job applicants to the National Health Service are eligible to be whistleblowers. The 2019 European Union Whistleblowing Directive also stipulates that protections should apply to people where they report information “acquired during the recruitment process or other pre-contractual negotiations.”<sup>5</sup>

#### **1.1.6. People in detention and children in state care**

Children in state care and people in detention are distinct from members of the general public, because they are subject to greater restriction, control and oversight from the state, and experience reliance on state-provided services. These factors render this relationship with state agencies distinct from ordinary members of the general public, in that they may be more likely to be in a position to witness wrongdoing occur, and equally more vulnerable to retaliation for speaking up.

For example, a person in detention may witness correctional staff receiving bribes or unjustly treating another person in detention. When reporting this wrongdoing, they may face a range of retaliatory actions, including being placed in solitary confinement, bullying and harassment by correctional staff, having health needs ignored, having their work or educational opportunities taken away and being the subject of arbitrary disciplinary procedures.

Whistleblower protections have emerged in federal laws to recognise instances where a person’s liberty, care, and wellbeing is partially or wholly subject to another’s influence, as a reason for extending

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<sup>5</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of person who report breaches of Union law, Article 4.3.

whistleblower protections beyond employment relationships. For example, the whistleblower protections in both the *Aged Care Act 2024* (Cth) and the *National Disability Insurance Scheme Act 2013* (Cth) provide that people receiving aged care and NDIS participants, respectively, are able to make disclosures and receive protections.

We recommend that consideration be given to how best to protect people who are under the control of the state including people who are in detention, children in state care, and any other similar groups of people be included as eligible disclosers in the *PID Act* in a distinct category, with their own set of eligible recipients. We also recommend that people in detention who are taking part in work activities coordinated by their detention centres should be eligible to make disclosures in relation to those work activities.

**Recommendation 1:** The scope of eligible whistleblowers should be expanded to cover: (i) the wider category of individuals presently protected under the *Corporations Act 2001* (Cth) (***Corporations Act***); (ii) workers performing public services on behalf of government and certain grant recipients; (iii) prospective employees and contractors; and (iv) unpaid workers, including volunteers, trainees, and students on placement.

**Recommendation 2:** The *PID Act* should explicitly state that subcontractors are eligible recipients.

**Recommendation 3:** Consideration should be given to how best to protect people in other contexts including people who are in state care or detention.

## 1.2. What should disclosures be about?

The scope of disclosable wrongdoing for public officers should be amended to capture a wider range of conduct, while excluding disclosures consisting solely of personal workplace grievances.

### 1.2.1. Public Administration Information

The definition of corruption should be broader, and, to the extent possible, avoid limiting the scope of corruption to a few specified offences. The current definition of corruption is unnecessarily complex, and requires prospective whistleblowers to refer to multiple pieces of legislation to determine whether the wrongdoing they have witnessed is disclosable conduct. This threshold for protections to apply is unnecessary and unduly burdensome on whistleblowers. Broadening the definition of corruption would be consistent with the approach taken in the public sector whistleblowing legislation of nearly all other states.<sup>6</sup>

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<sup>6</sup> See, e.g, *Independent Commission Against Corruption Act 1988* (NSW) s 8; *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) s 4.

Disclosures of conduct which constitutes detriment should be expressly included as a category of disclosable conduct or ‘public interest information’. It is important that whistleblowers who experience detriment are able to report this safely, especially to recipients outside of their agency, such as the Commissioner for Public Sector Employment.

### **1.2.2. Personal workplace grievances**

Disclosures that solely relate to personal workplace grievances and do not have implications beyond the discloser should be expressly excluded from the scope of public interest information. The use of whistleblowing laws to agitate solely personal employment grievances can undermine the reputation and efficacy of those laws. For example, it may encourage the categorisation of public interest disclosures as personal workplace grievances, in order for agencies to avoid their obligations under the *PID Act*. Excluding personal workplace grievances ensures that the administration of the *PID Act* gives effect to its purpose, while recognising that workplace grievances can be addressed through other regimes, such as through employment and discrimination law.

However, it is important that any exclusion of personal workplace grievances specify that matters that contain both an element of personal workplace grievance and disclosable wrongdoing are eligible to be disclosed under the *PID Act*. This is critical, because disclosable wrongdoing is often mixed with personal workplace grievances. Research from Griffith University suggests that almost half of all cases that involve public interest disclosures also contain an element of personal workplace grievances.<sup>7</sup> Excluding **all** personal workplace grievances would therefore prevent important and relevant disclosures, while also discouraging disclosers who may feel that their personal workplace grievances impede on their ability to make a protected disclosure. In addition, it is not realistic to expect that disclosable conduct exists within a vacuum, without employment and workplace complexities.

Such an approach is consistent with other Australian whistleblowing regimes,<sup>8</sup> as well as the 2023 *Review of the Public Interest Disclosure Act 2010* by the Honourable Alan Wilson KC (the **Wilson Review**)<sup>9</sup> and the 2016 *Review of the Public Interest Disclosure Act 2013* by Philip Moss AM (the **Moss Review**).<sup>10</sup> Section 1317AADA(2) of the *Corporations Act* and section 29(2A) of the *Public Interest Disclosures Act 2013* (Cth) (the **Commonwealth PID Act**) provide useful examples of how the exclusion can be framed. In particular, we recommend that:

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<sup>7</sup> A J Brown et al, *Clean as a Whistle: a five step guide to better whistleblowing policy and practice in business and government* (Whistling While they Work 2 – key findings and actions, August 2019) 12-3.

<sup>8</sup> See, e.g., *Public Interest Disclosure Act 2012* (ACT) s 8(2)(a); *Public Interest Disclosure Act 2013* (Cth) s 29(2A); *Public Interest Disclosures Act 2022* (NSW) s 26(3).

<sup>9</sup> The Honourable Alan Wilson KC, *Review of the Public Interest Disclosure Act 2010* (Report, June 2023) <<https://www.ombudsman.qld.gov.au/improve-public-administration/public-interest-disclosures/review-of-the-public-interest-disclosure-act>> (“The Wilson Review”) 61 to 63.

<sup>10</sup> Philip Moss AM, *Review of the Public Interest Disclosure Act 2013* (Report, October 2016) <<https://www.ag.gov.au/about-us/publications/review-public-interest-disclosure-act-2013>> (“The Moss Review”) 30-33.

- The language makes clear that only matters which are ‘solely’ or ‘only’ personal workplace grievances are excluded;
- ‘Grievance’ is clearly and adequately defined;
- It is specified that personal workplace grievances may nevertheless attract *PID Act* protections in certain circumstances, for example where it relates to systemic wrongdoing or has implications beyond the discloser; and
- The *PID Act* makes it clear that if a matter involves both disclosable conduct and a personal workplace grievance, the *PID Act* protections and oversight processes apply to the *entirety* of the matter.

In addition, we recommend that matters of harassment, discrimination, and sexual assault, be expressly **included** in the scope of ‘disclosable conduct’, in line with Transparency International’s recommendations.<sup>11</sup> This is because these matters are frequently misclassified as personal workplace grievances and therefore excluded from whistleblowing legislation. Given the nature of this wrongdoing, this misclassification disadvantages women, First Nations peoples, people of colour, people with disabilities, and others who are more likely to experience harassment and discrimination in the workplace. When wrongdoing of this nature is misclassified as ‘personal, one off’ instances, it fails to see the underlying structural violence, abuse of power, and illegality. Wrongdoing of this nature often has great systemic implications for an organisation. The *PID Act* can help safeguard against the misclassification of this type of wrongdoing as ‘personal workplace grievances’ by expressly including sexual harassment, assault, and discrimination in the scope of ‘disclosable conduct’.

We also note that if Recommendation 17 is adopted, then agencies and regulators have the discretion to deem a personal workplace grievance to be a public interest disclosure if there are no other pathways of redress available to the discloser.

### **1.2.3. Disclosures of environmental and health information**

In theory, best practice whistleblowing legislation is confined to workplace, employment, and contractor relationships. However, given Australia’s regulatory landscape, the *PID Act* provides valuable protection that does not otherwise exist for people making disclosures of health, safety, and environmental issues. The protections in the *PID Act* can therefore be important in encouraging the disclosure of these issues and protecting people who speak up.

In particular, it is important that state legislation protects disclosures of information that relate to environmental harm and risk and current protections under the *PID Act* should not be removed or weakened. For example, under the current legislation, if a South Australian private sector worker

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<sup>11</sup> Transparency International, ‘The integration of gender and intersectionality in whistleblowing environments’, *Anti-Corruption Helpdesk Answer* (October 2025) 17.

witnessed their company illegally dumping toxic waste in a river, they could report the matter to the South Australian Environment Protection Authority and receive protections under the *PID Act*. In states where public interest disclosure legislation does not allow for the public to make disclosures of environmental information, the same private sector worker would have to go to the Australian Securities and Investments Commission (**ASIC**), who are unlikely to investigate, as they are primarily the financial markets regulator. The worker would then need to wait 90 days before speaking to an MP or journalist, impeding the timely investigation of the wrongdoing. Alternatively, if they wanted to immediately report to an environmental regulator, they would not receive any protections for doing so, thereby opening themselves up to civil, criminal, and disciplinary liability, as well as putting themselves at greater risk of experiencing reprisal. The current direct and protected pathway encourages people to come forth with information about environmental harm and facilitates the timely investigation of these issues. Similar principles and use cases apply for the disclosure of health information.

