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Utopia Care®

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The Whistleblower Project  
 Independent Commission Against Corruption  
 GPO Box 11066  
 Adelaide SA 5001

Dear Emma Townsend, Commissioner,

I write as the Founder and Managing Director of **Utopia Care Pty Ltd**, a South Australian disability support provider with a strong commitment to transparency, accountability, and ethical governance. We welcome the opportunity to contribute to the review of South Australia's whistleblower protection framework.

Whistleblowers play a vital role in exposing misconduct and safeguarding public trust. However, South Australia's Public Interest Disclosure Act 2018 (SA) has fallen behind best practice standards, and reform is urgently required to strengthen protections, increase accessibility, and foster a culture where speaking up is encouraged and supported.

Our responses to the specific issues raised in the Discussion Paper are attached.

#### **Issue 1: Threshold for obtaining protections**

- **Who should be able to disclose?**
  - Yes — the class should be expanded. Limiting protections to only public officers is unnecessarily restrictive. Former officers, contractors, trainees, volunteers in essential services, and even close relatives in some cases should be protected. In practice, those on the periphery often see misconduct first.
- **Qualifications?**
  - Reasonable limits (e.g., 2–3 years for former officers, volunteers only from regulated agencies) are acceptable to balance fairness with preventing misuse.
- **Scope of disclosures?**
  - The definition should be broadened to include victimisation itself and other serious misconduct. Whistleblowers acting in good faith should still be protected even if their assessment of corruption or maladministration is technically incorrect.
- **Exclusions?**
  - Yes, personal workplace grievances (e.g., personality conflicts) should be excluded unless they intersect with public interest wrongdoing.

- **Environmental and health disclosures?**
  - Keep them in scope — removing them risks silencing critical public-interest concerns.
  - **Recipients of disclosures?**
  - The definition of "relevant authority" must be widened. People should not lose protections for choosing the "wrong" pathway. Medical professionals, lawyers, and union officials should be valid recipients, as long as safeguards exist.
  - **External disclosures?**
  - Yes — the grounds should be expanded beyond MPs and journalists. Allowing disclosures to certain regulated professionals will strengthen confidence.
  - **Reasonable suspicion test?**
  - It should be softened. Good faith belief (subjective test) should be sufficient, with a presumption of honesty (as in NSW). Technical compliance failures shouldn't strip protections. Anonymous disclosures should also be explicitly protected.
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## **Issue 2: Early certainty about status**

Yes — there should be a mechanism (via an independent authority) to grant whistleblower status early. This would reduce stress and encourage disclosures. Waiting until legal proceedings is too late.

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## **Issue 3: Independent statutory authority**

Yes — South Australia should establish either:

- A new **Whistleblower Protection Authority**, or
- Extend an existing agency's remit (e.g., Ombudsman or ICAC).

Functions should include:

- Information, advice, and guidance
- Free legal support
- Receiving and investigating disclosures
- Investigating and prosecuting victimisation

This would fill the current gap and align with best practice.

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#### Issue 4: Confidentiality obligations

- **Reforms needed:**
  - Stronger technical and procedural safeguards must be mandated, especially in small workplaces. Penalties for breaches should be increased, and agencies must be required to use secure systems for handling disclosures.
  - **Current systems:**
  - Too many agencies lack capacity to guarantee confidentiality. Mandatory training and centralised secure reporting systems should be introduced.
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#### Issue 5: Immunities & remedies

- **Immunities:**
  - Current provisions are inadequate. Extend immunity to witnesses, preparatory acts (accessing documents), and disclosures involving self-incrimination (with limited protections).
  - **Remedies:**
  - Victimisation protections should be stronger:
    - Expand the definition of “detriment”
    - Reverse onus of proof (as in NSW)
    - Increase penalties for reprisals
    - Broaden remedies to include injunctive relief and cost protections
    - **Updates to disclosers:**
    - Current obligations are patchy. Regular, structured updates should be mandated but allow role-reporters to opt out to reduce unnecessary burden.
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### Issue 6: Oversight

- **Gaps:**
    - Oversight is minimal. Agencies essentially self-manage disclosures without independent quality control.
  - **Fix:**
    - Appoint an independent oversight body (or expand ICAC/Ombudsman powers) to:
      - Approve agency procedures
      - Audit compliance
      - Handle complaints about mishandled disclosures
      - Report annually to Parliament
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### Issue 7: Accessibility & clarity

- **Reforms:**
    - The Act must be rewritten in plain language, with flowcharts and examples. Current drafting is overly legalistic.
  - **Awareness:**
    - Rename it to include "Whistleblower" for visibility. Launch an awareness campaign in both public and private sectors.
  - **National consistency:**
    - Yes — harmonisation across states would simplify protections and reduce confusion, particularly for organisations operating across jurisdictions (like Utopia Care).
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### Issue 8: Incentives

- **Financial reward scheme?**
  - Cautious support. While rewards risk undermining the ethos of public service, in practice, financial incentives could be effective for high-value corruption matters. Any scheme should:
    - Be funded from recovered proceeds/fines, not taxpayer money
    - Apply only to significant wrongdoing (e.g., corruption > \$1M impact)
    - Be carefully regulated to prevent vexatious reporting



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## Issue 9: Organisational climate

- **Experience:**
  - Organisational culture is the biggest factor. At Utopia Care, we've found staff are more willing to raise concerns when leaders actively encourage transparency, provide confidential channels, and protect those who speak up.
- **Measures:**
  - Public agencies should be required to:
    - Demonstrate active cultural leadership around integrity
    - Provide anonymous internal reporting tools
    - Run mandatory training on rights and protections
    - Publicly report on whistleblower support measures

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## Closing Statement

As Founder and Managing Director of Utopia Care Pty Ltd, I strongly support reforms to strengthen South Australia's whistleblower protection regime. The current framework has slipped behind national standards and does not adequately support those who put themselves at risk to expose wrongdoing.

The reforms outlined above — expanding eligibility, simplifying processes, improving oversight, enhancing remedies, and investing in cultural change — will create a system that truly protects whistleblowers and strengthens public integrity.

**Tony Smith**  
Founder & Managing Director  
Utopia Care Pty Ltd