Independent Commission Against Corruption
South Australia

ICAC

Doing right by those who call out the wrong

A review of South Australia's whistleblower protection regime

Image credit - AFP: Jim Watson

This report has been prepared in accordance with sections 40(3), 42(1)(a), 42(1)(c) of the *Independent Commission Against Corruption Act 2012* (SA).

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Acknowledgement

ICAC acknowledges that the land on which we work is the traditional lands for the Kaurna people and that we respect their spiritual relationship with their Country.

We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today.

We pay our respects to Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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24 June 2026

The Hon Kyam Maher MLC
Deputy Premier
Attorney-General
Parliament House
North Terrace
ADELAIDE SA 5000

The Hon Reggie Martin MLC
President of the Legislative Council
Parliament House
North Terrace
ADELAIDE SA 5000

The Hon Nat Cook MP
Speaker of the House of Assembly
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Deputy Premier, President and Speaker

In accordance with sections 40(3), 42(1)(a), 42(1)(c) of the *Independent Commission Against Corruption Act 2012* (SA) (**the Act**), I present the report entitled *Doing right by those who call out the wrong: a review of South Australia's whistleblower protection regime*.

Section 40(4) of the Act requires that the report be laid before the respective Houses on the first sitting day after receiving it.

The report will be followed by two further reports containing additional findings and recommendations arising from evaluations conducted as part of the Independent Commission Against Corruption's broader Whistleblower Project.

Yours sincerely

Emma Townsend

COMMISSIONER
Independent Commission Against Corruption

Table of commonly used abbreviations

Term	Definition
ACS	Anti-Corruption Section of SA Police
Cth PID Act	*Public Interest Disclosure Act 2013* (Cth)
DHS	Department of Human Services
DIB	Diversity and Inclusion Branch of SA Police
EO Act	*Equal Opportunity Act 1984* (SA)
EPA	Environment Protection Authority
EPSB	Ethical and Professional Standards Branch of SA Police
Exposure draft	Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025 (Cth)
Govey Review	Review conducted by Ian Govey of the *Public Interest Disclosure Act 2012* (ACT) in 2023
HRLC	Human Rights Law Centre
ICAC	Independent Commission Against Corruption (SA)
ICAC Act	*Independent Commission Against Corruption Act 2012* (SA)
IIS	Internal Investigation Section of SA Police
Lander Review	Review conducted by former Independent Commissioner Against Corruption Bruce Lander KC of the SA WP Act in 2014
Moss Review	Review conducted by Philip Moss of the *Public Interest Disclosure Act 2013* (Cth) in 2016
NSW PID Act	*Public Interest Disclosures Act 2022* (NSW)
Ombudsman Act	*Ombudsman Act 1972* (SA)
OPI	Office for Public Integrity (SA)
PCD Act	*Police Complaints and Discipline Act 2016* (SA)
PSA	Public Service Association

Term	Definition
Reporting guidelines and directions	*Office for Public Integrity Directions and Guidelines for public officers, public authorities and inquiry agencies 2023* (SA) issued pursuant to s 18B of the ICAC Act; *Ombudsman SA Directions and Guidelines 2021* (SA) issued pursuant to s 12D(1) of the Ombudsman Act
SACAT	South Australian Civil and Administrative Tribunal
SAET	South Australian Employment Tribunal
SA PID Act	*Public Interest Disclosure Act 2018* (SA)
SA PID Guidelines	Public Interest Disclosure Guidelines published by ICAC in accordance with s 14 of the SA PID Act
SA PID Regulations	*Public Interest Disclosure Regulations 2019* (SA)
SA Police	South Australia Police
SA WP Act	*Whistleblower Protection Act 1993* (SA)
TIA	Transparency International Australia
Wilson Review	Review conducted by Alan Wilson KC of the *Public Interest Disclosure Act 2010* (Qld) in 2023

Commissioner’s foreword

History provides many examples of serious wrongdoing only being exposed because someone was willing to speak up. This person is often an insider.

When this happens, suspicions can be promptly investigated and addressed, often exposing corruption, maladministration and misconduct that might otherwise remain hidden.

An effective whistleblower protection regime encourages and supports insiders to come forward, forming an important part of the state’s overall integrity framework. These protections are essential to maintain accountability and community confidence in public administration.

The image on the cover of this report depicts the carpark in which a Washington Post journalist famously met his secret source, now known to have been Federal Bureau of Investigations Deputy Director Mark Felt, during the Watergate scandal.[1] Of course, not all acts of “blowing the whistle” are quite so momentous. South Australian public officers come forward with information all the time. The stimulus for the Independent Commission Against Corruption’s (**ICAC**) investigative – and preventative – work is frequently an insider report. A quote from one of my favourite novels captures this sentiment more poetically than I ever could:

> “for the growing good of the world is partly dependent on unhistoric acts; and that things are not so ill with you and me as they might have been, is half owing to the number who lived faithfully a hidden life, and rest in unvisited tombs.”

– George Eliot, Middlemarch

1 Lisa Millar, ‘Watergate scandal: Piece of US history under threat as Deep Throat meeting place faces demolition’, ABC News (22 June 2014) <Watergate scandal: Piece of US history under threat as Deep Throat meeting place faces demolition - ABC News>.

This report contains 61 recommendations to reform South Australia's whistleblower protection regime. Each is made with a view to ensuring that we are doing right by all those who play their part in maintaining public integrity – those who call out the wrong.

While the report has as its focus identifying problems and suggesting solutions, that is not to diminish the important work being done, within the bounds of the existing regime, to encourage and facilitate public interest disclosures. The current regime does provide a level of protection for some whistleblowers. Without doubt, many individuals tasked with handling disclosures endeavour to do so in a manner that results in positive outcomes and complies with the law. Many, though not all, of the recommendations in this report call for legislative reform. Legislative reform takes time. Let us strive for excellence while keeping firmly in mind what is already within our power to achieve.

Emma Townsend

COMMISSIONER
INDEPENDENT COMMISSION AGAINST CORRUPTION

Recommendations

Recommendation 1

That eligibility to make protected disclosures of public administration information under South Australia's whistleblower laws be extended to: former public officers; unpaid workers within public authorities including students on placements, trainees and volunteers; participants in public sector procurement and recruitment processes; and recipients and prospective recipients of government grants. That consideration be given to stipulating that disclosures must relate to such roles.

Recommendation 2

That South Australia's whistleblower laws clearly define which disclosures attract its protection, including by specifying that disclosures made by public officers within the meaning of Schedule 1 to the ICAC Act, and the additional groups referred to immediately above, may make protected disclosures.

Recommendation 3

That consideration be given to including a provision in South Australia's whistleblower laws which relieves an agency of the obligation to take reasonable steps to notify a reporter of the progress and outcome of a matter where a reporter formally indicates that they do not wish to receive updates.

Recommendation 4

That consideration be given to ensuring that existing legislative frameworks provide sufficient protection for children and young people in State care, and prisoners and others in detention, to make protected disclosures of information about wrongdoing in public administration.

Recommendation 5

That the next review of the operation of South Australia's whistleblower laws revisit the appropriateness of the scope of conduct about which protected disclosures may be made.

Recommendation 6

Where the reporting of reasonable suspicions of conduct falling short of disclosable conduct is encouraged or mandated, that public sector agencies and councils ensure internal policies and procedures prescribe:

i. adequate arrangements for receipt and handling of reports of this kind
ii. proportionate protections for those who make them.

Recommendation 7

That consideration be given to inserting into the PCD Act provisions providing an appropriate degree of protection to those who report information unlikely to qualify for special protection under South Australia's whistleblower laws.

Recommendation 8

That the definition of public administration information expressly include a potential issue of victimisation under the SA PID Act, or under another statute such as the ICAC Act or the Ombudsman Act, to improve clarity and accessibility.

Recommendation 9

That the definition of public administration information in South Australia's whistleblower laws exclude conduct solely related to personal workplace grievances except where such conduct may be sufficiently serious to have significant implications beyond the individual or where the conduct may amount to victimisation.

Recommendation 10

That the next review of the operation of South Australia's whistleblower laws consider how existing alternative channels for disclosures of environmental and health information might be enhanced to such an extent that it is no longer necessary for the SA PID Act to govern disclosures of this kind.

Recommendation 11

That South Australia's whistleblower laws specify that subsequent disclosures need not contain additional or new information to initial disclosures in order to qualify for protection.

Recommendation 12

That South Australia's whistleblower laws provide that it is sufficient to attract protection if, at the time of making a disclosure, either information disclosed tends to show – or a discloser reasonably suspects that information disclosed tends to show – a potential issue of corruption, misconduct or maladministration in public administration.

Recommendation 13

That consideration be given to introducing into South Australia's whistleblower laws a presumption akin to that in s 26(5) of the NSW PID Act to aid proof that a suspicion was genuinely held.

Recommendation 14

That consideration be given to whether the state of mind provisions in South Australia's whistleblower laws could be simplified by prescribing the same test for disclosures of environmental and health information as is prescribed for disclosures of public administration information.

Recommendation 15

That the words "at the time of making a disclosure" be inserted into the provision of South Australia's whistleblower laws stipulating the state of mind requirement.

Recommendation 16

That disclosures of public administration information made to legal practitioners, medical practitioners and psychologists be protected by South Australia's whistleblower laws where made in the context of a relationship of confidentiality and for the purpose of obtaining advice or assistance in connection with a disclosure. That it be made clear that the duty to act provisions are not engaged by such disclosures. That further consideration be given to whether disclosures made to unions or professional associations should be similarly protected in the next review of the operation of South Australia's whistleblower laws.

Recommendation 17

That consideration be given to expanding the list of relevant authorities in South Australia's whistleblower laws to include the Inspector where information relates to the Inspector's jurisdiction.

Recommendation	18

That the relevant authority in s 5(5)(d) of the current SA PID Act relating to council members, officers or employees be replaced with "where the information relates to a risk to the environment in the area of a particular council established under the *Local Government Act 1999* — the relevant responsible officer." That South Australia's whistleblower laws oblige principal officers of councils to make the names and contact details of their responsible officers publicly available.

Recommendation	19

That the relevant authority in s 5(5)(a) of the current SA PID Act relating to managers and supervisors be replaced with a simplified provision that captures both managers and supervisors of public officers the subject of reports and managers and supervisors of public officers making reports.

Recommendation	20

That public sector agencies and councils:

i. review whether current avenues for making internal public interest disclosures are sufficiently accessible having regard to the demographics of the organisation including its size, physical disbursement and education level
ii. where appropriate, expand the avenues by which public interest disclosures may be made internally to increase accessibility.