In addition, allowing the public to make disclosures about certain subject matter fills gaps created by other pieces of legislation. For examples, under the *Corporations Act*, associations incorporated under state and territory law and unincorporated associations are likely not ‘regulated entities’ about which a person can make disclosures. This excludes a wide range of workers in non-profits and equivalent organisations from making protected disclosures.

Given its utility in encouraging and protecting disclosers to come forward with information about public safety, health, and risk to the environment, we would recommend retaining the current protections in the *PID Act*. However, we recognise that retaining these protections may not necessarily reflect best practice whistleblowing legislation or the public sector’s regulatory or investigatory priorities. We also recognise that the inclusion of disclosures from the public within the ambit of the *PID Act* may lead to duplicated protections. Alternatively, inclusion of such protections in the *PID Act* may discourage the development of similar protections in other, more appropriate regimes. We therefore recommend that the inclusion of public disclosures be reviewed often, at the very least each time the *PID Act* is reviewed.

#### **1.2.4. *Incorrect assessment that wrongdoing raises a potential issue of public administration information***

The Discussion Paper raises the question of whether disclosers should be protected if they incorrectly assess that alleged conduct raises a potential issue of corruption, misconduct, or maladministration. It is our understanding that the Discussion Paper contemplates a distinction between a discloser incorrectly assessing the nature of the *information* (which would be protected by the current mixed objective and subjective test in section 5(4) of the *PID Act*) and incorrectly assessing the definition of corruption, misconduct or maladministration, such that they have failed to make an appropriate disclosure about disclosable conduct.

We consider that additional safeguards for whistleblowers are always positive, especially given that ‘corruption’, ‘misconduct’ and ‘maladministration’ have complex legal definitions that may be at odds with commonplace understandings of the terms. We would therefore support such a safeguard being implemented. Importantly, we recommend that this be a safeguard, where a discloser has honestly, or

on reasonably believed that the wrongdoing amounted to public administration information, but has incorrectly made that assessment. Honest belief and/or good faith **should not** be an *additional* requirement in order to receive protections, but rather a safeguard to ensure protections where the discloser has not met the technical requirements of under the *PID Act*.

**Recommendation 4:** The definition of ‘corruption’ should be broadened, references to specific offences should be removed, and there should be discretions to ensure trivial conduct does not have to be investigated or necessarily trigger the protections.

**Recommendation 5:** Disclosures that solely relate to personal workplace grievances and that do not have implications beyond the discloser should be expressly excluded from being disclosable conduct. Disclosures that involve a mix of personal workplace grievance and public interest information should be disclosable.

**Recommendation 6:** The *PID Act* should continue to govern disclosures of information, by any person, that raise potential issues of substantial risks to the environment or to the health and safety of the public.

**Recommendation 7:** Whistleblowers who incorrectly assess that certain wrongdoing raises a potential issue of public interest information should still be protected under the *PID Act*.

### 1.3. Who should be able to receive disclosures?

#### 1.3.1. *No wrong doors approach*

We strongly endorse the ‘no wrong doors’ approach, which increases the number and range of ‘relevant authorities’ such as to cover all government authorities that a whistleblower might reasonably disclose to. Whistleblowers should feel empowered to make disclosures to whichever authority they feel comfortable approaching, as often, there are legitimate reasons for choosing one authority over another, including because of fear of reprisal. Expansion of ‘relevant authorities’ should include all integrity and regulatory agencies, including the ICAC and the Audit Office.

Given the complexities of whistleblowing legislation, a ‘no wrong doors’ approach ensures that whistleblowers are not adversely affected just because they have misunderstood the legislation, have not received adequate advice, or have made disclosures to the authority they believed was best placed to address the disclosure, rather than to the authority prescribed by the *PID Act*. A ‘no wrong doors’ approach also recognises the fact that whistleblowers are often operating under great stress, and may not have the resources or ability to interpret complex disclosure pathways. In addition, the nature of the wrongdoing and the person/agency involved should not affect what relevant authority the whistleblower may approach, as this renders disclosure pathways unnecessarily restrictive.

The exposure draft of the *Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025* (Cth) (**draft Commonwealth Whistleblower Protections Bill**) proposes

'backstops' to ensure that a public interest disclosure could still be treated as such, even if it does not meet the criteria set out in the act. In particular, the draft Bill proposes to allow a principal offer to deem that a disclosure which does not otherwise meet the requirements of the Act, but which raises 'a fundamental and serious concern relating to the integrity or accountability of the Commonwealth public sector', can be a public interest disclosure. Additionally, it provides that a disclosure made where the discloser 'reasonably believes that the disclosure is for the purposes of the disclosure being investigated or otherwise dealt with under another law or power' is also a public interest disclosure.<sup>12</sup> Similar provisions would bolster protections in the *PID Act*.

We note that a 'no wrong doors' approach is the most effective where relevant authorities have the duty to refer the disclosure to the most appropriate recipient. This also needs to be paired with education and training within relevant authorities for how to manage disclosures.

### **1.3.2. *Managers and supervisors***

A person who directly, indirectly, formally, or informally supervises a whistleblower should be a relevant authority. For many of our clients, their manager or supervisor is the first person they instinctively want to approach to make a disclosure. Out of the clients we advised in FY2023-2024:

- 40% of those who made disclosures prior to seeking legal help made a disclosure to their manager;
- 60% made disclosures to human resources or other internal management, such as board directors or compliance managers;
- 27% made disclosures to both.

This suggests that managers, supervisors, and other officers with expertise in human resources, ethics, and anti-corruption are often receiving disclosures of wrongdoing, often at the first instance. The *PID Act* should therefore expand the scope of 'relevant authority' to include managers and supervisors. Doing so would not only ensure that these disclosures are protected, but also ensure that when they do receive disclosures, managers and supervisors are subject to the duties and obligations under the *Act*.

### **1.3.3. *Eligible recipients of external disclosures***

Section 6 of the *PID Act* is inappropriately narrow and should be expanded to include disclosure pathways for the purposes of seeking support or escalating a disclosure to the public.

It is critical that whistleblowers are encouraged to seek support and advice about their whistleblowing. The *PID Act* should be amended to extend the protections to disclosures made to legal practitioners for the purpose of seeking advice about the operation of the Act. This approach is consistent with the

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<sup>12</sup> *Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025* (Cth) ss 14(5)-(8), 16.

*Commonwealth PID Act*. Whistleblowers should also be allowed to make disclosures for the purposes of seeking support from a health professional or other professional support. In particular, we recommend that professional associations, unions, medical practitioners, and psychologists are included as eligible recipients for the purpose of providing support to whistleblowers. This approach was recommended by the Moss<sup>13</sup> and Wilson<sup>14</sup> Reviews and is being adopted across whistleblowing legislation in Australia. For example, the draft *Commonwealth Whistleblower Protections Bill* at schedule 2 section 31(2) and (3) enables disclosures to medical practitioners, psychologists, unions, and professional associations. The *Taxation Administration Act 1953* (Cth) (**Tax Act**) at section 14ZZT(3B) similarly provides for disclosures to medical practitioners and psychologists.

We recommend that the category of people to whom external disclosures can be made is expanded. While we recognise that journalists play an important role in the exposure of wrongdoing, and are often the appropriate recipients for external disclosures, they should not be the only eligible recipient for external disclosures, outside of members of Parliament. In many cases, it may be more appropriate to make disclosures to professional bodies, special interest groups, and civil society. This is consistent with the approach taken by the *Commonwealth PID Act*, which allows an external disclosure to be made to any person, other than a foreign government official. Internationally, other jurisdictions, such as the United Kingdom, take a similar approach.

Expanding the scope of eligible recipients will not require any additional safeguards. Internal disclosures should remain the primary avenue for whistleblowers to make disclosures, and for disclosures to be adequately addressed. However, where disclosures fail to be investigated and addressed adequately by internal recipients, whistleblowers should be empowered and protected to go to whoever can provide action and redress for the wrongdoing.

#### **1.3.4. Grounds for making external disclosures**

The circumstances permitting external disclosure should be expanded, to permit disclosure when satisfying all the requirements set out in section 6 is not possible, safe or reasonable.

