Whistleblower Project
Independent Commission Against Corruption South Australia

Per email: WhistleblowerProject@icac.sa.gov.au

9 November 2025

Dear Commissioner

Submission re Whistleblower Project - Sharon Kelsey

I commend the Independent Commission Against Corruption South Australia (ICAC) on identifying the need to discuss greater whistleblower protection.

My submission is presented in three parts,

1. Background
2. Issues for consideration
3. Concluding remarks.

1. Background

I am the former Chief Executive Officer of the Logan City Council (Qld) (LCC). In 2017 I made a public interest disclosure (PID). The then mayor of LCC was subsequently charged with a range of offences. In 2023 the former mayor pleaded guilty to

> *one count each of misconduct in relation to public office and failing in his obligation to update his register of interests* … he *was also facing one count of official corruption, but instead pleaded guilty to the alternative charge of receiving a secret commission by an agent*.[1]

I have previously been employed as an executive at the Victorian Independent Anti-Corruption Commission (IBAC). I hold a Bachelor of Laws (with Honours) and a Master of Comparative Laws.

[1] *Former Logan mayor Luke Smith pleads guilty to Crime and Corruption Commission charges*, Talissa Siganto ABC news online 7 March 2023 accessed 21 June 2025 https://www.abc.net.au/news/2023-03-07/qld-logan-mayor-luke-smith-pleads-guilty-corruption-commission/102062736.

As a member of the National Whistleblower Advisory Panel for Transparency International (Australia) (TIA), I am a lived-experience advocate for improved whistleblower protection.

2. Issues for consideration

Issue 1 – Threshold for obtaining protections

The class of individuals that can make a PID needs to be expanded to include all individuals that have dealings with the State and its functions. This includes government agencies, government contracted or sponsored entities and associated individuals, the public sector more generally and volunteers that offer services to organisations that benefit from government funds. The nature of government business is extraordinarily diverse, and in recognition of this there should be the broadest possible inclusions for the class of individual. This is particularly critical when much government business is conducted via third party contractors, consultants and/or entities at apparent arm's length of government. This broad capture is necessary to realise true transparency and accountability in government business.

There should not be a time limit on the making of the PID but instead it should be considered and assessed based on its merits and the veracity of the information provided.

There should be a no wrong door approach to making a PID with assurance that the relevant authority is enabled and motivated to action the PID.

The threshold should be a subjective belief in the nature of the information rather than a more onerous reasonable suspicion. This is especially relevant after the decision in Boyle.[2] The making of the PID often involves a range of antecedent acts or steps. Boyle showed that such acts, even if reasonable, were not protected. This means a higher bar of reasonable suspicion would cause more risk to the whistleblower who may consider it necessary to support their suspicion to show it was

[2] *Boyle v Director of Public Prosecutions (Cth)* [2024] SASCA 73.

'reasonable'. Protection for anonymous disclosures should be specifically stated. However, it is also important to recognise that some whistleblowers may be better able to protect themselves if they do not remain anonymous, eg where it is self-evident that the information could only come from a particular source.

Issue 2 – Early certainty about status

Whistleblowers must be informed at the earliest opportunity whether their disclosure is a PID. This is vital to underpin the safety of the whistleblower and to enable them to have agency in the process.

Issue 3 – An independent statutory authority to protect whistleblowers.

I gave evidence before the federal Senate Legal and Constitutional Affairs Committee in regard to the urgent need to establish an independent whistleblower protection authority. Those comments remain valid.

An independent office enables the primary focus of the authority to be the protection of whistleblowers. It must be a standalone authority and not co-located within an existing agency. This is necessary to avoid conflicts of interest between competing obligations and to ensure the primacy of the protection function. Some anti-corruption agencies have acted under a misconception that they had a duty to protect whistleblowers, later to find by Independent Inquiry that they owed no such duty and the primary obligation was to the investigation of the PID and NOT the protection of the whistleblower.[3]

[3] *Commission of Inquiry relating to the Crime and Corruption Commission 2022* (Queensland)

Issue 4 – Confidentiality Obligations

It is vital that confidentiality obligations in respect to the whistleblower are embedded in the law but more importantly, assured in practice. The failure to protect whistleblowers often starts with the disclosure of confidential information relating to the whistleblower.

Australia's dismal prosecution record for failures to protect whistleblowers under similar State provisions, shows that the bar to making out such an offence is too high. The elements of the offence along with the unrealistic likelihood of a successful prosecution, is inadequate to disincentivise actors. There is a general fallacy that the risk of criminal prosecution will dissuade acts of reprisal action against whistleblowers. Making detrimental action against a whistleblower a criminal offence is vital, however in instances of organised corruption it does not serve as a deterrent. To this end, the absence of successful prosecutions does not mean that retaliatory action does not occur but instead, the bar for prosecuting such matters remains too high.

Importantly, third party actors must not be omitted from the ICAC reach. In my own case, adverse comments and actions were taken against me by third party actors. In addition, limiting the protection available to whistleblowers would do nothing to address the more far-reaching, long-term implications of blacklisting whistleblowers. This term is used to encapsulate the practice of boycotting whistleblowers for future job-prospects or services more broadly. This can occur on an industry or sector basis, or even more widely, on a national or international basis.