Recommendation	21

That consideration be given to prescribing as a relevant authority, pursuant to s 5(5)(m) of the SA PID Act, individuals who monitor designated repositories for public interest disclosures.

Recommendation	22

That public sector agencies and councils making use of shared inboxes, hotlines or postal addresses to receive disclosures of public administration information:

i. review their public interest disclosure procedure to ensure that it is compliant with s 12 of the SA PID Act and Guideline 4 of the SA PID Guidelines
ii. review arrangements in place relating to those reporting channels to ensure that confidentiality is maintained and disclosures are received by appropriate personnel having regard to the requirements of the SA PID Act
iii. review their public interest disclosure procedure to ensure that it adequately communicates arrangements in place relating to those reporting channels to staff.

Recommendation 23

That public sector agencies and councils consider designating any staff member in a role that renders them likely to receive disclosures of public administration information, who may not otherwise be captured by the definition of a relevant authority in South Australia's whistleblower laws, as a responsible officer.

Recommendation 24

That public sector agencies and councils:

i. review the seniority and location of their responsible officers
ii. consider whether additional responsible officers should be designated under s 12 of the SA PID Act to improve accessibility across the agency or council.

Recommendation 25

That the grounds on which disclosures attracting the protections of South Australia's whistleblower laws may be made to entities outside of the public sector be expanded. In particular, that the grounds applicable to "external disclosures" and "emergency disclosures" at the federal level be incorporated. That similar limits be placed on the making of disclosures of this kind as exist at the federal level – in particular, that a public interest test with factors adapted to the South Australian context be incorporated.

Recommendation 26

That the next review of the operation of South Australia's whistleblower laws examine whether the entities outside of the public sector to whom protected disclosures may be made in South Australia should be expanded.

Recommendation 27

That the section of South Australia's whistleblower laws containing the immunity – or the section defining the term "liability" – be amended to clarify at least that administrative, civil and criminal liability is not incurred by making a public interest disclosure.

Recommendation 28

That consideration be given to broadening the scope of the immunity to capture acts preparatory to the making of a public interest disclosure where they are reasonably necessary for the making of the disclosure. That, at a minimum, South Australia's whistleblower laws clarify the position with respect to preparatory acts.

Recommendation	29

That South Australia's whistleblower laws expressly state that a person's liability for their own conduct is not affected by the person's disclosure of that conduct under those laws.

Recommendation	30

That South Australia's whistleblower laws prescribe a process for making a claim of immunity akin to that in s 23 of the Cth PID Act – in particular, that they render any admissions made with a view to invoking immunity, whether made prior to or in the course of legal proceedings, inadmissible to establish liability.

Recommendation	31

That special purpose funding be allocated to existing community legal centres in South Australia for a pilot advice and representation program to assist prospective whistleblowers and whistleblowers seeking to understand – or assert – their rights.

Recommendation	32

That South Australia's whistleblower laws protect whistleblowers – and make clear to whistleblowers that they are protected – from costs orders except where a court or tribunal finds that they have instituted legal proceedings vexatiously or that an unreasonable act or omission by them caused the opposing party to incur costs.

Recommendation	33

That an injunctive remedy be available to a whistleblower who can demonstrate a risk of victimisation. That this be achieved by stating in the SA PID Act that an injunctive remedy is available in addition to the suite of remedies in the EO Act or listing all remedies available for victimisation in the SA PID Act.

Recommendation	34

That ICAC's jurisdiction be broadened to include investigation of alleged offences under South Australian whistleblower laws, including alleged victimisation; alleged breaches of confidentiality; alleged false and misleading reporting; and alleged preventing or hindering of reporting.

Recommendation	35

That South Australia's whistleblower laws reverse the onus of proof so that the defendant in civil or criminal victimisation proceedings bears the burden of disproving that any detriment established to have been caused was retaliatory.

Recommendation	36

That the threshold for causation be lowered in the definition of victimisation in South Australia's whistleblower laws. In particular, that the requirement to establish that detriment was caused "on the ground, or substantially on the ground" that a person or third party made or intended to make a public interest disclosure be replaced with a requirement to establish that this formed "part of the reason" or a "contributing factor" for engaging in the conduct.

Recommendation	37

That the states of mind sufficient to prove victimisation under South Australia's whistleblower laws be expanded so that it is sufficient if part of the reason or a contributing factor for engaging in the conduct was that the person or a third party "may have made" a public interest disclosure.

Recommendation	38

That the words "or attempts, conspires or induces another to cause" be inserted after the words "a person who causes" in the introductory words of the definition of victimisation currently in s 9(1) of the SA PID Act.

Recommendation	39

That South Australia's whistleblower laws exempt reasonable management action from the definition of victimisation in a manner similar to that in s 31 of the NSW PID Act.

Recommendation 40

That training provided by the designated oversight body for South Australia's whistleblower laws extends to principal officers of public sector agencies and councils, and:

i. addresses the importance of compliance with legislative obligations to include in internal procedures clear obligations to take action to protect disclosers and risk management steps to assess and minimise risk
ii. addresses the importance of diligent compliance, in practice, with these clauses of internal procedures
iii. provides practical, scenario-based guidance about how the risk of detrimental action may be minimised in different circumstances.

Recommendation 41

That the exception to the prohibition on divulging the identity of a maker of a public interest disclosure in s 8(1)(a) of the SA PID Act be repealed.

Recommendation 42

That an additional confined exception to the prohibition on divulging the identity of a maker of a public interest disclosure be included in South Australia's whistleblower laws capturing divulgence for the purposes of referring a disclosure to an agency best placed to deal with it, where the disclosure has been made anonymously and it is not possible to seek consent.

Recommendation 43

That an additional confined exception to the prohibition on divulging the identity of a maker of a public interest disclosure be included in South Australia's whistleblower laws capturing divulgence for the purposes of providing access to information in connection with a review pursuant to Schedule 4 to the ICAC Act.

Recommendation 44

That an additional confined exception to the prohibition on divulging the identity of a maker of a public interest disclosure be included in South Australia's whistleblower laws mirroring the current exception in the SA PID Guidelines but:

i. removing the word "imminent"
ii. replacing the words "serious physical injury" with the words "physical or psychological harm"
iii. removing the requirement that divulgence be to an entity believed to be the most appropriate to take action.

Recommendation 45

That South Australia's whistleblower laws oblige any person who proposes to divulge discloser identity without consent, in reliance on an exception, provide the discloser with adequate notice so that steps may be taken to manage any risk of retaliation. That training provided to those eligible to receive disclosures of public administration information, including responsible officers and managers and supervisors, address provision of information to prospective disclosers about the consequences that may flow from the making of a disclosure.

Recommendation 46

That further consideration be given to whether technological tools could be made available to public sector agencies and councils to assist them to preserve discloser identity.

Recommendation 47

That the designated oversight body for South Australia's whistleblower laws review open-source technological tools to consider the appropriateness of their use to facilitate ongoing communication with anonymous disclosers, with a view to providing guidance to other recipients of public interest disclosures about the same.

Recommendation 48

That special purpose funding be allocated to existing community counselling services in South Australia for a pilot program to assist prospective whistleblowers and whistleblowers seeking wellbeing support.

Recommendation **49**

That an independent whistleblower support function be established within the office of the OPI with statutory authority and adequate resources to:

i. provide information and guidance to prospective disclosers and disclosers about South Australia's whistleblower protection regime
ii. refer prospective disclosers and disclosers to programs providing free access to legal advice and counselling services
iii. receive public interest disclosures and, where necessary, refer them to appropriate entities for potential investigation, bearing in mind restrictions on divulgence of discloser identity
iv. provide information and guidance to public sector agencies and councils, including responsible officers, about identification, receipt and handling of public interest disclosures
v. otherwise promote awareness and provide guidance about South Australia's whistleblower protection regime, including through publishing guidelines and creating accessible resources
vi. receive notifications from public sector agencies and councils about public interest disclosures and periodically review/report on the operation of South Australia's whistleblower protection regime.

Recommendation **50**

That further consideration be given to:

i. whether South Australia's whistleblower laws should be amended to allow for an authority to determine that a disclosure qualifies for legislative protections
ii. whether South Australia's whistleblower laws should be amended to provide for written notice of such a determination to be admissible in legal proceedings as evidence of the fact that the disclosure qualifies for legislative protections.

Recommendation **51**

That South Australia's whistleblower laws stipulate that a review must be conducted of their operation by the designated oversight body at specified intervals.

Recommendation **52**

That South Australia's whistleblower laws require public sector agencies and councils to include in their annual reports (in an appropriate way so as not to offend confidentiality obligations) not only information about the number of public interest disclosures received but also information about the outcomes of investigations of those matters. Further, that information be included about steps taken during the reporting period to promote a culture in which reporting is encouraged and facilitated.

Recommendation 53

That current oversight functions including the publishing of guidelines and the approval of training courses (in practice, delivery of training courses) be transferred from ICAC to the OPI.

Recommendation 54

That South Australia's whistleblower laws be revised to:

i. remove or minimise the need to move between multiple pieces of legislation so that they are as self-contained as possible
ii. adopt a more logical structure
iii. replace convoluted phrases with simpler language
iv. expressly state that disclosures may be anonymous
v. mandate initial and refresher training for responsible officers and other relevant authorities, including managers and supervisors.

Recommendation 55

That any newly established whistleblower support authority be adequately resourced to:

i. promote awareness of the existence and operation of South Australia's whistleblower protection laws both in the public sector and more broadly in the community, including to any new categories of eligible disclosers and to existing categories that may not fully appreciate their current eligibility
ii. create a range of plain English, and multilingual, resources to explain key provisions of the SA PID Act to whistleblowers, including factsheets and short videos
iii. create a range of resources to assist those tasked with identifying, receiving and handling public interest disclosures, including a ready reckoner or handbook for quick reference
iv. develop and deliver practical, scenario-based training to responsible officers but also others eligible to receive public interest disclosures such as managers and supervisors, focussing on:
    a. appropriate identification of public interest disclosures
    b. handling public interest disclosures without offending the prohibition on divulging discloser identity, including training in relation to the recommended exceptions to this prohibition.

Recommendation 56

That consideration be given to consolidating some of the numerous instruments that those who make, and receive, public interest disclosures must navigate and reconcile, including the SA PID Act, SA PID Regulations, SA PID Guidelines as well as applicable codes of conduct and internal reporting procedures.

Recommendation 57

That public sector agencies and councils strengthen the integration of South Australia's whistleblower laws within other internal policies and procedures relating to the making of complaints and reports. This should include referring to South Australia's whistleblower laws in those other internal policies and procedures and providing guidance about interrelationship.