Expansion of external disclosure pathways in this way would allow whistleblowers to make emergency disclosures where there is an imminent risk to the environment or to the health and safety of other people. While the requirements at section 6 are reasonably imposed to allow agencies to deal with disclosures internally, it is realistic to expect that some wrongdoing will need to be brought to the public's attention immediately, to minimise the harm and danger caused. Allowing for emergency disclosures is in line with the approach taken by the *Corporations Act* and the *Commonwealth PID Act*. Additionally, we would recommend that the *PID Act* create a catch-all safeguard where external disclosure is "otherwise reasonable and in the public interest, having regard to all of the

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<sup>13</sup> *Moss Review* (n 10) 56-7.

<sup>14</sup> *Wilson Review* (n 9) 142.

circumstances,” in line with the approach proposed by Zoe Daniel MP in an amendment unsuccessfully moved to the *Public Interest Disclosure Amendment (Review) Bill 2022*. This would provide an extra layer of security for whistleblowers who make disclosures believing it is in the public interest, after internal disclosure mechanisms have failed them.

**Recommendation 8:** The scope of relevant internal authorities should be expanded so that investigation and protection obligations are triggered when whistleblowers make disclosures to: (i) any appropriate and reasonable body, no matter the nature of the public administration information contained in their disclosures; and (ii) any person who directly or indirectly supervises that whistleblower.

**Recommendation 9:** The scope of eligible recipients should be amended to include: (i) legal practitioners; (ii) medical and mental health professionals; and (iii) professional associations and unions, for the purposes of advising, assisting and supporting the whistleblower, or acting on their behalf.

**Recommendation 10:** The scope of eligible external recipients should be expanded from journalists and members of Parliament, other than a Minister, to include any person, other than a foreign government official.

**Recommendation 11:** The grounds for making an external disclosure should be expanded to include avenues for: (i) emergency disclosures where there is imminent danger to the health and safety of a person or to the environment; and (ii) public disclosures where it is otherwise reasonable and in the public interest, having regard to all of the circumstances.

#### **1.4. Reasonable suspicion requirement**

The *PID Act* currently requires that a public official ‘reasonably suspects’ that the information raises a potential issue of wrongdoing. We consider it appropriate to amend this test to require that the public official “suspects on reasonable grounds” the information shows disclosable conduct.

The Ombudsman’s Directions and Guidelines note that “a suspicion must have a factual basis” and that [w]hether or not a suspicion is reasonable will depend on the surrounding circumstances.” These guidelines already point to the reasonableness of the grounds on which a suspicion is built as the focus of the objective test. It would therefore improve clarity and accessibility to use the ‘suspicion on reasonable grounds’ formulation in the text of the *PID Act*. In addition, this wording is consistent with the formulation used by best practice legislation in Australia<sup>15</sup> and internationally.<sup>16</sup>

Requiring ‘belief’ is more onerous on disclosers and may deter people from speaking up about wrongdoing, as they are more likely to be concerned that they do not meet such requirements. It should

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<sup>15</sup> *Public Interest Disclosures Act 2013* (Cth) s 26.

<sup>16</sup> *EU Directive* (n 5) Article 6.1(a).

not be the role of the discloser to investigate the wrongdoing; a suspicion on reasonable grounds is sufficient to deter unfounded disclosures. Furthermore, an exclusively objective test should be included in addition to the hybrid test. If information “shows or tends to show” wrongdoing, it should be protected under the *PID Act*, regardless of whether the discloser turned their mind to whether the information gave rise to disclosable wrongdoing. Such an objective test places the onus on agencies to identify where disclosures may be public interest disclosures, even where the disclosers themselves have not identified that they are making a public interest disclosure. This incentivises better education for officers tasked with dealing with public interest disclosures, managers, and integrity agencies, and ensures that everyone who is potentially exposing themselves to retaliation for disclosing wrongdoing is proactively protected.

A presumption that the discloser has fulfilled the ‘suspicion on reasonable grounds’ requirement should also be implemented. In circumstances where a whistleblower is seeking to enforce their rights under the *PID Act*, it follows that it should be the party that alleges that the discloser did not make a protected disclosure that should bear the onus of proving it.

**Recommendation 12:** The ‘reasonable suspicion’ threshold should be amended to ‘suspicion on reasonable grounds that the information shows or tends to show disclosable conduct’. The requirement should also be amended to include an exclusively objective test, such that a disclosure would be protected if the information shows or tends to show public interest information irrespective of the whistleblower’s belief or suspicion.

**Recommendation 13:** A presumption that a whistleblower has satisfied the ‘suspicion on reasonable grounds’ requirement should be implemented.

## 1.5. Other issues

### 1.5.1. *Anonymity*

The legislation should expressly specify that disclosures made anonymously will still attract legal protections. Anonymity can be an important tool for whistleblowers to protect themselves against reprisals, and allowing whistleblowers to remain anonymous is key to encouraging disclosures. Expressly stating that disclosures may be anonymous is important for the clarity and accessibility of the *PID Act*, both for prospective whistleblowers and recipients of disclosures. Many Australian whistleblower protection laws permit anonymous whistleblowing.

### 1.5.2. *Protections for substantially compliant disclosures*

Substantially compliant disclosures should be sufficient to trigger protections. It is well known that whistleblowing legislation is incredibly complex and hard to navigate without a lawyer. In recognising that whistleblowers are often operating in environments of high stress and have few resources to seek legal assistance, it would be best practice to ensure whistleblowers are not penalised for failing to meet minor technical requirements. We consider that section 11(4)(c) of Aotearoa New Zealand’s *Protected*

*Disclosure (Protection of Whistleblowers) Act 2022* is a sound example of how such a safeguarding mechanism can be incorporated into the *PID Act*.

**Recommendation 14:** The *PID Act* should expressly specify that disclosures can be made anonymously.

**Recommendation 15:** The *PID Act* should provide protections to any disclosures that substantially comply with the technical requirements.

## 2. Early certainty about status

The Discussion Paper rightfully recognises that the stress whistleblowers experience is compounded by the lack of any certainty that they will receive whistleblower protections. In our experience, this uncertainty can arise for a variety of reasons, including:

- A lack of confidence in whether the wrongdoing amounts to ‘public administration information’;
- Questions as to whether they have made the disclosure to a relevant authority, for example where they have disclosed to an indirect supervisor of the public officer who is the subject of the disclosure;
- A lack of education by agencies and regulators to inform whistleblowers about correct pathways and procedures; and
- Being unable to seek legal advice to confirm they have satisfied the requirements, because of financial barriers and the lack of solicitors who specialise in whistleblowing law.

Early confirmation of whistleblower status would greatly benefit whistleblowers by reducing their emotional burden and by providing them with more clarity about their rights and obligations throughout the whistleblowing process. If a whistleblower intends to rely on any immunities, or wishes to pursue a reprisal claim, confirmation of whistleblower status would also mean that their burden in court to prove they have made a protected disclosure is reduced significantly.

All authorities who are eligible to receive disclosures should be able to confirm a person’s whistleblower status. In addition, any new whistleblower support unit, as discussed in Issue 3.2, should also have this ability. Such a support unit could also provide specialist support for agencies who are wanting to confirm a person’s whistleblower status, or simply step in to confirm that person’s status themselves. While such confirmation would not be determinative of whistleblower status for the purposes of subsequent court proceedings, it would provide some level of assurance to whistleblowers – and may well provide a level of assistance in subsequent litigation.

This ability should also extend to deeming a disclosure an appropriate disclosure, even if it otherwise would not have been. For example, under section 29 of the *NSW PID Act*, once a head of agency has deemed a disclosure a public interest disclosure, the determination is admissible in civil and criminal proceedings as evidence that the disclosure is a public interest disclosure. Even if the whistleblower failed to meet a technical requirement, they would still receive the relevant protections under the *PID Act*.

**Recommendation 16:** The *PID Act* should allow all eligible recipients to provide confirmation to whistleblowers that they are protected under the *PID Act*. This confirmation should be admissible in civil and criminal proceedings as evidence that the disclosure is protected under the *Act*.

**Recommendation 17:** The *PID Act* should also allow all eligible recipients to deem a disclosure a appropriate disclosure, even if it otherwise would not have been.

## 3. Independent authority to support whistleblowers

### 3.1. The need for independent support for whistleblowers

Across the Whistleblower Project's empirical research and client work, the Whistleblower Project sees firsthand the emotional, psychological, social, professional and financial impacts that whistleblowers face. As a philanthropically funded organisation with limited resources, the Whistleblower Project cannot help every person that seeks assistance from the service.

Research shows that as many as 8 in 10 whistleblowers will suffer retaliation for speaking up.<sup>17</sup> We have long advocated for an independent statutory authority to oversight federal whistleblowing laws, provide independent support and advice to whistleblowers, and investigate allegations of reprisal. This is a crucial component of a functioning whistleblowing regime, and a missing piece in our integrity landscape currently.

