

Human
Rights
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Supplementary Submission to the *Whistleblower*
Project Discussion Paper

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Human Rights Law Centre

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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.

The Human Rights Law Centre thanks the Independent Commission Against Corruption South Australia for the opportunity to make a supplementary submission to its review of the *Public Interest Disclosure Act 2018* (SA). We refer to our initial submission, dated 12 November 2025, and adopt the defined terms as set out in that submission.

Supplementary Submission

Under section **1.5 Other Issues**, we additionally submit:

1.5.3 No requirement that an appropriate disclosure contain new information

The *PID Act* does not explicitly require that an appropriate disclosure contain new information in order for the discloser to be eligible for protections. However, in the decision of *King v Psychological Board*¹ (**King**), the Supreme Court of South Australia determined that a disclosure containing public interest information must include information that has not been previously conveyed. In other words, a disclosure must contain new information to be deemed an appropriate disclosure for the purpose of the relevant legislation at the time, the *Whistleblowers Protection Act 1993* (SA).

While this decision is almost 30 years old and was made in respect of a previous legislative regime, we have recently seen this issue arise in the course of our client work, where the test in *King* is used to determine if the information disclosed is sufficiently new to be considered public interest information, and in turn if the disclosure made is protected. In our experience, this issue is still a live one in the context of whistleblowers securing protections under the *PID Act*.

Any imposition of this requirement will adversely affect whistleblowers who seek to make further disclosures that are similar or related to previous disclosures. It is not uncommon for whistleblowers to make further disclosures containing further information, but not necessarily ‘new’ information, for the purpose of supporting, further substantiating or clarifying a previous disclosure. If it is required that further disclosures must contain new information, then a whistleblower may not be entitled to protections in the course of making any further disclosures.

This risk is not uncommon or remote. In our client work, we observe the difficulties clients face when navigating the technical, prescriptive and narrow disclosure pathways under the *PID Act*. For example, we often assist clients who have attempted to make an appropriate disclosure under the *PID Act* but have done so in a way that may not meet all the technical requirements for an appropriate disclosure (for example, making a report to the wrong authority). Additionally, sometimes our clients struggle to articulate the substance of the wrongdoing in a disclosure statement, and may seek to improve or clarify that disclosure with a supplementary disclosure. This means that we often assist clients with making further disclosures that better comply with the *PID Act* or better

¹ Supreme Court of South Australia, Bleby J, Judgment No S6621, 9 April 1998, Unreported. at pp 5-6.

articulate the disclosable conduct, in order to improve the ability of our clients to secure whistleblower protections.

Having regard to this perspective, any requirement that a disclosure contain new information in order to be considered public interest information, may preclude a whistleblower from making further clarifying or supporting disclosures and in turn, may jeopardise a whistleblower's capacity to secure whistleblower protections. Further clarifying or supporting disclosures are likely to be of value to the recipients of these disclosures when assessing or investigating allegations of wrongdoing, and making such disclosures should be supported and protected, in line with the purpose of whistleblower protections. We also note that to our knowledge and in our experience, such a requirement has not been imposed in any other jurisdiction.

We therefore recommend that the *PID Act* contain an express provision stating that it is not necessary for an appropriate disclosure to include new information. Alternatively, this may be achieved through a legislative note or included in the explanatory memorandum.

Recommendation 15A: The *PID Act* should expressly clarify that an appropriate disclosure does not need to contain new information or be materially distinct from previous disclosures to qualify as an appropriate disclosure.