Recommendation 58

That the next review of the operation of South Australia's whistleblower laws specifically address international and domestic developments with a view to reevaluating the desirability and feasibility of financially incentivising public sector whistleblowing in this jurisdiction.

Recommendation 59

That consideration be given to ways in which whistleblowing (generally or in individual cases) might be appropriately recognised (publicly or within organisations), to reinforce shifting community perceptions. That civics education in South Australian schools address whistleblowing.

Recommendation 60

That public sector agencies and councils consider whether there are opportunities to further promote a culture in which public interest disclosures are encouraged within their organisation, including through messaging from leadership and promotional campaigns.

Recommendation 61

That public sector agencies and councils consider the adequacy of internal training modules – in particular, whether they communicate organisational commitment to a speak up culture and whether they provide sufficient information about public interest disclosures.

Introduction

Laws protecting those who disclose information in the public interest form a pivotal part of an effective whistleblower protection regime. More than thirty years ago, South Australia was the first Australian jurisdiction — and among the first jurisdictions in the world — to enact whistleblower legislation. The *Whistleblower Protection Act 1993* (SA) (**SA WP Act**) was heralded as an "integral part of the Government's comprehensive anti-corruption programme."[2] In 2018, it was replaced with an updated *Public Interest Disclosure Act 2018* (SA) (**SA PID Act**) following a review by former Independent Commissioner Against Corruption Bruce Lander KC (**Lander Review**).[3]

Whistleblower legislation has now been enacted in all Australian jurisdictions. Further, in many Australian jurisdictions the operation of these laws has been reviewed in recent years – in New South Wales this process culminated in a complete re-write to reduce complexity and strengthen protections from 2023.[4] Some whistleblower legislation in other jurisdictions now appears to be more robust than the SA PID Act – South Australia's position in the vanguard has slipped.

At the same time, longitudinal data from ICAC's Public Integrity Survey suggests the proportion of respondents willing to report suspected corruption internally has decreased in recent years, as has the proportion of respondents willing to report suspected corruption externally. Around 60 per cent of the more than 7,000 South Australian public officers who completed the survey in 2024 were willing to report inside their workplace compared with just over 70 per cent of respondents to the 2018 survey. About 66 per cent of respondents to the 2024 survey agreed that they would report suspected corruption to the Office for Public Integrity (**OPI**) compared with about 69 per cent of respondents to the 2018 survey. While many South Australians do report their suspicions, a concerning number remain reluctant to do so.

ICAC Public Integrity Survey

This report examines the effectiveness of South Australia's whistleblower protection regime and recommends changes to enhance it. It draws on data gathered throughout the course of ICAC's Whistleblower Project which commenced in August of 2025. Among other things, the Whistleblower Project has involved:

a. the release of a discussion paper, in response to which more than 40 considered written submissions were received from members of the public including those who have made or handled disclosures, academics, civil society organisations, public authorities and integrity agencies[5]

2 South Australia, *Parliamentary Debates*, House of Assembly, 23 March 1993, 2520 (Terry Groom, Minister for Primary Industries).
3 Bruce Lander KC, *A review of the Whistleblower Protection Act 1993 (SA)* (Report, September 2014) ('*Lander Review*').
4 The *Public Interest Disclosure Act 2022* (NSW) ('*NSW PID Act*') came into force on 1 October 2023.
5 While not all submissions could be specifically referred to, all submissions were considered.

b. an evaluation, pursuant to s 40 of the *Independent Commission Against Corruption Act 2012* (SA) (**ICAC Act**), of the practices, policies and procedures of two public authorities – South Australia Police (**SA Police**) and the Department of Human Services (**DHS**)[6] – relating to protecting the identities of whistleblowers, protecting whistleblowers from retaliation, and fostering an environment in which whistleblowing is encouraged and supported[7]

c. a public forum attended by an (in-person and online) audience in excess of 200 people, involving a facilitated discussion with a panel of experts distilling issues and testing solutions

d. a review of the expansive body of research and reports in this field as well as comparative analysis of legislation in Australian jurisdictions.

Although the SA PID Act applies to disclosures of both public administration information[8] and environmental and health information[9], this report focuses on the former. This is because the breadth of the topic necessitates some narrowing of scope, but also because disclosures of public administration information are central to ICAC's discharge of its statutory functions relating to the identification, investigation, prevention and minimisation of corruption in public administration. In addition, it has not been possible to exhaustively address all issues relating to disclosures of public administration information – instead, the report focusses on the most pertinent issues.

The report also recognises that the SA PID Act is a key component of South Australia's whistleblower protection regime but it is not the only – or perhaps even the most significant – component. Organisational culture and practices, and accessible advice and support for whistleblowers, all play a crucial role in encouraging and facilitating public interest disclosures. Legislative reform is warranted, but this alone is unlikely to be sufficient. The report outlines a combination of measures to better protect whistleblowers in South Australia.

The information contained in this report is general; it is not a substitute for legal advice.

6 These agencies were not selected due to any identified deficiencies in their existing arrangements. The evaluations have provided valuable insights into the practical operation of South Australia's whistleblower protection regime. Where recommendations arising from evaluation findings have broader application, they are presented in this report, largely in the form of case studies. ICAC provided DHS and SA Police with the opportunity to review and comment on the relevant sections of this report prior to its finalisation. More detailed reports tailored to the circumstances of DHS and SA Police will also be prepared.

7 The evaluations involved:

- obtaining and reviewing key documents including policies, procedures, training materials, and public sector survey results relating to topics including public interest disclosures, complaint management, organisational culture, and corruption, misconduct and maladministration
- seeking submissions from key stakeholders
- interviewing key senior staff members within both DHS and SA Police.

8 Defined to mean information that raises a potential issue of corruption, misconduct or maladministration in public administration: *Public Interest Disclosure Act 2018* (SA) s 4 ('*SA PID Act*').

9 Defined to mean information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public: *SA PID Act* (n 8) s 4.

Legislative framework at a glance

Appendix A contains an overview of the current SA PID Act as it relates to public administration information.

The SA PID Act aims to encourage and facilitate certain disclosures of information in the public interest by ensuring procedures are in place for making and dealing with such disclosures and by providing protection for those who make such disclosures.[10]

Protections – including immunity from liability flowing from the making of a disclosure,[11] criminal penalties and civil remedies for retaliatory action,[12] a criminal penalty for breaching confidentiality obligations,[13] and duties to act and notify disclosers[14] – are enlivened where a public officer makes "an appropriate disclosure of public administration information."[15]

A public officer makes an appropriate disclosure of public administration information for the purposes of the SA PID Act if the disclosure is made to a "relevant authority"[16] and the public officer "reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration."[17]

The *Public Interest Disclosure Regulations 2019* (SA) (**SA PID Regulations**) render mandatory training courses approved by ICAC for persons designated as "responsible officers"[18] for the purposes of the SA PID Act. In accordance with s 14 of the SA PID Act, ICAC has also published Public Interest Disclosure Guidelines (**SA PID Guidelines**) in relation to six aspects of the SA PID Act.

The SA PID Act, SA PID Regulations and SA PID Guidelines form part of a broader legislative framework. A number of other South Australian statutes prescribe overlapping procedures for handling disclosures of certain kinds of information and/or provide a level of protection to those who make or assist with disclosures including the ICAC Act, the *Ombudsman Act 1972* (SA) (**the Ombudsman Act**) and the *Police Complaints and Discipline Act 2016* (SA) (**the PCD Act**).

10 Ibid s 3.
11 Ibid s 5(1)(b).
12 Ibid s 9.
13 Ibid s 8(1).
14 Ibid s 7.
15 See ibid s 5(4).
16 See ibid s 5(5).
17 Ibid s 4. The term "corruption in public administration" has the same meaning as in the *Independent Commission Against Corruption Act 2012* (SA) ('*ICAC Act*'). The terms "misconduct in public administration" and "maladministration in public administration" have the same meaning as in the *Ombudsman Act 1972* (SA) ('*Ombudsman Act*').
18 See *SA PID Act* (n 8) ss 12, 13.

Chapter 1: Which disclosures should attract legislative protection?

A key issue with which all whistleblower legislation must grapple is which disclosures of information it is in the public interest to specially protect. Whistleblower laws in Australian jurisdictions vary in terms of who may make protected disclosures, what protected disclosures may be about, the state of mind a discloser must form in order for a disclosure to be protected, and to whom protected disclosures may be made. Changing the scope of our whistleblower laws in the ways recommended in this chapter would better serve one of the core purposes: to encourage and facilitate the making of disclosures in the public interest.

Who should be able to make protected disclosures of public administration information?

> "the South Australian regime at the moment is pretty limited"
>
> **– Human Rights Law Centre (HRLC) Whistleblower Project Lawyer Anneliese Cooper speaking at ICAC's 2026 Whistleblower Project Public Forum**

At present in South Australia, only **"public officers"** may make protected disclosures of public administration information.[19] Most other Australian jurisdictions allow for a wider range of individuals to make such disclosures.[20] International guidance suggests protections should extend beyond public sector employees to "the broadest possible range of reporting persons".[21]

Under the previous SA WP Act, any person could make a protected disclosure of public administration information. The Lander Review recommended that whistleblower laws protect public officers but not members of the public. The rationale given for this policy change was that members of the public need no special encouragement to report given they are unlikely to be under organisational pressure to refrain from doing so, they are less vulnerable to victimisation compared with public officers and they have available to them sufficient channels for making such reports under the ICAC Act.[22] That view was endorsed during parliamentary debates in relation to the Bill that became the SA PID Act.[23]

19 Ibid ss 5(1), 5(4). The term "public officer" has the same meaning as in Schedule 1 to the *ICAC Act* (n 17): *SA PID Act* (n 8) s 4; *ICAC Act* (n 17) s 4(1).
20 See Appendix B.
21 G20, High-Level Principles for the Effective Protection of Whistleblowers, 2019, principle 3 ('*G20 Principles*').
22 *Lander* Review (n 3) 103.
23 South Australia, *Parliamentary Debates*, Legislative Council, 6 November 2018, 1856 (Rob Lucas, Treasurer).

Importantly, **any** person who makes a report about potential misconduct, maladministration or corruption in public administration to the OPI, or assists an ICAC investigation, may avail themselves of protections in the ICAC Act.[24] Likewise, **any** person who makes a report about potential misconduct or maladministration in public administration to the Ombudsman may avail themselves of protections in the Ombudsman Act.[25] The resources available to administer the scheme created by the SA PID Act are not infinite. Confining the more comprehensive protections in the SA PID Act to disclosers who, by virtue of their position, are likely to have valuable information but are also particularly vulnerable to retaliation, continues to be appropriate. The question remains, though, whether good reason exists to extend protection to certain categories of individuals who may answer this description but may not come within the definition of a public officer.