At the federal level, there are a number of separate legislative frameworks for whistleblowing including the public and private sector and various sector specific regimes. In this context, we argue that an independent standalone authority is necessary and appropriate, given the absence of any current body that could house the proposed functions across all federal whistleblowing regimes. In the state context, it is our view that the support functions could be housed within existing agencies, provided there were information barriers between different functions, and sufficient funding to perform those functions.

In the course of the Whistleblower Project's casework, we observe overwhelmingly the psychological impacts and procedural burnout that clients face when speaking out and participating in investigations. We have found that ongoing assistance, support and advice has provided considerable benefit to many of clients. These supports should be requisite, but regulatory or investigatory agencies often face resource constraints, and are limited by the actual and perceived conflicts that would arise if they provided these supports to whistleblowers.

The Whistleblower Project's own data analysis from its first year of operation found that a third of clients who suffered reprisal before coming to us had their employment terminated, and almost one fifth had allegations made against them in the workplace following their whistleblowing.<sup>18</sup> Whilst there are protections against victimisation in the *PID Act*, the reality is that more often than not, whistleblowers face mistreatment for speaking out, and this mistreatment can range from beyond deliberate acts of victimisation to other forms of indirect or incidental detriment. Without external support, they are often left unable to enforce their rights under whistleblowing laws. Only one case has been brought under the *PID Act* since it came into effect more than six years ago.

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<sup>17</sup> *Cost of Courage* (n 1) 4.

<sup>18</sup> *Women Speaking Up* (n 4).

In June 2025, the Human Rights Law Centre, Griffith University and Transparency International Australia published *A Fair Go for Speaking Up: Design Principles for Australia's Federal Whistleblower Protection Authority*. This resource provides a comprehensive background on the need for a Whistleblower Protection Authority at the federal level and establishes 10 design principles for such an authority. These design principles are relevant to consideration of a support function at the state level. The establishment of a whistleblower protection unit with the functions recommended below would see South Australia again lead in protecting and empowering whistleblowers.

### **3.2. Placing support functions within an existing agency**

We recommend that any whistleblower protection agency or support function within an existing agency have the following functions and powers:

- (a) A clearinghouse function for reports, including facilitating referrals to the appropriate investigation authority;
- (b) Provide information, advice, psychological/psychosocial support, legal advice and practical support for whistleblowers, whether that be in-house or through the facilitation of a referral and funding scheme;
- (c) Safeguard the identity and confidentiality of people who make disclosures under the Act;
- (d) Advise, assist and educate public sector bodies on their obligations under the Act;
- (e) Assist and advise agencies on the coordination and management of disclosures;
- (f) Investigate allegations of victimisation or detrimental conduct arising from a disclosure; and
- (g) Commence proceedings to enforce the protections in the Act.

The potential for conflicts of interest between different functions is frequently raised as an issue in relation to determining where to place whistleblower support functions. In particular, there are circumstances where the functions at (b) above involving support to the whistleblower may conflict with those at (e) and (f) around oversight and investigation. In our view, this can be effectively managed by implementing information barriers between functions housed within the same agency, and/or facilitating an external legal advice and representation scheme, whereby whistleblowers could receive funding to access legal and psychological support, or access to that support could be facilitated and funded through the agency. We provide our insights as to how the proposed functions may be best housed in the South Australian context below.

#### **3.2.1. Information, support, legal advice and representation to whistleblowers**

A whistleblower support unit's functions should include:

- i. **In-house case work service** as an ongoing contact point for guidance and support, including assistance with making disclosures, guidance on navigating pathways and processes, and practical support.

- ii. **Administering funding and referrals** to support services delivered to whistleblowers externally and independently, including legal assistance and psychological support.<sup>19</sup>

The NSW Ombudsman's Whistleblower Support Team provides a useful model for an in-house support scheme and could be replicated within the South Australian Ombudsman, Office for Public Integrity (**OPI**) or the ICAC. The NSW Ombudsman's model provides confidential support to whistleblowers and operates independently from the Ombudsman's other functions, including the handling of whistleblower complaints and advising agencies on managing disclosures. The NSW Ombudsman is exploring externally operated pilot programs for wellbeing support and legal advice to complement its in-house functions.<sup>20</sup>

In Queensland, as an other example, the need for a whistleblower support and advice unit was recognised in the Wilson Review, which recommended that an independent unit be established within the Queensland Ombudsman, with its investigatory function kept distinct and separate.<sup>21</sup> The Wilson Review also recommended a pilot funding scheme for a community legal centre to provide legal support to whistleblowers.<sup>22</sup>

We would encourage the ICAC to consider the scope of a whistleblower support unit in relation to where this may be appropriately placed in the South Australian regime, given the breadth of subject matter contemplated by the *PID Act*. A whistleblower support unit would be most effective in improving the workability of the scheme and the experience of whistleblowers where its scope is not limited to particular subject matters of wrongdoing, for example, limited to only corruption issues.

### **3.2.2. Receipt, referral or investigation of disclosures**

A whistleblower support unit should have the role of receiving and referring disclosures and overseeing investigations of detrimental conduct. The role of investigating disclosures should remain within the investigatory functions of pre-existing regulatory bodies, such as to avoid real and perceived conflicts of interest and overlap of functions.

The value of an independent whistleblower support body as a clearinghouse for disclosures has been recognised in other jurisdictions and internationally as of benefit to both whistleblowers and regulatory bodies. Presently, the operation of the *PID Act* involves many different agencies and complaints systems, depending on the nature of the wrongdoing. A disclosure of information may raise a potential corruption issue that poses a risk to the environment and may also raise issues of maladministration or misuse of public office. In this instance, the remit of the ICAC, Ombudsman and the EPA may be engaged. On paper, the *PID Act* facilitates effective management and referral of disclosures through

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<sup>19</sup> *A Fair Go for Speaking Up* (n 4).

<sup>20</sup> Legal and Constitutional Affairs Legislation Committee, Public Hearing, *Whistleblower Protection Authority Bill 2025* (13 August 2025) 34.

<sup>21</sup> *Wilson Review* (n 8) 148.

<sup>22</sup> *Wilson Review* (n 8) recommendation 89.

OPI as a central agency. However, in practice, the referral process is often stagnated and unclear, contributing to greater uncertainty and risk to the whistleblower.

To some extent, overlap is unavoidable for a scheme that contemplates a broad range of subject matter. Whilst OPI currently performs some ‘clearinghouse’ functions in its receipt and referral of PIDs, a central whistleblower support unit with dedicated powers and resourcing to liaise with the relevant investigatory agencies and support the whistleblower would assist in streamlining the overlapping functions and complexity of the current scheme.

### **3.2.3. Investigation, referral or prosecution of detrimental conduct**

As above, our view is that an investigatory and prosecution function for detrimental conduct is missing from most whistleblowing regimes across Australia, including the *PID Act*. Currently, access to remedies is a key barrier to the workability of the *PID Act*. One of the reasons for this is the burden of securing independent legal resources to enforce their rights, and the limited resources and capacity of current regulatory bodies to take enforcement action in cases of suspected breaches.<sup>23</sup> With limited enforcement, whistleblower protection laws are not having the intended effect in deterring detrimental conduct.

An investigatory and enforcement function for victimisation would need to be distinct from other current and proposed oversight functions within the South Australian PID regime. This function could sit within the Ombudsman, OPI or ICAC, but barriers would need to be in place to separate this function from advisory, whistleblower support, and disclosure investigation functions. It is also crucial that this function would extend to detrimental conduct taken against any person for disclosures of any eligible conduct, including public administration information *and* environment and health information.

In August 2025, ASIC secured a penalty against TerraCom of \$7.5million for whistleblower victimisation.<sup>24</sup> This was ASIC’s first enforcement outcome for contraventions of whistleblower provisions and plays an important role in setting norms and expectations about corporate compliance with whistleblowing protections. We are yet to see similar enforcement actions taken under state and territory PID legislation.

**Recommendation 18:** A whistleblower support unit be established within the South Australian Ombudsman or the Office for Public Integrity, with the power to receive and refer disclosures, provide independent and confidential information and advice to current and prospective whistleblowers on the *PID Act*, and investigate and take remedial action on detrimental acts and omissions, ranging from victimisation to detrimental failures in support and protection.

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<sup>23</sup> *Cost of Courage* (n 1) 14.

<sup>24</sup> *Australian Securities and Investments Commission v TerraCom Ltd* (No 3) [2025] FCA 1017.

**Recommendation 19:** A program be established for whistleblowers to access (a) funding for legal support (to an appropriate cap) to seek advice in relation to their rights concerning potential or actual disclosures and steps to vindicate their rights and seek remedies, and (b) funding for welfare costs including psychological support and career transition costs where appropriate.

**Recommendation 20:** An investigatory and enforcement function for whistleblower remedies should be established within one of the oversight bodies of the PID regime, which would operate independently and separate to other PID-related functions, and investigate and take action to remedy potential cases of detrimental acts and omissions, ranging from victimisation to detrimental failures in support and protection.