Issue 5 – Immunities and Remedies

In practice, the much-lauded immunity protection for whistleblowers is an empty vessel. In light of the technical arguments made in the prosecutions of Boyle and McBride[4] that distinguished their whistleblowing from a practice that would be afforded immunity, the trust in the immunity provision

[4] *Boyle v Director of Public Prosecutions (Cth)* [2024] SASCA 73 and *McBride v The King* [2025] ACTCA 16

was severed. ICAC would need to overcome the arguments made out in these prosecutions to establish with any confidence that such an immunity in law, actually existed in practice.

All too often, the only avenue open to a whistleblower to seek redress is via a court or tribunal. A better, fairer practice would be for an authority to be funded and enabled to obtain an appropriate remedy for the whistleblower. The opportunity to remedy the wrong must be time sensitive to limit the nature and extent of the harm and to ensure the whistleblower is not limited in their own legal redress options.

Even in some circumstances where a regulatory body has been awarded damages for retaliatory action taken against a whistleblower – the money may not flow to the whistleblower themselves but instead into the general revenue of the regulatory body.[5]

As most whistleblower applicants have to self-fund their own redress proceedings in circumstances where they have limited and finite personal funds and assets, this presents a significant financial risk. In addition, there is high probability the whistleblower will experience associated mental health episodes that are likely to be exacerbated the longer it takes to conclude the matter. This means the whistleblower, who is likely to already be in a vulnerable mental state with limited time, finances and information, is expected to seek their own redress.

As an example, in my matter I had to personally fund a protracted, complex and arduous legal process in an attempt to assert my rights.[6] In addition to the rapidly escalating legal costs, my career took a significant downward spiral. An initial reinstatement by the QIRC was short-lived as legal proceedings waxed and waned. I was unable to secure comparative alternative employment and

[5] *ASIC v TerraCom Ltd (No 3)* [2025] FCA 1017*, ordering TerraCom to pay a $7.5 million penalty and an additional $1 million in respect of ASIC's costs.*

[6] *Kelsey v Logan City Council and Ors* [2021] ICQ 11; *Kelsey v Logan City Council & Ors* (No. 8) [2021] QIRC 114; *Kelsey v Logan City Council & Ors* (No 9) [2022] QIRC 342; *Kelsey v Logan City Council & Ors* (No 2) [2022] ICQ 013; *Kelsey v Logan City Council & Ors* (No 3) [2022] ICQ 021; *Kelsey v Logan City Council & Ors* (No.4) [2023] ICQ 23; *Kelsey v Logan City Council & Ors* (No. 5) [2024] ICQ 015; *Kelsey v Logan City Council & Ors* [2022] QCA 238; *Smith v Kelsey & Ors; Dalley & Ors v Kelsey & Ors* [2020] QCA 55

was reliant on my savings and the generosity of family to continue through to trial. Even without entertaining an adverse costs order, my own legal costs were nearing $4 million**.** I was without recourse to any financial support or safety net.

Whistleblowers need to be supported by an independent Agency, to provide protective oversight, support services and recourse to legal funds.

Issue 6 – Oversight

Whistleblowing should be recognised as a public service central to maintaining trust in government and essential for democracy. The profile of whistleblowing should be elevated and recognised in this light. This will necessitate supporting and reinforcing the already changing public attitude to whistleblowing.

Issue 7 – Accessibility and clarity

The term 'whistleblowing' and its continued use have been much debated amongst whistleblower organisations. What is clear is that it is arguably not the term, but its much maligned reception, that is at issue. This presents an opportunity for ICAC to seek the support of government to mount a positive whistleblower campaign.

The courts appear to take an overly conservative and cautious approach to interpreting the protections for whistleblowers. The legislation and powers to protect whistleblowers must be clear and definitive. Where interpretations are in dispute, interpretations should favour the protection of the whistleblower. This is necessary to preserve the public interest, protect the party that has made the PID and to address the obvious vulnerabilities.

Issue 8 – Incentives

South Australia should have a financial reward scheme for whistleblowers. However, financial incentives of themselves are insufficient to induce people to report wrongdoing. More important is a genuine protection regime. Most whistleblowers would welcome a no harm environment and to

be righted when their world has been upturned, rather than a stand-alone financial reward scheme. In other words, a reward scheme should be pursued but more fundamental, is a regime that can be relied on to protect whistleblowers from harm and adequately recompense them if and when harm occurs.

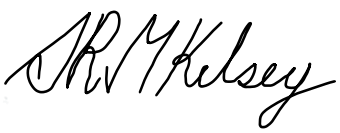
Issue 9 – Organisational climate

The organisational climate is set by its leaders. There may be a public persona that is at odds with privately held views. Therefore, the tolerance for poor conduct often reflects the norms or values of the governing body. While the CEO is tasked with leading the culture it is the entire governing body that must be held accountable for backing the appropriate culture in. In my experience people are reluctant to report wrong doing if they have the slightest inkling that their concern may not be welcomed. Even if a PID is warranted, the person's reluctance becomes so palpable they rarely make the PID. This manifests further when the person becomes aware of adverse action being taken against a whistleblower in their organisation. At this juncture there is no room for further debate, the message from the organisation is loud and clear, *we don't tolerate whistleblowers here* no matter what our policies say. Now the would-be whistleblower is best advised to keep their head well below the parapet.

3. Concluding remarks

Reform in the protection of whistleblowers is much needed. There is no single fix but the understanding and recognition of whistleblowing as a welcome public function must underpin the reform. I am available to provide additional information or clarification as may assist ICAC's Whistleblower Project.

Yours sincerely



Sharon Kelsey