Of the discussion paper submissions received which addressed this question, more than 70 per cent advocated for an expansion of the class of eligible disclosers. Proposed categories of eligible disclosers included:

a. former public officers
b. unpaid workers within public authorities such as trainees, students on placements and volunteers
c. contractors and subcontractors
d. participants in procurement and recruitment processes
e. recipients of government grants
f. close relatives of public officers and former public officers
g. people in detention and prisoners
h. children and young people in State care.

Although several submissions proposed contractors working in the public sector as an additional category of eligible disclosers, persons performing contract work for a public authority or the Crown come within the definition of a public officer, meaning that contractors working in the public sector already are eligible disclosers.[26]

Subcontractors working in the public sector are also likely to be public officers for the purposes of the ICAC Act and, therefore, the SA PID Act, because “contract work” is defined to include work performed by a person “indirectly on behalf of a contractor.”[27]

ICAC’s recent Contract Management Survey further highlights that it is not well known that contractors and subcontractors working in the public sector may themselves be public officers. More than 300 contractors and subcontractors participated in the survey. While most were aware that public officers have reporting obligations, only half (51.1%) were aware that contractors working in the public sector are public officers, and less still (44.6%) were aware that subcontractors working in the public sector are likely public officers. Evidently, there is a need for greater clarity about – and awareness of – the status of contractors and subcontractors.

24 *ICAC Act* (n 17) s 57 provides for victimisation to be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984* (SA), and provides that a person who personally commits victimisation is guilty of an offence punishable by a maximum penalty of $10 000; s 50 provides that no obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of a matter dealt with under the *ICAC Act* except an obligation or restriction designed to keep the identity of an informant secret; and s 54 sets out a regime for maintaining the confidentiality of information about matters dealt with under the *ICAC Act*.

25 *Ombudsman Act* (n 17) s 31A provides for victimisation to be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984* (SA), and provides that a person who personally commits victimisation is guilty of an offence punishable by a maximum penalty of $20 000 or imprisonment for two years; s 20 provides that no obligation to maintain secrecy or other restriction on the disclosure of information applies to disclosure of information for the purposes of an investigation by the Ombudsman; and s 29A sets out a regime for maintaining the confidentiality of information about matters dealt with under the *Ombudsman Act*.

26 *SA PID Act* (n 8) ss 5(1)(b), 5(4), 4; *ICAC Act* (n 17) s 4(1), sch 1. See also *A v C* [2015] SASCFC 105.

27 *ICAC Act* (n 17) s 4(1), sch 1.

Former public officers?

> "when I'm advising clients who are sitting in South Australia and they're wondering if they're eligible...one of the difficulties that we have is that if you're not a current public official you're not protected ...that's one of the key ways in which the eligibility criteria really needs to be broadened"
>
> **– HRLC Whistleblower Project Lawyer Anneliese Cooper speaking at ICAC's 2026 Whistleblower Project Public Forum**

The effect of the SA PID Act is that a disclosure of public administration information will receive protection only if made by a person who is a public officer **at the time the disclosure is made**.[28] It does not protect disclosures by former public officers, even if they were public officers at the time of the events that are the subject of their disclosure. This appears to be at odds with what was apparently intended by the Parliament that considered and passed the Public Interest Disclosure Bill 2018 (SA), the purpose of which was said to be "to facilitate disclosures about public administration information by public officers **or former public officers**".[29]

Submissions in favour of extending protection to former public officers acknowledged that there may be legitimate reasons for delayed reporting – for example, public officers may only feel safe to report when they have moved on to new roles outside of the public sector and no longer fear retaliation, or they may not even appreciate that certain conduct was potentially corruption in public administration until they become aware of other information years later. The HRLC and Transparency International Australia **(TIA)** joint submission observed that while leaving the public sector considerably reduces the risk of retaliation, former public officers may still incur civil, criminal and administrative liability for whistleblowing.

> "I have not reported due to the negative impact on me whilst working there. It's only safe now I have left. I do not trust the management: gossip, ineffective, obstructive, demeaning behaviours and would make my life very difficult."
>
> **– A respondent to ICAC's 2024 Public Integrity Survey**

Submissions opposed to extending protection to former public officers observed that such individuals were likely obligated to report at an earlier time and that a balance must be struck between facilitating reports from those who fear reprisal and guarding against misuse of the scheme by those seeking to "settle scores" post-employment. Some submissions also predicted that broadening eligibility in any way would increase the burden on agencies and increase the risk of public disclosures (that is, to journalists and members of Parliament).

28 *SA PID Act* (n 8) ss 5(1)(b), s 5(4), s 4; *ICAC Act* (n 17) s 4(1), sch 1.

29 South Australia, *Parliamentary Debates*, House of Assembly, 16 May 2018, 441 (Vickie Chapman, Deputy Premier, former Attorney-General). See also South Australia, *Parliamentary Debates*, Legislative Council, 5 June 2018, 379 (Rob Lucas, Treasurer).

If our whistleblower laws aim to encourage the reporting of valuable information about wrongdoing and serious incompetence, then penalising delayed reporting seems counter-productive. A balance must indeed be struck between facilitating reports and guarding against misuse. Existing provisions help to strike this balance by prescribing the state of mind a discloser must form in order to be protected,[30] denying protection to those who make false or misleading disclosures,[31] and criminalising the making of false or misleading disclosures.[32] While acknowledging that broadening eligibility may result in an increase in reports received,[33] resourcing implications may to some extent be offset by positive benefits given whistleblowing enables organisations to act swiftly with respect to potentially damaging conduct. In addition, some of the other recommendations in this report would reduce the administrative burden on agencies. Although broadening eligibility might result in increased public whistleblowing,[34] this form of whistleblowing: is statistically infrequent;[35] is only protected where there has been a failure to comply with notification obligations;[36] and provides an important safeguard against complacency.

Some submissions supported a limited timeframe within which former public officers could make protected disclosures; for example, within two to five years of separation. Reasons cited for such a limitation included the obligations on public officers to report suspected corruption in public administration as soon as reasonably practicable, and the prejudice to investigations occasioned by delay. One submission cautioned against fixing a time limit, suggesting that limiting eligibility in this way might not be in the public interest and that any such limit would be arbitrary. Director of the OPI, Vanessa Burrows, suggested prompt reporting should continue to be encouraged but allowances should be made to facilitate delayed reporting of potentially serious issues. The HRLC and TIA joint submission proposed requiring a sufficient nexus between the discloser's former role as a public officer and the content of their disclosure.

A connection qualifier would likely better serve the purpose of our whistleblower laws than a time qualifier.[37] Moreover, there may be little reason to distinguish between former public officers and public officers (or, for that matter, any other category of individuals identified in this section) in this regard. At present, all disclosures of public administration information by public officers may be protected, regardless of whether or not they relate to the role the public officer occupies. However, one might query whether a teacher in a public school who discloses information about potential corrupt conduct by a police officer, for example, needs any greater protection than a member of the general public who discloses information of that kind. The level of risk of retaliation assumed by the teacher is likely to be identical to that assumed by the member of public. Both are potentially able to avail themselves of the protections in the ICAC Act. If the information is not connected to the teacher's role, immunity from liability is unlikely to be necessary. The teacher is also, generally speaking, no more likely to be privy to valuable information about police conduct than anyone else.

30 *SA PID Act* (n 8), s 5(4).
31 Ibid s 10(2).
32 Ibid s 10(1).
33 It might be expected, though, that the individuals this chapter ultimately recommends being afforded protection would be more likely to report externally to an integrity agency than internally to a public sector agency or council, having regard to their positions vis à vis the organisations with which they interact.
34 Understood to mean disclosures to journalists or members of Parliament (discussed later in this section) rather than to any entity outside of the organisation such as an integrity agency.
35 A J Brown, Paul Latimer, John McMillan and Chris Wheeler, 'Best-practice whistleblowing legislation for the public sector' in A J Brown (ed), *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU E Press, 2008) 263 ('*Best-practice whistleblowing legislation for the public sector*').
36 *SA PID Act* (n 8) s 6(b)(iii).
37 Further, a connection qualifier would prevent the problems associated with expanding eligibility to include former public officials identified by one of the reviews that led to the reenactment of NSW's whistleblower laws. A former public official via his blog had encouraged public officials to inform him of wrongdoing so he could make disclosures on their behalf, and former public officials had made public interest disclosures relating to information obtained in a private capacity.

Where the teacher does acquire the information through interactions with police in the course of their employment, any requirement for a connection between role and disclosure would be met and the SA PID Act would be engaged.

Consideration should be given to extending legislative protection to former public officers disclosing information connected to their former roles as public officers. To do so would bring South Australia's public sector whistleblower laws more closely in line with other Australian jurisdictions, including at the federal level.[38] Consideration should also be given to requiring a connection between role and disclosure for all categories of individuals eligible to make disclosures of public administration information.

Theoretically, any expansion of the class of eligible disclosers could be effected by amending Schedule 1 to the ICAC Act. However, this would have other consequences including extending ICAC's jurisdiction. It is beyond the scope of the Whistleblower Project to assess the desirability of such consequences. In any event, specifying in the SA PID Act itself which groups – in addition to public officers – may make protected disclosures would enhance clarity and increase accessibility.

One submission suggested that extending the category of eligible disclosers beyond public officers and former public officers may only be necessary for disclosures of information raising potential corruption. It observed that allegations of corruption in public administration are more serious – and have the potential to result in more severe consequences – than allegations of misconduct or maladministration in public administration, making the risk of victimisation more acute. As the submission acknowledged, there remains a risk of victimisation even where allegations of misconduct or maladministration are reported. Proved misconduct may have significant consequences for an individual, including termination of their employment, and people respond to allegations of all kinds in a variety of ways. In addition, the protections for whistleblowers extend beyond protection against victimisation, and include immunity from any liability arising from the making of the disclosure.

Importantly, distinguishing between disclosures in this way would further complicate this already complex legislative environment. It is not recommended that the class of eligible disclosers under the SA PID Act expand and contract depending on disclosure content.

Unpaid workers within public authorities such as students on placements, trainees and volunteers?

More than half of the submissions expressing support for expanding eligibility in some way specifically called for unpaid workers within public authorities – such as students on placements, trainees and volunteers – to be brought within the class of eligible disclosers. No submissions specifically opposed this course.