## 4. Confidentiality obligations

### 4.1. Reforms necessary to protect confidentiality

It is paramount that whistleblowers have confidence and certainty that their identity will remain confidential while making a public interest disclosure. Confidentiality is important for preventing against detrimental conduct and other adverse consequences for speaking up. The importance of this is recognised in the current act which criminalises conduct which breaches a whistleblower's confidentiality.<sup>25</sup>

However, no one has ever been charged with these offences, which undermines the effectiveness of these provisions.<sup>26</sup> In our experience as a casework service, the bodies charged with prosecuting such offences do not have the resources to prioritise prosecuting these offences. In reality, this means that the risk of criminal liability does not sufficiently deter conduct which breaches whistleblower protections, and whistleblowers are often left to seek their own legal remedies, at their own cost, for breaches of whistleblower protections.

Additionally, confidentiality provisions under the current regime are deficient because it does not protect preparatory conduct. Under the current regime, whistleblowers are unable to, for example, send supporting evidence of their disclosure from their work email to a pseudonym email account for the purpose of making a disclosure anonymously. This undermines a whistleblower's ability to maintain their confidentiality, and in our experience working with clients, this has a chilling effect on those who want to make a whistleblower disclosure. We refer to our submissions at Recommendation 23 below, for further submissions on this issue.

Separately, section 6(b)(ii) of the *PID Act* currently requires a whistleblower to have made their identity known in their initial disclosure (to an agency or oversight body in accordance with section 5), before being able to make an external disclosure to a journalist or member of Parliament. In our casework experience, this technical requirement can 'trip up' those wanting to make an external disclosure, who often, having not felt comfortable identifying themselves as part of their section 5 disclosure, can be left without an external disclosure pathway if their initial anonymous disclosure was not adequately resolved.

### 4.2. Systems and capabilities of agencies to protect confidentiality

Whistleblower confidentiality can be easily undermined in the process of the investigation, particularly where an agency or team is small, and the whistleblower has previously or informally vocalised concerns pertaining to their disclosure in the past, making it easy for others to identify who made a disclosure. These realities are observed by the Whistleblower Project's casework service.

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<sup>25</sup> *PID Act* s 9.

<sup>26</sup> *Cost of Courage* (n 1).

Additionally, as informed by the Whistleblower Project's casework experience, workplaces or investigators are often unable to progress an investigation in a meaningful way, unless the discloser agrees to be identified to some degree. This means that disclosers often need to weigh up the potential implications of losing their confidentiality as a whistleblower and risking a superficial or meaningless investigation which would mean their efforts in making a disclosure could be in vein.

Ultimately, whistleblowers should feel that they can trust that if they make a disclosure, any investigations will be done in a way that protects their confidentiality. Where it is necessary for the purpose of the investigation for the whistleblower to be identified, the investigating authority or agency should proactively take steps to protect whistleblowers from any potential reprisal action as a result. In these circumstances, improved training for agencies and PID Officers in these circumstances are paramount to resolving some of these issues and fostering a strong organisational culture that is compliant with the *PID Act* and protects whistleblowers. We refer to our submissions at Issue 6 below, regarding the importance of robust organisational culture and oversight.

**Recommendation 21:** Authorities charged with prosecuting breaches of the *PID Act* should be given adequate mandate and resources to do so.

**Recommendation 22:** The requirement under section 6(b)(ii) should be removed.

## 5. Immunities & remedies

### 5.1. Immunities

#### 5.1.1. *Immunities should be extended to witnesses and other groups*

The *PID Act* already protects third parties from detriment for speaking up where a disclosure is made by another person (s 9(1)). This is appropriate and should be retained.

Other regimes afford immunities to witnesses and other groups. For example, relatives were included in the 2019 reform to the *Corporations Act* and the *Tax Act*. These reforms were included with the intention of encouraging close personal relatives such as a spouses, to make disclosures about corporate wrongdoing of which they were aware, even if their own spouse (the actual employee or officer) did not make a disclosure about that same wrongdoing. We are supportive of similar reforms in the South Australian *PID Act*. We also refer to Recommendation 3 above, with respect to others under state authority such as people in detention.

We note that if the immunities and protections were extended to other groups, public sector agencies would be unlikely to be in a position to provide adequate and appropriate support to reporters who are not within the ambit of the organisation. Such protections would be the province of general witness protections, if available from the police or relevant regulator, for example.

#### 5.1.2. *Preparatory acts should be protected where ‘reasonably necessary’*

The South Australian Court of Appeal’s judgment in *Boyle v Commonwealth Director of Public Prosecutions* (**‘Boyle’**) confirmed that whistleblowing immunity in the *Commonwealth PID Act*, only applies to the act of disclosure, and not to any preparatory or anterior conduct, no matter how essential that conduct is to the disclosure. The Centre made submissions as *amicus curiae* on this issue, and while the Centre’s submissions were ultimately not accepted by the Court in light of the current drafting of the immunities in the *Commonwealth PID Act*, the submissions remain salient when considering desirable reform to the *PID Act*.<sup>27</sup>

The immunities set out in section 10 of the *Commonwealth PID Act* are sufficiently similar to other whistleblowing laws in jurisdictions across Australia, including the South Australian *PID Act*, that it is clear from the *Boyle* decision, that whistleblowing regimes across Australia are unlikely to protect preparatory conduct. The *Boyle* decision has caused significant gaps in protections for whistleblowers, given the practical reality that some preparatory steps may need to be taken for the whistleblower to make a disclosure.

These gaps are especially problematic where public servants, who often have confidentiality and secrecy obligations, are at risk of criminal penalty for breaching those obligations, and are not afforded the

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<sup>27</sup> Human Rights Law Centre, ‘Written Submissions of the Human Rights Law Centre (Amicus Curiae)’, in *Boyle v Commonwealth Director of Public Prosecutions*, CIV-23-004375, 26 July 2023, 12.

relevant whistleblowing immunities. This is also the case for the *PID Act*, where without knowledge of the *Boyle* decision, it would not necessarily be clear to a potential whistleblower on the face of the legislation, that preparatory acts are not afforded the relevant immunities.

It can also be difficult for disclosers to demonstrate a reasonable suspicion about the disclosable conduct. For example, it might be difficult to form a reasonable suspicion that certain conduct constitutes maladministration as distinct from questioning the merits of government policy, without sufficient documentation.

The inability for whistleblowers to provide documentary evidence to the recipients of a disclosure, also undermines the effectiveness of the disclosure. It is clear from the Whistleblower Project's casework experience that many investigating agencies decline to take action on specific allegations unless the discloser can provide evidence of the alleged wrongdoing. Further, a recipient of an external disclosure, such as a member of Parliament or a journalist, will likely not have the powers of investigation that an investigating agency does, meaning that it is unlikely a disclosure will be taken seriously or actioned, if evidence in support cannot be provided.

The preferable approach to resolving the issue in *Boyle* is for the section 5 immunities in the *PID Act* to be amended to include **protection for preparatory conduct that is reasonably necessary to the making of a disclosure**. This would be consistent with the Wilson Review into the Queensland public sector whistleblowing regime, which recommended that:

1. A disclosure should have limited immunity for preparatory acts and self-reported conduct, which would apply if the court is satisfied that it is appropriate, having regard to, at a minimum:
  - a. Whether the conduct was reasonably necessary in to make a disclosure, or to protect a discloser's other rights such as in proving that a disclosure was a valid disclosure in a claim of reprisal;
  - b. The seriousness of the conduct;
  - c. Any risks to a particular third party, and the proportionality of those risks;
  - d. Any steps to mitigate those risks;
  - e. Whether the preparatory acts were likely to prejudice investigation of the disclosure;
  - f. Whether the preparatory acts were likely to prejudice the investigation of the disclosure;
  - g. Whether the preparatory acts were to retain copies of information the discloser become aware of in the ordinary course of their work, or extended beyond that to conducting their own investigation;
  - h. Any delay between the preparatory act and the making of the disclosure, and the length and reasons for the delay;

- i. Whether the person sought legal advice before undertaking the preparatory act.<sup>28</sup>

Such criteria could be incorporated into section 5 of the *PID Act*, to guide the determination of whether the preparatory conduct was reasonably necessary to the making of the disclosure.

Additionally, whistleblowing laws in the US, UK and EU all provide some form of protection for preparatory conduct, either directly or by way of judicial interpretation.<sup>29</sup>

Until preparatory acts are protected, there is an urgent need for regulators and government agencies to educate public officers and publish guidance on the limitation of the immunities, so that whistleblowers do not inadvertently engage in conduct that is not protected, and risk not being entitled to the immunities and protections against detrimental conduct.

### **5.1.3. Immunities in disciplinary proceedings**

The *PID Act* is currently silent on the process by which a person the subject of disciplinary proceedings wishes to claim immunity under section 5. In the *Boyle* decision, the South Australian Court of Appeal held that proceedings relating to a claim for immunity under the *Commonwealth PID Act* are to be heard in separate civil proceedings, even where the claim for immunity related to criminal charges. A claim for immunity under the *PID Act* is yet to be heard before a court.