In the private sector, eligibility for whistleblower protection is extended to any "individual who supplies services or goods" to a regulated entity "whether paid or unpaid."[39] Transparency International's 2013 'International Principles for Whistleblower Legislation' (**TI's principles for legislation**), recommend adoption of a wide definition of whistleblower capturing a range of unpaid workers including students on placements, trainees and volunteers.[40] Transparency International's further guidance for transposition of the principles into national legislative regimes, 'A Best Practice Guide for

38 See Appendix B. While s 13(1) of the *Public Interest Disclosure Act 2010* (Qld) ('*Qld PID Act*') allows only for public officers to make such disclosures, a recent review recommended that eligibility be extended to other groups including former public officers: Alan Wilson KC, *Review of the Public Interest Disclosure Act 2010* (Report, June 2023) 81-82 ('*Wilson Review*').

39 *Corporations Act 2001* (Cth) s 1317AAA ('*Corporations Act*').

40 Transparency International, *International Principles for Whistleblower Legislation* (Report, November 2013) principle 4 ('*TI's principles for legislation*').

Whistleblower Legislation' (**TI's best practice guide for legislation**), reaffirms this.[41]

It should be noted that, in limited circumstances, unpaid workers may be public officers under the ICAC Act, and therefore eligible disclosers for the purposes of the SA PID Act.[42]

A submission to Alan Wilson KC's 2023 review of Queensland's whistleblower laws (**Wilson Review**), noted the heavy reliance on university students in placement programs in the medical research industry. Students spend considerable time in laboratories and may gain valuable insights into employee conduct. Such placements are fiercely competitive and essential for attainment of qualifications.[43]

These observations have broader application. In many industries, students on placements and trainees may be both privy to valuable information about wrongdoing or serious incompetence and vulnerable to victimisation. A student or trainee who observes and reports wrongdoing or serious incompetence by a public officer ought to be protected, including from retaliation in the form of being provided with an unduly negative reference, being refused a reference, or being overlooked for a paid role.

The Wilson Review recommended that eligibility be extended only to volunteers with the Queensland Fire and Emergency Services or the Queensland Police Service .[44] The Wilson Review reasoned that volunteers can leave situations in which they may be vulnerable to reprisal without suffering financial or legal consequences, the quality of information to which volunteers are privy will vary considerably depending on their particular volunteering role, and extending eligibility to the large number of public volunteers would increase the administrative burden on agencies. These reasons were said to carry less weight where, as with the Queensland Fire and Emergency Services and the Queensland Police Service, the cohort is well-recognised and provides skilled services that are typically considered government functions such that there is a public interest in their proper performance.[45] Some submissions to the Whistleblower Project similarly proposed confining eligibility in South Australia to certain volunteers within high-risk or public-facing organisations to avoid overextension of protections to individuals with minimal exposure to public administration.

It is difficult to see why a distinction should be drawn between different groups of volunteers within public authorities. A volunteer who leaves a situation due to the risk of reprisal may still suffer a range of detrimental consequences including social isolation, reduced ability to build skills and experience necessary for paid employment, and even indirect financial implications – for example, access to subsidised childcare. Many volunteers may be privy to valuable information about wrongdoing and serious incompetence. In ICAC's experience, reporters' seniority is not a reliable predictor of the value of the information reported – in fact, perpetrators might be emboldened to act improperly in the presence of junior or peripheral members of an organisation. The administrative burden placed on agencies by the SA PID Act is an important consideration, but many of the SA PID Act's core protections– for example, immunity from liability and access to civil remedies for victimisation – require little of agencies.

41 Transparency International, *Best Practice Guide for Whistleblower Legislation* (Report, March 2018) 3, 11-14 ('*TI's best practice guide for legislation*').

42 Whether or not a particular unpaid worker is a public officer depends upon whether or not the individual is captured by one or more of the descriptions in the first column of Schedule 1 to the *ICAC Act* (n 17) – for example, are they "a person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act"? The need to consult multiple pieces of legislation to determine the coverage of the *SA PID Act* raises concerns about the complexity of our whistleblower laws – a topic also discussed in Chapter 6. For present purposes, suffice to say that in many cases unpaid workers will *not* come within the definition of a public officer.

43 *Wilson Review* (n 38) 79.

44 Ibid 81.

45 Ibid 80.

It is also unclear why certain subsets of well-recognised volunteers might be less able than others to extricate themselves without consequence, or more likely to provide quality information about their organisations. The public has an interest in the integrity of all public authorities and, therefore, in encouraging and facilitating reporting of wrongdoing or serious incompetence suspected to have occurred in any public authority.

Expressly stating that unpaid workers – such as students on placements, trainees and volunteers – within public authorities[46] may make protected disclosures would provide appropriate coverage and clarity for unpaid workers. It would also bring South Australia in line with the majority of Australian jurisdictions.[47]

Participants in procurement and recruitment processes?

> "I and many other business owners will never report anything because if we do, we will NEVER receive any work/contracts in any state"
>
> **– A respondent to ICAC's 2025 Contract Management Survey**

A number of submissions favoured (and none specifically opposed) extending eligibility to a broader range of individuals interacting with the public sector, including unsuccessful participants in procurement and recruitment processes.

Procurement and recruitment processes are vulnerable to corruption. Risks to the integrity of public sector procurement include misusing information, soliciting or accepting gifts and benefits, and failing to declare or manage conflicts of interests.[48] Integrity risks in recruitment include tailoring position descriptions or interview questions, limiting the field of potential applicants, excluding suitable candidates, manipulating panel membership or reports, misusing direct appointment processes, and failing to declare or manage conflicts of interest.[49] Both prospective contractors and workers, and those who have been unsuccessful in procurement and recruitment processes, may be privy to valuable information about wrongdoing or serious incompetence in public administration. They may also be vulnerable to retaliation – for example, by being unfairly overlooked for the contract or a future contract or role, or through reputational damage within government and/or industry.

The HRLC and TIA joint submission acknowledged that extending eligibility to prospective contractors and employees would be consistent with developing international best practice, citing examples in the United Kingdom[50] and European Union.[51]

46 See the earlier discussion about the rationale for not expanding eligibility to any member of the public – for analogous reasons, eligibility should be confined to unpaid workers within public authorities.

47 Section 25 of the *NSW PID Act* (n 4) provides that a disclosure complies with the section if it is made by a public official who is not a member of Parliament. Section 14 then defines the term "public official" to include "a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor *or* volunteer." While public sector whistleblower laws in other Australian jurisdictions do not specifically extend eligibility to this group, those which allow for any person at all to make a protected disclosure of course do so indirectly (see Appendix B).

48 ICAC, *Buying Trust: Corruption Risks in Public Sector Procurement* (Report, June 2024).

49 ICAC, *Robust Recruitment* (Report, August 2023).

50 *Employment Rights Act 1996* (UK), s 49B.

51 *Parliament and Council Directive EU 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law*, art 4.3 ('*EU Directive*').

Consideration should be given to extending legislative protection to participants in public sector procurement and recruitment processes. While public sector whistleblower laws in other Australian jurisdictions do not specifically extend eligibility to this group, those which allow for any person at all to make a protected disclosure do so indirectly.[52]

Recipients of government grants?

Some submissions proposed (and none specifically opposed) that eligibility to make protected disclosures be extended to recipients of government grants.

Again, it should be noted that some recipients of government grants may come within the definition of a public officer, meaning that they may already be eligible disclosers.[53] But the position of any particular grant recipient is unclear, and much is likely to turn on the terms and status of any agreement between the recipient and the government.

The position of grant recipients – and, for that matter, potential grant recipients – is no different to contractors and subcontractors, and participants in procurement and recruitment process, in terms of their capacity to observe wrongdoing or serious incompetence, and their vulnerability to retaliation.

Again, while public sector whistleblower laws in other Australian jurisdictions do not specifically extend eligibility to this group, those which allow for any person at all to make a protected disclosure do so indirectly.[54] Consideration should be given to specifying in the SA PID Act that recipients of – and applicants for – government grants may make protected disclosures.

Close relatives of public officers and former public officers?

One submission proposed that eligibility be extended to close relatives of public officers and former public officers in some cases. Another submitted that extending eligibility to this group would be a positive development, observing that eligibility for whistleblower protection is extended to relatives and dependents of other eligible disclosers in the private sector.[55] No submission raised a specific objection.

If the guiding light is likelihood of access to valuable information about serious public sector wrongdoing or serious incompetence and extent of vulnerability to retaliation, then there is certainly less impetus for extending eligibility to close relatives of public officers and former public officers compared with many other groups identified in this chapter. Close relatives are a step further removed from the public sector, and the protections in the SA PID Act will be available to the public officer.

Of course, it is conceivable that, for example, a public officer may confide in their spouse about suspected improper conduct but not be prepared to report it, and the spouse may feel compelled to do so but fear adverse consequences. While it may be that some of the protections in the ICAC Act or the Ombudsman Act identified earlier in this report would apply, the more comprehensive protections in the SA PID Act likely would not. Such situations are likely to arise infrequently. However, if they do it might be expected that the close relative may focus their efforts on supporting the public

52 See Appendix B.
53 As with unpaid workers, whether or not a particular grant recipient is a public officer is contingent upon whether or not the grant recipient is captured by one or more of the descriptions in the first column of Schedule 1 to the *ICAC Act* (n 17) – for example, are they "a person performing contract work for a public authority or the Crown"?
54 See Appendix B.
55 See the *Corporations Act* (n 39) ss 1317AAA(g)– (h).

officer to report, in line with the public officer's obligation to do so.

Mindful that any expansion of the class of eligible disclosers broadens the scope of the scheme and the resources required to administer it – and mindful of the protections available to reporters and witnesses under the ICAC Act – it is not recommended that close relatives of public officers and former public officers be brought within the class of eligible disclosers. The Wilson Review arrived at a similar conclusion.[56] No other Australian jurisdiction has extended the reach of its public sector whistleblower laws specifically to this group.

Children and young people in State care?

One submission recommended that consideration be given to how best to protect children in State care. They observed that this group can be distinguished from members of the general public insofar as they are more likely to be in a position to witness public sector wrongdoing and serious incompetence because of their frequent interaction with public officers, and they are more vulnerable to retaliation because their wellbeing is subject to the influence of others. Another contended that there are already multiple effective avenues available for all stakeholders involved in the care and protection of children and young people, including children and young people themselves, to raise issues of concern. This submission cautioned that extending the reach of the SA PID Act to this group could result in duplication and confusion.

Notably, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) (**CYP Act**) establishes a Commissioner for Children and Young People, a Commissioner for Aboriginal Children and Young People, and a Guardian for Children and Young People, each with various functions and powers. In many respects, s 67 of the CYP Act mirrors – although with a lesser maximum penalty[57] – s 9 of the SA PID Act in providing protection against victimisation where a person has provided, or intends to provide, information under the CYP Act. Section 66 of the CYP Act also renders it an offence for persons engaged or formerly engaged in the administration of the Act to divulge or communicate personal information obtained in the course of official duties except in limited circumstances. That said, the protection is not focused on informant identity in the way that it is in s 8(1) of the SA PID Act, there is no equivalent provision to s 8(2) of the SA PID Act (which provides that the obligation to maintain confidentiality applies despite any other law to the contrary), and the maximum penalty for failing to maintain confidentiality is less severe[58] than in the SA PID Act. The *Children and Young People (Safety) Act 2017* (SA) also contains various protections with respect to confidentiality and victimisation.[59]

In addition, as discussed earlier in this report, any person who makes a report under the ICAC Act or the Ombudsman Act may avail themselves of the protections in those Acts. Further, if a child or young person reports information that raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public then they may well be protected under the SA PID Act.[60]

56 *Wilson Review* (n 38) 83.
57 $10,000: *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) ('*CYP Act*') s 67(6); $20,0000 or 2 years imprisonment: *SA PID Act* (n 8) s 9(5).
58 $10 000: *CYP Act* (n 57) s 66(1); $20 000 or imprisonment for 2 years: *SA PID Act* (n 8) s 8(1).
59 See, for example, ss 163-165. The *Children and Young People (Safety and Support) Act 2025* (SA), which will soon replace it, retains those protections (see, for example, ss 214, 218 and 219).
60 As discussed in the next section, public interest information includes both public administration information and environmental and health information – eligibility to make a disclosure of the latter kind of information is extended to all individuals.

No other Australian jurisdiction has extended the reach of its public sector whistleblower laws specifically to this group. Consideration should instead be given to ensuring that existing legislative frameworks provide sufficient protection for children and young people in State care to make protected disclosures including of information about wrongdoing or serious incompetence in public administration to which they may be privy.

Prisoners and others in detention?

A few submissions observed that disclosures of public administration information made by prisoners and others in detention are not protected. Some recommended that consideration be given to how best to protect this group. Ms Burrows, in her submission made on behalf of the OPI, pointed out that a prisoner who reports a prison officer to the OPI for introducing contraband into a prison would not be protected under the current SA PID Act, whereas a colleague of the prison officer who makes the same report (and is likely less vulnerable to retaliation) would be. The HRLC and TIA joint submission observed that prisoners and others in detention could experience retaliation in the form of being placed in solitary confinement, having their health needs ignored, or having work or educational opportunities taken away. No submission raised a specific objection to extending eligibility to this group.

Again, any person who makes a report about potential misconduct, maladministration or corruption in public administration to the OPI, or assists an ICAC investigation, may avail themselves of protections in the ICAC Act. Similarly, any person who makes a report about potential misconduct or maladministration in public administration may avail themselves of protections in the Ombudsman Act. Again, if a prisoner or other person in detention raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public then they may be protected under the SA PID Act. Some provision is also made in the *Correctional Services Act 1982* (SA) for reports to be made to an independent Official Visitor and handled confidentially.[61]

No other Australian jurisdiction has extended the reach of its public sector whistleblower laws specifically to this group. As with children and young people in State care, consideration should instead be given to ensuring that existing legislative frameworks provide sufficient protection for prisoners and others in detention to make protected disclosures including of information about wrongdoing or serious incompetence in public administration to which they may be privy.[62]

Role reporters including "responsible officers" under the SA PID Act?

A further issue relevant to who should be able to make protected disclosures of public administration information relates to those for whom reporting potential wrongdoing or serious incompetence is a core requirement of their formal position, sometimes called "role reporters". Role reporters may have only become aware of the information to be disclosed because it was reported to them in their official capacity.[63]

61 See, for example, s 20H and s 20I(4).

62 There are other groups of individuals, not identified in submissions to the Whistleblower Project, who, while not being public officers, may potentially be in a position to play a key role in exposing public sector wrongdoing yet may find themselves in a position of vulnerability should they choose to do so – for example, customers or patients in medical and aged care settings. It is beyond the scope of this project to address each such category. However, it may be that, for similar reasons as discussed above, ensuring existing legislative frameworks provide sufficient protection is preferable to extending the reach of the *SA PID Act* to these groups. Of course, disclosures made by any person may be protected if they raise substantial risks to the health and safety of the public generally or a significant section of the public (or to the environment, for that matter).

63 A J Brown (ed), *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU E Press, 2008) glossary.

Issues of victimisation and confidentiality[64] are likely to be less important to a responsible officer designated under the SA PID Act[65] – or a human resources staff member, for that matter – reporting information they have received, than for the public officer from whom they received that information in the first place. A responsible officer or human resources staff member may be less invested in the progress and outcome of the matter. Yet, a report is likely to attract the operation of the SA PID Act where a role reporter is a public officer, conveys information to a relevant authority, the information conveyed is public administration information, and state of mind conditions are satisfied.[66]

Recognising the different position occupied by role reporters,[67] the *Public Interest Disclosures Act 2022* (NSW) (**NSW PID Act**) distinguishes between mandatory public interest disclosures and voluntary public interest disclosures.[68] While legislative protections – such as immunity from liability and remedies for victimisation – apply to both kinds of disclosures,[69] agency obligations – such as notification requirements – apply only to voluntary public interest disclosures.[70] In this way, disclosures by role reporters are protected but agencies are not unreasonably burdened.

The Wilson Review similarly recommended that agencies be exempt from administrative obligations to role reporters (preferring this to the creation of multiple categories of public interest disclosures which could be apt to confuse) but considered that role reporters should have the ability to opt into agency obligations.[71] The ability to "opt in" provides a mechanism to convey information about the progress or outcome of a matter to an initial reporter whose identity is known only to the role reporter.

A related issue arises for consideration which could equally be dealt with in the final section of the next chapter but which it is convenient to address now. Even reporters who make disclosures voluntarily (as in, not in the ordinary course of their core duties) may not wish to receive updates following their report. Some may make disclosures so as to comply with reporting obligations but otherwise have little interest in the progress or outcome of any investigation into the matters raised. Others may feel strongly about the issues they raise but wish to distance themselves as much as possible, fearing exposure and retaliation. The parts of whistleblower laws that impose notification obligations on recipients of disclosures play an important role in ensuring reporters are kept abreast of matters arising from issues they have raised, but they cannot protect reporters in the way that other more critical provisions – such as those providing immunity and remedies – can. Plainly, rendering optional the application of crucial provisions of the SA PID Act would be problematic and undesirable. However, allowing all reporters to nominate whether or not to receive status updates is unlikely to cause any significant issues and may prove mutually beneficial for reporters and agencies. If role reporters are to be permitted to choose whether to receive status updates, there may be little reason not to extend the same flexibility to other kinds of disclosers. Indeed, even makers of voluntary public interest disclosures in New South Wales have the ability to waive their right to receive

64 They may, though, be concerned about preserving the confidentiality of the identity of the original reporter. If the initial report was made by a public officer to a relevant authority, it too would likely be captured by the *SA PID Act*. However, if the report was made to a human resources staff member who was not a relevant authority – because they were not also a responsible officer or a person responsible for the management or supervision of the public officer to whom the disclosure relates, for example – then the anomalous situation would arise in which the human resources staff member's disclosure to the OPI would be protected but the public officer's initial disclosure to the human resources staff member would not, despite the latter being in far greater need of protection.

65 A person designated as a responsible officer of a public sector agency or council for the purposes of the Act must receive appropriate disclosures of public interest information relating to the agency or council and ensure compliance with the Act in relation to such disclosures: *SA PID Act* (n 8) s 13(a).

66 See the other sections of this chapter for a detailed analysis of each of these elements.

67 Parliament of New South Wales Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994* (Report, October 2017) 18-19 ('*2017 NSW parliamentary committee review*').

68 *NSW PID Act* (n 4) s 21(1).

69 Ibid ss 21(1) and s 30.

70 Ibid Part 5.

71 *Wilson Review* (n 38) 137-140.

information.[72]

An "opt out" mechanism is preferable to an "opt in" mechanism. Whereas it might be appropriate for the default position with respect to role reporters to be that agencies are not obliged to issue status updates, the default position with respect to other kinds of reporters should be that they are. Creating a notification opt in mechanism for one class of disclosers and a notification opt out mechanism for another class of disclosers would result in additional complexity.[73] An opt out mechanism for all reporters would still likely lead to considerable efficiencies for agencies which, at present, must continue to provide status updates regardless of the attitude of a discloser, and would better achieve the legislative purpose of encouraging disclosures.

Consideration should be given to including a provision in South Australia's whistleblower laws which relieves an agency of the obligation to take steps to notify a reporter of the progress and outcome of a matter where a reporter formally indicates that they do not wish to receive updates. There is no reason to limit the application of such a provision to role reporters, provided it is confined to notification obligations.

72 *NSW PID Act* (n 4) s 59(5)(b).

73 An opt in mechanism would also present challenges where disclosures are not identified – by either maker or recipient – as public interest disclosures. That said, in such a situation, at present, compliance with the notification obligations under the Act is highly unlikely anyway.

Recommendation	1

That eligibility to make protected disclosures of public administration information under South Australia's whistleblower laws be extended to: former public officers; unpaid workers within public authorities including students on placements, trainees and volunteers; participants in public sector procurement and recruitment processes; and recipients and prospective recipients of government grants. That consideration be given to stipulating that disclosures must relate to such roles.

Recommendation	2

That South Australia's whistleblower laws clearly define which disclosures attract its protection, including by specifying that disclosures made by public officers within the meaning of Schedule 1 to the ICAC Act, and the additional groups referred to immediately above, may make protected disclosures.

Recommendation	3

That consideration be given to including a provision in South Australia's whistleblower laws which relieves an agency of the obligation to take reasonable steps to notify a reporter of the progress and outcome of a matter where a reporter formally indicates that they do not wish to receive updates.

Recommendation	4

That consideration be given to ensuring that existing legislative frameworks provide sufficient protection for children and young people in State care, and prisoners and others in detention, to make protected disclosures of information about wrongdoing in public administration.

What should protected disclosures be about?

Whistleblower legislation aims to encourage and facilitate disclosure of information in the public interest. A key consideration for all such legislation, then, is what information engages the public interest sufficiently to warrant special protection.

At present in South Australia, a public officer makes an "appropriate disclosure of public administration information", attracting the protections of the SA PID Act, "if the disclosure is made to a relevant authority and the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration."[74] The term "public administration information" is defined to mean "information that raises a potential issue of corruption, misconduct or maladministration in public administration".[75]

As such, to qualify for protection, a disclosure **must raise**, and a discloser **must reasonably suspect that it raises**, a **potential issue of corruption, misconduct or maladministration in public administration.** Those key terms are defined in the SA PID Act[76] to have the meaning given to them in the ICAC Act[77] and Ombudsman Act[78] as set out below.