Whistleblowers can face practical difficulties with enlivening immunities where investigations are ongoing. This is informed by the Whistleblower Project's casework experience. A common example of this is where a whistleblower makes an appropriate disclosure to an oversight body, following which that oversight body imposes strict confidentiality requirements preventing the whistleblower from speaking about the disclosure, so as not to prejudice any investigations, which can create difficulties where a whistleblower needs to simultaneously enliven immunities in related civil proceedings or internal disciplinary proceedings. While there are circumstances in which an oversight body might release the whistleblower from those confidentiality obligations for the discrete purpose of claiming an immunity, this is not always possible.

Similar difficulties arise where a whistleblower suffers detriment, and is seeking to bring a claim against their employer, but is unable to disclose that they have made an appropriate disclosure. This is especially complex in the context of related workplace claims, where limitation periods for commencing a claim are often short, such as a claim for unfair dismissal which has a limitation period of 21 days under the *Fair Work Act 1994* (SA).<sup>30</sup> Such limitations periods are far shorter than typical investigation times which can take many years.

Of course, these issues are further exacerbated by whistleblowers often having limited access to affordable legal representation to assist with navigating these complex scenarios. Additionally,

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<sup>28</sup> *Wilson Review* (n 9) Recommendation 72, page 259.

<sup>29</sup> Olivia Dixon, 'Do the ends justify the means?: Whistleblower protection for preparatory acts' (2024) 39 *Australian Journal of Corporate Law* 389.

<sup>30</sup> s 72B(6)(b).

common examples such as these demonstrate the difficulties for whistleblowers in maintaining confidentiality of their identity, as it is difficult for a whistleblower to exercise their workplace rights, enliven the immunities or bring a claim to remedy detriment, while simultaneously preserving their confidentiality as a whistleblower.

#### **5.1.4. Effectiveness of the current provisions**

As contemplated by the Discussion Paper at page 11, we are supportive of the insertion of a provision which allows for a whistleblower to be provided with undertakings that their disclosures will not be used in evidence against them, where that evidence pertains to the whistleblower's past conduct.<sup>31</sup>

In conjunction with our Recommendation 34 below, it is worth noting that generally, whistleblowing regimes do not protect against liability for a whistleblower's past conduct. In implementing Recommendation 24 below, it should also be made clear that such an undertaking would only preclude a whistleblower's disclosure from being used against them, and that the whistleblower's prior wrongdoing might still be investigated or prosecuted (however without reliance on the whistleblower's disclosure).

**Recommendation 23:** Immunities under section 5 should be extended to preparatory conduct that is reasonable in association with the making of an appropriate disclosure.

**Recommendation 24:** A provision should be included to allow whistleblowers to be provided with undertakings that their disclosure will not be used in evidence against them, where that evidence pertains to the whistleblower's past conduct.

## **5.2. Remedies**

### **5.2.1. Are the current remedies adequate?**

Whistleblower protections exist to prevent detriment to whistleblowers for speaking up, and to provide access to remedies when detriment nonetheless occurs. Since its enactment, we are not aware of any successful claim under the *PID Act* and there is an urgent need to improve remedies under the current regime.

The Centre's *Cost of Courage* report reviewed every whistleblower protections case to proceed to judgment across Australia up to 2023, finding only one successful claim for court ordered compensation across federal and state/territory whistleblower laws.<sup>32</sup> One of the reasons for this is the burden of securing independent legal resources to enforce their rights, and the limited resources and capacity of

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<sup>31</sup> *Public Interest Disclosure Act 2022* (NSW) s 41.

<sup>32</sup> *Cost of Courage* (n 1).

current regulatory bodies to take enforcement action in cases of suspected breaches.<sup>33</sup> With limited enforcement, whistleblower protection laws are not having the intended effect in deterring detrimental conduct.

### **5.2.2. *The Centre's experience and knowledge about the effectiveness of protections***

The Centre's research has found that whistleblowers continue to experience detriment, with approximately 7 out of 10 whistleblowing reporting suffering reprisal for making public interest disclosures across Australia.<sup>34</sup>

Informed by the Whistleblower Project's experience working directly with the whistleblower clients, it is clear that seeking compensation for detriment can be very difficult and whistleblowers are often more inclined to seek redress through other more general employment law claims (such as unfair dismissal or discrimination claims). Damages awarded are also often low, making other employment law remedies more inciting.

Women and men also typically experience detrimental conduct in different ways. The Centre's Women Speaking Up report shows that while men and women typically experience reprisal at similar rates, the nature of that reprisal typically looks different for men and women, which can affect the ability for women whistleblowers in particular, to successfully obtain legal remedies. For example, the Centre's research showed that almost half of its men clients had their employment terminated, whereas only a quarter of its women clients were terminated at the initiative of her employer. Comparatively, almost a third of its women clients faced harassment and bullying because of their disclosures, while only 9% of our men clients had the same experience. Importantly, the creation of a hostile work environment via bullying and harassment can lead to forced resignations or 'constructive dismissals' which are more complex cases to run in court, which can make it harder for women who have experienced this form of detrimental conduct to pursue compensation via legal remedies.<sup>35</sup> This demonstrates some of the complexities of seeking remedies for detrimental conduct, where law enforcement and government agencies fail to prevent reprisal action, and individuals are left to pursue legal action themselves.

With the above challenges in mind, we support amendments to the *PID Act* which make it easier for whistleblowers obtain remedies where they have experienced detriment, and to place the onus of whistleblower protection on agencies and oversight bodies, rather than requiring whistleblowers to seek remedies and enforce their rights at their own cost and initiative.

In particular, we are supportive of the following amendments to the *PID Act* (as canvassed in the Discussion Paper at page 12):

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<sup>33</sup> *Cost of Courage* (n 1) 14.

<sup>34</sup> *Women Speaking Up* (n 4) 17.

<sup>35</sup> *Women Speaking Up* (n 4) 18.

1. **reversing the onus of proof** in reprisal claims. Such an amendment would be consistent with other whistleblowing regimes<sup>36</sup> and shift the burden of compliance with whistleblower protections towards government agencies and oversight bodies, rather than whistleblowers. This would be an important and positive step, although it should be noted that reverse onus of proof provisions that exist in other whistleblowing regimes, have not yet proven to materially improve the accessibility of whistleblower protections in reprisal matters.
2. Broadening s 9(1) such that detrimental conduct includes language such as ‘**attempting, conspiring or inducing**’ to cause detriment, and to include detrimental conduct that is done where the making of an appropriate disclosure is a **contributing factor**, rather than a substantial factor, in causing the detrimental conduct. These amendments would go some way to improving a whistleblower’s prospects of bringing successful remedies for detriment, and would bring the South Australian regime in alignment line with other recently updated regimes.<sup>37</sup>
3. Allowing for a wider range of remedies, including **injunctive relief** where detrimental action is anticipated. This would be a positive step which may prevent whistleblowers from suffering detriment however, we note that barriers such as expensive legal costs and inaccessible court processes would still prohibit whistleblowers from easily securing injunctive relief.
4. Including an asymmetrical ‘**no costs**’ provisions for reprisal claims. This would reduce barriers to commencing a claim, and ensuring that whistleblowers are not bearing financial risk where it is necessary for them to enforce their rights and protections in courts. There is some precedent for this in other jurisdictions, such as the *Corporations Act* and the *Commonwealth PID Act*.<sup>38</sup>
5. Imposing a **positive duty** on agency principal officers and authorised officers, to protect disclosers from reprisals.<sup>39</sup> This would go some way to shifting responsibility for protecting whistleblowers to the agency, and away from the individual whistleblower, and was a measure recommended by the Wilson Review.<sup>40</sup> (See Recommendation 29.)

Importantly, access to remedies and avenues to enforce whistleblower protections is a key barrier to the workability of the PID regime. We emphasise the need for whistleblower protections to be the responsibility of agencies, rather than the responsibility of individual whistleblowers. We also reiterate the importance of a body with whistleblower oversight and support functions (see Recommendation 18) which would be instrumental in enforcing whistleblower protections.

Additionally, we note that while criminal penalties at sections 8 and 9(5) emphasise the seriousness of detrimental conduct or breach of a whistleblower’s confidentiality, the *PID Act* does not provide any clarity as to which investigative or regulatory agencies should prosecute these offences, and to date, no

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<sup>36</sup> *Public Interest Disclosures Act 2022* (NSW) s 35(4); *Corporations Act 2001* (Cth) s 1317AD.

<sup>37</sup> *Public Interest Disclosures Act 2022* (NSW) s 33(1)(b); *Public Interest Disclosure Act 2010* (Qld) s 40.

<sup>38</sup> *Corporations Act 2001* (Cth) s 1317AH.