(1) ***Corruption in public administration*** means conduct that constitutes—

a. an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
   i. bribery or corruption of public officers;
   ii. threats or reprisals against public officers;
   iii. abuse of public office;
   iv. demanding or requiring benefit on basis of public office;
   v. offences relating to appointment to public office; or
b. an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
c. an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
d. any of the following in relation to an offence referred to in a preceding paragraph:
   i. aiding, abetting, counselling or procuring the commission of the offence;
   ii. inducing, whether by threats or promises or otherwise, the commission of the offence;
   iii. being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
   iv. conspiring with others to effect the commission of the offence.

For example, corruption in public administration can look like a public officer seeking or accepting a bribe for a favourable outcome, giving out jobs to family and friends, selling confidential information obtained through work, favouring a friend's business in a procurement process or stealing public resources.

74 *SA PID Act* (n 8) s 5(4).
75 Ibid s 4.
76 Ibid.
77 *ICAC Act* (n 17) s 5(1).
78 *Ombudsman Act* (n 17) ss 4(1)-(2).

(1) ***Misconduct in public administration*** means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.

...

(4) A reference in subsection (1) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.

For example, misconduct in public administration can look like a public officer improperly accessing a computer system to obtain confidential information about an individual that is not required for their role, or the chair of a recruitment panel for a position in a State Government department discussing potential interview questions with a close friend prior to them applying for the position. Misconduct in public administration must be both *intentional* and *serious* to meet the definition in the Ombudsman Act. For example, an isolated incident of rudeness in service delivery may breach the obligation in the Code of Ethics for the South Australian public sector to at all times treat other persons with respect and courtesy[79] but is unlikely to amount to misconduct in public administration for the purposes of the Ombudsman Act.

(2) ***Maladministration in public administration—***

a. means—

i. conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or

ii. conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

b. includes conduct resulting from impropriety, incompetence or negligence; and

c. is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

(3) Without limiting or extending the conduct that may comprise misconduct or maladministration in public administration, this Act applies to conduct that—

a. occurred before the commencement of this section; or

b. occurs outside this State; or

c. comprises a failure to act; or

d. is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or

e. is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.

79 Office of the Commissioner for Public Sector Employment, *Code of Ethics for the South Australian public sector* (Code, January 2022) 6 (‘*Code of Ethics*’).

Maladministration is the mismanagement of public resources or functions that might have serious implications for an agency and/or the community. It can arise from negligence or incompetence. It does not have to be intentional. It can include things like the misuse of public funds or mismanagement of projects. For example, it can look like a council undertaking a significant development without undertaking a tender process, or unauthorised use of public money in a State Government department with no accounting system.

While not the focus of this report, disclosures of environmental and health information (defined to mean "information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public") may also attract the protections of the SA PID Act.[80]

A broader range of public sector[81] conduct than potential issues of corruption, misconduct or maladministration in public administration?

Very few submissions made to the Whistleblower Project favoured adopting a substantially different approach to the categories of conduct about which protected disclosures may be made in South Australia. Some favoured tinkering with the current approach in specific ways discussed later in this section.

The scope of the SA PID Act was impacted, perhaps unintentionally, by amendments made to the ICAC Act in 2021. In particular, revision of the definition of corruption in public administration in the ICAC Act had implications not only for ICAC's jurisdiction but also for the reach of the SA PID Act. That is because the SA PID Act defines corruption in public administration with reference to the meaning given to that term in the ICAC Act.

A more limited definition of corruption may create uncertainty as to whether a disclosure about a particular matter is likely to qualify for the protections of the SA PID Act. However, because the SA PID Act continues to protect not only disclosures of information raising a potential issue of corruption in public administration but also disclosures of information raising potential issues of misconduct or maladministration in public administration, protected disclosures about a broad range of conduct likely continue to be protected. As Ms Burrows observed in the OPI's submission to the Whistleblower Project, all criminal conduct alleged to have been engaged in by a public officer in their capacity as a public officer is likely to at least amount to potential misconduct in public administration,[82] even if it may not amount to potential corruption in public administration as it is now defined.

While contraventions of codes of conduct must be serious and intentional to constitute misconduct in public administration, in many cases information about suspected impropriety (criminal or otherwise) will at least give rise to that possibility. As set out above, disclosures need only raise "a potential issue" of corruption, misconduct or maladministration to qualify for protection. Even an apparently trivial suspected breach of a code has the potential to be serious for a variety of reasons.

80 *SA PID Act* (n 8) s 4.

81 Leaving aside environmental and health disclosures in relation to which different considerations may apply, this report starts from the premise that protected disclosures should relate to conduct alleged to have been engaged in by public officers **in their official capacity**. The *Lander Review* (n 3) observed that other protections are available to citizens who report other criminal conduct to law enforcement agencies and it is not necessary for reports of that kind to be specially protected by whistleblower legislation: *Lander Review* (n 3) 89-93. The question then becomes what kinds of *public sector* conduct should disclosures relate to in order to attract the protections of the *SA PID Act*.

82 Even leaving aside breaches of specific clauses in codes of conduct, many codes contain general clauses prohibiting conduct that reflects poorly on organisations or might bring the public sector into disrepute: see, for example, *Police Complaints and Discipline Regulations 2017* (SA) sch 3; *Code of Ethics* (n 79).

Further, as Ms Burrows observed in the OPI's submission, special protections may not be warranted for the reporting of minor issues not captured even by the definition of misconduct in public administration. It may be sufficient for internal policies to establish arrangements for receipt and handling of reports of this kind, and to protect those who make them. That position is consistent with the approach taken by a review of the *Public Interest Disclosure Act 2012* (ACT) (**ACT PID Act**) conducted by Ian Govey in 2023 (**Govey Review**). In assessing the scope of disclosable conduct in that jurisdiction, the Govey Review considered "what conduct is so serious as to be authorised to be disclosed in the public's interest" and recognised the importance of "setting the threshold for disclosable conduct high enough that it warrants immunity from criminal and civil liability". It is also consistent with the observation made by a review of the *Public Interest Disclosure Act 2013* (Cth) conducted by Philip Moss in 2016 (**Moss Review**) that public sector whistleblower legislation at the federal level is not "...well adapted to resolving allegations of less serious disclosable conduct".[83]

Still, the HRLC and TIA joint submission advocated both for the definition of corruption in public administration in the SA PID Act to be broadened and for references to specific offences to be removed. It assessed that broadening the definition would be consistent with the approach taken in nearly all other Australian jurisdictions.[84] International guidance favours a "broad but clear"[85] definition of the categories of conduct about which a public interest disclosure may be made. TI's best practice guide for legislation cautions against exhaustive lists of reportable conduct, observing that such lists have the advantage of clearly communicating what is captured but also the disadvantage of excluding some categories, deliberately or inadvertently. Instead, it recommends use of indicative lists of broad categories introduced by phrases such as "including but not limited to".[86]

This may provide an insufficiently compelling basis for change where a broad range of conduct likely continues to be protected. In addition, the current approach provides a degree of uniformity between overlapping frameworks. The 'Office for Public Integrity Directions and Guidelines for public officers, public authorities and inquiry agencies' and the 'Ombudsman SA Directions and Guidelines' (**reporting directions and guidelines**) establish reporting obligations in the public sector.[87] The former impose a legal obligation on public officers to report to the OPI matters reasonably suspected of involving corruption in public administration except in limited circumstances. The latter set an expectation that matters reasonably suspected of involving misconduct or maladministration in public administration will be reported to Ombudsman SA (unless the conduct is known to have already been reported to Ombudsman SA or the OPI). Particularly where there exists a legal obligation or expectation to report, it is fair that disclosures attract legislative protection. While subordinate instruments must always yield to primary legislation, the reporting directions and guidelines themselves reflect the language of the ICAC Act and Ombudsman Act. The use of identical terminology to describe the subject matter of suspicions in both the SA PID Act and the reporting directions and guidelines provides a level of certainty to reporters that at least mandated reports will be protected.

Beyond this, the justification for uniformity may be weaker. The SA PID Act establishes reporting pathways for the making of disclosures of public interest information, and creates a range of rights and duties where they are made. The ICAC Act and Ombudsman Act establish the jurisdiction,

83 Philip Moss, *Review of the Public Interest Disclosure Act 2013* (Report, July 2016) 30 ('*Moss Review*').
84 Appendix C contains a comparison of provisions governing the categories of conduct about which protected disclosures may be made in whistleblower laws in Australian jurisdictions.
85 *G20 Principles* (n 21) principle 2.
86 *TI's best practice guide for legislation* (n 41) 7-9.
87 *Office for Public Integrity Directions and Guidelines for public officers, public authorities and inquiry agencies 2023* (SA) ('*OPI Directions and Guidelines*') issued pursuant to the *ICAC Act* (n 17) s 18B; *Ombudsman SA Directions and Guidelines 2023* (SA) ('*Ombudsman Directions and Guidelines*') issued pursuant to the *Ombudsman Act 1972* (SA) (n 17) s 12D(1).

functions and powers of the various integrity agencies in South Australia. These instruments, and the reporting directions and guidelines, are all interconnected, but they each serve a different purpose. While harmony is generally desirable because it can reduce complexity, it is not essential that each of these instruments aligns in all respects. As discussed in the section of this chapter examining who should be able to receive protected disclosures of public administration information, there may sometimes be good reason to deviate in the SA PID Act from the approach taken in the reporting directions and guidelines.

Notwithstanding this, there does not appear, here, to be sufficient reason to introduce variance in relation to the subject matter of disclosures by broadening the definition of corruption in public administration in the SA PID Act. That is because, for reasons already outlined, the current approach is likely to, in any event, capture a broad range of public sector conduct. It is also likely to capture the right kinds of conduct, being conduct the seriousness of which is commensurate with the potentially[88] strong protections in the SA PID Act.

Subject to the confined changes suggested below, it is not recommended that the scope of conduct about which protected disclosures of public administration information may be made in South Australia be broadened at this time. However, given there appears to be some tension between this conclusion and some best practice guidance, any future review of South Australia's whistleblower laws should revisit this issue.

The undesirability of requiring users of the SA PID Act to move between multiple pieces of legislation is discussed in Chapter 6.

88 While this report identifies issues and suggests solutions with a view to strengthening these protections, sight should not be lost of the fact that, even at present, they provide a level of protection to some whistleblowers far greater than that available to those who make other kinds of disclosures not captured by the *SA PID Act*.