<sup>39</sup> See e.g., *Public Interest Disclosure Act 2022* (NSW) ss 61(2)-62.

<sup>40</sup> *Wilson Review* (n 9).

breaches of these provisions have been prosecuted. This means that practically, criminal offences at sections 8 and 9 are not prosecuted and are not an effective deterrent for enforcing whistleblower protections. In reality, whistleblowers are left to pursue civil remedies, and to bear the financial, emotional and time costs of doing so.

### **5.2.3. Obligations to provide updates**

We recommend that an agency or oversight body's obligations to inform and update disclosers be updated to align with other whistleblower regimes to improve harmonisation. However, we note that in our experience, agencies and oversight bodies tend to request multiple extensions to the deadlines in which they are obligated to provide a substantive response to a disclosure. While we appreciate that it can take some time to evaluate or investigate a disclosure, continued delays can cause undue distress, especially where a whistleblower is also dealing with reprisal action or has related workplace or workers compensation claims on foot. It is therefore paramount that agencies and oversight bodies provide regular, timely updates as to the status of investigations to reduce stress and uncertainty for whistleblowers.

Importantly, where a disclosure is passed between agencies as part of the referral process, agencies should update the discloser of these referrals in a timely and substantive way, such that the discloser is aware of any additional obligations imposed on them as a result. For example, a disclosure made to the Ombudsman, that is subsequently referred to the ICAC, would then potentially carry with it statutory confidentiality obligations imposed on the discloser by the ICAC Act,<sup>41</sup> preventing the discloser for example, from speaking with others about the disclosure. These are obligations that the discloser should be aware of, particularly if they are considering making a subsequent external disclosure to a journalist or member of parliament, for example.

We are additionally supportive of allowing whistleblowers to opt out of updates should they wish, however we emphasise that this should be an 'opt out' rather than an 'opt in' system, so that whistleblowers remain entitled to automatically receive updates and do not need to proactively request updates.

**Recommendation 25:** The onus of proof should be reversed in prosecutions or actions for remedies relating to detrimental acts and omissions.

**Recommendation 26:** Section 9(1) should be broadened to include language such as 'attempting, conspiring or inducing' to cause detriment, and so that it includes detrimental conduct that is done where the making of an appropriate disclosure was a *contributing* factor, rather than a substantial factor in causing that detrimental conduct.

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<sup>41</sup> Section 54.

**Recommendation 27:** A wider range of remedies, including injunctive relief, should be provided.

**Recommendation 28:** A 'no cost' provision for whistleblowers commencing actions for remedies should be provided.

**Recommendation 29:** Introduce a positive duty on agency principal officers and authorised officers to assess and proactively manage risks of detriment, support whistleblowers, and protect whistleblowers from adverse outcomes, including but not limited to direct retaliation. The duty should be made enforceable through a statutory right to remedies if support and protection obligations are not fulfilled.

## 6. Oversight

Part 3 of this submission considers the need for a dedicated whistleblower protection unit, which we recommend be established in South Australia, which would fill the current gaps in the oversight framework for the *PID Act* around coordination, oversight and enforcement.

There is a need for strengthened and consolidated oversight of the *PID Act*, beyond the existing combination of limited oversight functions across OPI and the Ombudsman. The Whistleblower Project's experience advising and representing clients under the *PID Act* has shown significant gaps in institutional oversight evidence by:

- public officers are frequently unaware of PID pathways and protections;
- there is no access to legal funding or psychosocial support for whistleblowers;
- employees of private sector bodies contracted to government agencies are not aware *PID Act* pathways and protections apply to them;
- investigatory agencies are not monitored for their compliance with the *PID Act* in taking actions to review or investigate PIDs they receive or are referred; and
- whistleblowers are often not informed promptly of any actions being taken in response to their PID.

Saliently, the most prominent missing piece in oversight for the *PID Act* in South Australia is the oversight and enforcement of whistleblower protections. These missing functions do not all need to be provided by one agency. However, co-location of these functions can be beneficial for resource efficiency, in that intelligence gained from performance of a particular function can assist with the performance of others. While there may need to be measures to avoid conflicts of interest between roles, arrangements for this are not unusual in existing integrity and regulatory agencies (for further discussion, see the *Design Principles for a Whistleblower Protection Authority*).

**Recommendation 30:** The government strengthen the oversight of the *PID Act*, in particular, establishment and/or strengthening of monitoring, coordination and education functions of OPI.

## 7. Accessibility & clarity

It is critically important that the structure and language of the *PID Act* is as simple and non-legalistic as possible. We strongly support clarifying and simplifying the *PID Act* so that any redrafting is set out in plain English language, such that any prospective or current whistleblower can understand their rights and obligations without necessarily obtaining legal advice.

This is especially important given the significant hurdles faced by whistleblowers in obtaining legal advice about their rights and obligations under *PID Act*, including that legal practitioner disclosures are not explicitly accommodated, and in addition to other difficulties in obtaining legal advice such as prohibitive financial costs.

### 7.1. Changes to improve understanding of the *PID Act*

As mentioned in the Discussion Paper, the *PID Act* as it is currently drafted, requires a potential whistleblower to grapple with legal concepts such as ‘reasonably suspects’ and also to understand elements of criminal offences. Such concepts are not decipherable without knowledge of law or assistance from a legal practitioner, and whistleblowers may be benefitted by provision of further detail of these concepts within the Act.

To the extent that detailing complex concepts such as these cannot practically be extrapolated in the legislation, or may be overly prescriptive so as to cause ambiguity or conflict with other legislation, we recommend that regulators, oversight bodies and government agencies publish detailed and plain English guides and ‘self-help’ resources to facilitate community legal education about these topics.

With respect to redrafting of specific provisions, we suggest the following:

1. ‘Appropriate disclosure’ should be replaced with language such as ‘protected disclosure’ or ‘public interest disclosure’ to better articulate the effect of the disclosure (ie. that is a disclosure giving rise to protections under the Act) and to be more consistent with language used in other regimes.
2. The immunities set out in section 5 should make explicit that a person who makes an appropriate disclosure will not be subject to any liability, including criminal, civil or administrative liability.
3. The immunities at section 5 be clarified to explicitly exclude a discloser’s own wrongdoing from the immunities. This would also clarify the scope of the immunities under the Act.

#### 7.1.1. Including ‘whistleblowing’ in the title

Inclusion of the term ‘whistleblower’ or ‘whistleblowing’ in the title of the *PID Act* would assist public officials, agencies and general public to clearly understand the nature and purpose of the *PID Act*, and to improve visibility of the existence of the *PID Act*. An updated title could include this language by way of the following: *Public Interest Disclosure (Whistleblowing) Act*.

Inclusion of such language in the Queensland regime was recommended by the Wilson Review.<sup>42</sup> Further, the 2019 reforms of Part 9.4AAA. of the *Corporations Act* retained the title of ‘Whistleblower Protections’ and introduced the statutory term ‘eligible whistleblower’.

While there is a case for including the entire term ‘Whistleblower Protection’ in the title of the *PID Act*, this should only be adopted if the *PID Act* is updated to include improved protections recommended in these submissions, as well as new, more effective enforcement machinery (outlined at Recommendation 18) so that the purpose of the Act is more strongly aimed at delivering protections as promised in the title.

### **7.1.2. Greater harmony between whistleblower protection laws necessary**

We are supportive of greater harmonisation between whistleblower protections laws across Australian jurisdictions. There are multiple overlapping whistleblower laws across Australia, each with its own distinct disclosure pathways, protections and remedies. This lack of harmonisation causes additional difficulties where a discloser might be eligible to make a disclosure under more than one regime, but each regime has slightly different pathways and protections. For example an officer of a company that is engaged under contract to provide services to a South Australian government agency, could make a disclosure under either or both the *PID Act*, and also the *Corporations Act*. Each of these respective statutes have different requirements for making a protected disclosure, which can give rise to difficulties with respect to the discloser having made a valid disclosure under one regime, but not the other, and therefore not entitled to fulsome protections and immunities.

**Recommendation 31:** Regulators, oversight bodies and agencies should publish plain English guides and ‘self help’ resources to facilitate community legal education about the operation of the *PID Act*.

**Recommendation 32:** The use of the term ‘appropriate disclosure’ should be replaced with ‘public interest disclosure’.

**Recommendation 33:** The immunities set out in section 5 of the *PID Act* should make explicit that a person who makes an appropriate disclosure will not be subject to any liability including criminal, civil or administrative liability.

**Recommendation 34:** The immunities at section 5 should explicitly exclude a discloser’s own wrongdoing.

**Recommendation 35:** The term ‘whistleblower’ or ‘whistleblowing’ should be included in the title of the Act.

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<sup>42</sup> *Wilson Review* (n 9) 15.

**Recommendation 36:** Amendments to the Act should aim to achieve greater harmonisation in line with other whistleblowing laws across Australian jurisdictions.

## 8. Incentives

### 8.1. The case for a rewards scheme

In principle, we support the use of rewards schemes to encourage whistleblowing. International literature and practical examples strongly support the assertion that whistleblower rewards schemes can be successful in encouraging genuine reporting of wrongdoing, and the implementation of a rewards scheme is a policy tool that remains available in Australia to help improve the experience of whistleblowers. The recent paper from the UK-based Royal United Services Institute on whistleblower rewards schemes offers a comprehensive argument for rewards in respect of economic crime, including evidence that such schemes have driven greater reporting.<sup>43</sup>

There are significant potential benefits to a rewards scheme in the current whistleblowing climate in Australia, including the opportunity to reshape the cultural perception of whistleblowing, encourage reporting of information about wrongdoing to the appropriate regulator through formal whistleblowing pathways, and reduce the financial costs and burden currently experienced by whistleblowers. Currently, Australian institutions do not fully recognise the value of whistleblowers in exposing wrongdoing, particularly in the public sector. The premise of whistleblower rewards schemes is the recognition of the value of the information provided by whistleblowers above and over the whistleblower themselves and any assumptions about their motives for speaking up; “prioritising the message, not the messenger”.<sup>44</sup> Polling undertaken by the Australia Institute in 2023 found that a large majority of Australians would support financial rewards for individuals who exposed corporate wrongdoing.<sup>45</sup>

We are supportive of greater financial assistance, recognition and support for whistleblowers who provide valuable information to regulators. Whistleblowing rewards schemes are one measure to achieve this. In the Whistleblower Project’s experience of advising clients demonstrates that most whistleblowers will be financially worse-off for having blown the whistle, which can be because of out of pocket legal and health costs, time off work to participate in investigations, and long-term implications on employment opportunities or career transition costs. A rewards scheme is no substitute for improved access to protections and compensation for detriment. However, we consider there to be merit in idea of establishing some form of rewards scheme to even the playing field for whistleblowers in Australia.

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<sup>43</sup> Eliza Lockhart, *The Inside Track: The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime* (SOC ACE Research Paper, 2024).

<sup>44</sup> Lockhart, 49.

<sup>45</sup> The Australia Institute, *Polling – whistleblowing and secrecy* (May 2023) <<https://australiainstitute.org.au/report/polling-whistleblowing-secrecy/>>.

## 8.2. Suitability in the South Australian PID regime context

In our view, any whistleblower rewards scheme implemented in Australia should be designed to assist enforcement bodies to investigate, prosecute and deter wrongdoing. In the public sector context, a rewards scheme would incentivise the disclosure of information that may enable recovery of misappropriated government funds or criminal prosecutions of corruption and other criminal conduct. In our *Federal Roadmap*, we suggest that a Whistleblower Protection Authority would be an appropriate body to administer a rewards scheme.<sup>46</sup> In the South Australian context, a whistleblower support unit or body would similarly be appropriate.

A prominent argument against rewards schemes in the public sector context is that public servants should not receive personal benefit for behaviour within their existing duty to act in the benefit of the Australian public. The Discussion Paper also cites commentary in the Lander Review of the former whistleblowing legislation in South Australia, that there is an absence of a financial pool from which rewards could be drawn. These concerns could be addressed by implementing the following principles in any rewards scheme in the South Australian context:

- Any rewards scheme should be administered by a whistleblower support unit or other independent agency within whistleblower support functions and separate to advisory functions.
- Disclosures of information made under an existing legal duty should not be subject to a whistleblower rewards scheme.
- The scheme should extend to whistleblowers within contractor and sub-contractor arrangements with government departments or agencies, where funds are most likely to be recoverable in respect of economic crime.

Indeed, it is in this latter context where American whistleblower incentive programs such as the *False Claims Act*, have proven particularly effective.

**Recommendation 37:** The ICAC should consider the merits of whistleblower reward models in South Australia, in the context of the need for greater recognition and support for whistleblowers who provide regulators with valuable information on wrongdoing to be left no worse off for having blown the whistle.

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<sup>46</sup> A J Brown and Kieran Pender, *Protecting Australia's Whistleblowers: The Federal Roadmap*. Griffith University, Human Rights Law Centre and Transparency International Australia (updated January 2023) 6.

## 9. Organisational climate

### 9.1. Experiences of people who witness and report wrongdoing

Legislative reform to simplify whistleblowing pathways and strengthen protections is essential to encourage people to speak up, but will only go so far if these values are not embedded in agency culture. Research demonstrates a strong correlation between positive ethical cultures and leadership and a greater willingness to speak up.<sup>47</sup> The *Whistling While they Work* research provides a comprehensive framework for managing internal whistleblowing in the public sector.<sup>48</sup>

As part of the Whistleblower Project's work advising current and prospective whistleblowers, we frequently observe a low level of trust that agencies will protect a whistleblower from reprisal if they make a disclosure. The Whistleblower Project's anecdotal experience with clients is consistent with the research that employees who report wrongdoing are often sceptical that their organisation will do anything with their report, and that organisations are often better at setting up administrative mechanisms for receipt of reports than following through in addressing the issues raised.<sup>49</sup>

The Whistleblower Project's clients who come to our service prior to blowing the whistle often report that they have sought our advice because it is "better to be safe than sorry" and report fears about being prosecuted or "going to jail for blowing the whistle". This is particularly true of workers in the public sector, where there is generally a more hierarchical structure, which means that direct managers have a significant level of authority over employees for career advancement as well as their day to day working environment.

Amongst clients that contact the Centre's Whistleblower Project service after having made a disclosure internally, we often observe that their disclosure has not been treated as a protected disclosure or they have been met with hostility by officers of the agency when trying to raise their concerns. We know from our clients experience that often, disclosures of wrongdoing that would meet requirements for a protected disclosure are often made in less formal settings at the early stage, for example, during a conversation at a manager's desk. Where informal conversations about public interest information are raised are not being treated as protected disclosures, the organisational climate for whistleblowing in the public sector will remain limited.

In addition, where a disclosure includes elements of personal or workplace grievances, or other workplace health and safety concerns which would not currently meet the definition of disclosable conduct under the *PID Act*, alongside information that is disclosable conduct under the *PID Act*. In

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<sup>47</sup> P. Brough, S.A. Lawrence, E. Tsahuridu and A.J. Brown, 'The Effective Management of Whistleblowing'. In P. Brough, E. Gardiner, K. Daniels (eds) *Handbook on Management and Employment Practices*. Handbook Series in Occupational Health Sciences (Springer, 2021).

<sup>48</sup> 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* (2011).

<sup>49</sup> 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* (2011) 22.

these circumstances, we observe that disclosable conduct contained in disclosures are sometimes overlooked or mishandled, and whistleblowers are not given whistleblower protections. This can also lead to flow on effects such as failure to ensure procedural fairness, administrative delays in investigation, and further deterioration in workplace relations. In these circumstances it is paramount that agencies, PID Officers and other staff receive training to recognise and appropriately deal with public interest disclosures.

## **9.2. Further measures to encourage reporting**

Alongside legislative measures to clarify whistleblowing pathways and strengthen protections in the *PID Act*, there are additional measures that could be implemented in the South Australian PID regime to address issues around the organisational climate for whistleblowing.

### **9.2.1. Positive duty to prevent detriment**

There are limited obligations and duties placed on public sector agencies and PID officers under the current *PID Act*. In other jurisdictions, there is an enforceable positive duty to protect whistleblowers from retaliation. Most recently, the *NSW PID Act* was amended to include such a duty.<sup>50</sup> The NSW model provides a well-calibrated example, because it establishes a proactive requirement for agencies that are aware of a PID, to take steps to assess and minimise the risk of detriment. The duty applies whether the agency *was* aware, or *ought reasonably* to be aware of the PID. Damages are recoverable from the offending agency or the state by a person who suffers injury or damage because of a breach of the duty.

### **9.2.2. PID Guidelines published by ICAC**

The *Public Interest Disclosure Guidelines* issued by the ICAC provide a clear explanation of the eligibility requirements in the *PID Act*, and describe the minimum standards for agencies in dealing with PIDs. The Guidelines could be improved by including more comprehensive guidance around facilitating a positive reporting culture within the public service, and how the obligations in the *PID Act* compliment or interact with those obligations in the South Australian public sector Code of Ethics, beyond the minimum standards in the *PID Act*. Further, whether these Guidelines are effective in practice remains unclear without appropriate auditing and monitoring functions in oversight bodies. This is highlighted in our response to Issue 6 above.

**Recommendation 38:** Issue more comprehensive Public Interest Disclosure Guidelines with greater practical requirements and guidance for public sector agencies on proactively encouraging reporting of wrongdoing and identify and managing risks of detrimental outcomes, with recognition of the varied capacities of different sized and resourced agencies.

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<sup>50</sup> *Public Interest Disclosures Act 2022* (NSW) s 61.