Evaluation case study: protections for reports falling short of public interest disclosures

SA Police is a large and complex organisation engaging 6,131 FTE (as of June 2025). Broadly speaking, staff engaged by SA Police are either designated officers employed under the *Police Act 1998* (SA) (such as sworn officers, special constables, police security officers and police cadets), or they are public sector employees employed under the *Public Sector Act 2009* (SA) (together, SA Police employees). SA Police's workforce also includes people providing contracted services. In addition, other assistance is obtained from volunteers working in community-led programs like Neighbourhood Watch. SA Police has an extensive geographical reach, with staff employed across South Australia.

To fulfil its function to reassure and protect the community in relation to crime and disorder, SA Police engages in a broad range of activities, including emergency assistance; crime prevention; child protection; coordinating and managing emergency responses; responding to domestic violence; undertaking police checks; preventing motor vehicle accidents; regulating road use; registration and licensing of firearms; administering expiation notices; liquor licence enforcement; statewide security; and generally upholding the law.

The *Police Complaints and Discipline Regulations 2017* (SA) (**PCD Regulations**) contain a Code of Conduct. Conduct of a designated officer which breaches that code, or contravenes the PCD Act, is termed a "breach of discipline." Designated officers are also required to comply with General Orders and Special Orders issued under the *Police Act 1998* (SA). All public sector employees who work for SA Police must comply with both SA Police's General Orders and Special Orders as well as the Code of Ethics for the South Australian public sector issued under the *Public Sector Act 2009* (SA).

As public officers, SA Police employees are bound by the reporting directions and guidelines issued by the OPI and Ombudsman SA in relation to potential corruption, misconduct and maladministration in public administration. The PCD Act also obliges designated officers to report reasonable suspicions that other designated officers have engaged in corruption, misconduct or maladministration in public administration to SA Police's Internal Investigation Section (**IIS**) or the OPI. The SA Police *General Order Complaints and disciplinary framework* states that it is the responsibility of all employees to report any suspected breaches of either code that constitute grounds for disciplinary action.

The Ethical and Professional Standards Branch (**EPSB**) is the primary division within SA Police's organisational structure that discharges internal investigatory and disciplinary functions. This includes the IIS, Anti-Corruption Section (**ACS**) and Professional Conduct Section (**PCS**). The People, Culture and Wellbeing Service (**PCWS**) also includes a Diversity and Inclusion Branch (**DIB**) created in 2018 in response to recommendations made by the Equal Opportunity Commission. DIB may also receive, and take action in relation to, reports about the conduct of SA Police employees. As well as dealing with issues relating to its own employees, SA Police is also a relevant authority for receipt of protected disclosures under the SA PID Act.

Where a designated officer suspects another officer has engaged in conduct constituting a breach of discipline that falls short of a potential issue of misconduct in public administration as defined in the Ombudsman Act, any report made by them will not attract the protections of the SA PID Act.

Public sector agencies and councils should take care to ensure they are not taking too narrow a view of what might amount to misconduct in public administration in assessing whether a disclosure is likely to engage the SA PID Act. They should also ensure that, particularly where the reporting of reasonable suspicions of conduct falling short of the categories of conduct about which protected disclosures may be made under the SA PID Act is encouraged or mandated, internal policies and procedures establish:

a. adequate arrangements for receipt and handling of reports of this kind
b. proportionate protections for those who make them.

At various points, this report has cause to refer to parts of certain statutes that largely mirror the provisions of the SA PID Act relating to victimisation and/or confidentiality, though they may be less comprehensive and the consequences of breaching them may be less severe. By way of example, provisions in the CYP Act and the *Equal Opportunity Act 1984* (SA) (**EO Act**) provide a level of protection to some individuals who report information in other contexts, and whose disclosures are unlikely to qualify for the protections of the SA PID Act. The PCD Act does not contain such provisions. Consideration should be given to whether it should.

Should disclosures about victimisation be protected?

Among submissions to the Whistleblower Project addressing the issue, there was a consensus that potential issues of victimisation should be included as a category of public sector conduct about which protected disclosures may be made.

Alleged victimisation is likely to amount to a potential issue of misconduct in public administration. However, it may improve clarity and accessibility to expressly include a potential issue of victimisation under the SA PID Act, or under another statute such as the ICAC Act or the Ombudsman Act,[89] in the definition of public administration information.

Should disclosures about personal workplace grievances be protected?

There was also a consensus among submissions to the Whistleblower Project that disclosures concerning personal workplace grievances should not generally be protected by South Australia's whistleblower laws. However, it may be appropriate to protect such disclosures where they are particularly serious, or where they may amount to, or be entwined with, other types of qualifying public sector conduct.

Several submissions to the Whistleblower Project observed that alternative pathways for receiving and handling reports solely relating to personal workplace grievances are adequate and may be better adapted than whistleblower laws. A decade ago, the Moss Review observed that "the PID Act is seen as a cumbersome, legalistic mechanism that complicates minor workplace disputes"[90] and forecast that "[f]ocussing away from personal employment-related grievances towards serious wrongdoing [would] help to restore the reputation of the PID Act..."[91] Federal public sector whistleblower laws[92] now exclude workplace grievances from the definition of disclosable conduct except in certain circumstances:

> **Subdivision B—Disclosable conduct**
> **29 Meaning of *disclosable conduct***
>
> ...
>
> (2A) Despite subsections (1) and (2), personal workrelated conduct is not ***disclosable conduct*** unless:
>
> a. the conduct would constitute taking a reprisal against another person, or an offence under section 19 (reprisals in relation to disclosures—offences); or
> b. the conduct:
>   i. is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
>   ii. has other significant implications for an agency (or agencies).
>
> ...

89 The first section of this chapter suggests that it continues to be in the public interest to reserve the special protections of South Australia's public sector whistleblower laws for those most likely to be privy to information about wrongdoing or serious incompetence in public administration, and most vulnerable to retaliation. It does not recommend that eligibility to make protected disclosures be expanded beyond certain categories of insiders who interact closely with the public sector. Although conduct suffered by a broad range of individuals may amount to victimisation under the *ICAC Act* or the *Ombudsman Act*, many of those individuals do not have standing to make public interest disclosures. It may still be appropriate to include in the definition of public administration not only information that raises a potential issue of victimisation under the *SA PID Act* but also information that raises a potential issue of victimisation under the *ICAC Act* or the *Ombudsman Act* because those who do have standing to make public interest disclosures may witness, or otherwise become aware, of victimisation within the meaning of the *ICAC Act* or the *Ombudsman Act* involving others. It is in the public interest to encourage and facilitate them to come forward so that concerning public sector conduct of that kind may be investigated and corrected.

90 *Moss Review* (n 83) 19.

91 Ibid 69.

92 Some other Australian jurisdictions similarly carve out workplace grievances from the subject matter of protected disclosures. See, for example, *NSW PID Act* (n 4) ss 26(3)-(4); *Public Interest Disclosure Act 2012* (ACT) s 8(2) ('*ACT PID Act*'). See also the *Wilson Review* (n 38) 63.

29A Meaning of *personal workrelated conduct*

Personal workrelated conduct is conduct (by act or omission) engaged in by a public official (the ***first official***) in relation to another public official (the ***second official***) that:

a. occurs in relation to, or in the course of, either or both of the following:
   i. the second official's engagement or appointment as a public official;
   ii. the second official's employment, or exercise of functions and powers, as a public official; and
b. has, or would tend to have, personal implications for the second official.

Examples: The following are examples of personal workrelated conduct:

a. conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
b. conduct relating to the transfer or promotion of the second official;
c. conduct relating to the terms and conditions of engagement or appointment of the second official;
d. disciplinary action taken in relation to the second official;
e. the suspension or termination of the second official's employment or appointment as a public official;
f. conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the *Public Service Act 1999* or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.

The Public Service Association (**PSA**)'s submission to the Whistleblower Project, which incorporated input sought from its members, observed both that personal workplace grievances can reveal patterns of conduct "that warrant consideration through the PID lens" and that victimisation can present as a personal workplace grievance. In some circumstances, conduct relating only to the employment of a particular individual may be so serious that it is injurious to the public interest more broadly or may reflect a broader systemic issue. The approach taken at the federal level makes allowances in circumstances such as these.

The HRLC and TIA joint submission agreed that disclosures of information exclusively relating to matters that do not have implications beyond the discloser themselves should be expressly excluded. However, it drew attention to research suggesting almost half of all cases involving public interest disclosures also involve an aspect of personal workplace grievance. While it may not be in the public interest to specially protect disclosures exclusively concerned with personal workplace grievances,[93] it may well be where disclosures relate to a mixture of wrongdoing or serious incompetence in public administration and personal workplace grievance.

The definition of public administration information in South Australia's whistleblower laws should exclude conduct solely related to personal workplace grievances except where such conduct may be particularly serious or may amount to victimisation.

93 A variety of avenues exist for such matters – for example, a workers compensation claim for work-related injury or illness, an application for a stop bullying order under the *Fair Work Act 2009* (Cth), or a complaint alleging discrimination or victimisation under the *Equal Opportunity Act 1984* (SA) ('*EO Act*').

Potential issues of substantial risks to the environment or to the health or safety of the public?

The Whistleblower Project's discussion paper raised whether the SA PID Act should continue to govern disclosures of environmental and health information. Most of the submissions received did not address the issue – of the few submissions that did, following varying levels of analysis, most considered that it should. While not the focus of this report, some observations can be made about disclosures of this kind.

While disclosures of environmental and health information may be made to any of the relevant authorities in s 5(5) of the SA PID Act, specific provision is made for disclosures relating to risks to the environment to be received by the Environment Protection Authority (**EPA**).[94] Chief Executive of the EPA, Dr Jon Gorvett, observed in his submission to the Whistleblower Project that the EPA receives only a small number of public interest disclosures – around one per year.[95] All relevant authorities must provide the OPI with information relating to any public interest disclosure they receive[96] – the OPI has confirmed that in the 2024-2025 year, only one of the 100 public interest disclosure notifications it received related to environmental and health information.

Conduct posing a substantial risk to the environment or to public health or safety can arise in a public sector context or a private sector context. As things stand, a disclosure about pollution or environmental harm resulting from the activities of a mining company, for example, may engage the SA PID Act. Equally, a disclosure about pollution or environmental harm resulting from government activities associated with an infrastructure project may be protected if other requirements are met. To build on public health or safety examples given in the Lander Review, a disclosure about the use of schedules likely to cause fatigue by a trucking company may be protected, and a disclosure about persistent failure to take anti-infection precautions by a nurse or doctor in a public hospital may be protected.[97] Dr Gorvett commented that while this broad approach facilitates a wide range of disclosures, "it may also introduce additional complexity – particularly for private sector employees who may already be subject to internal whistleblower policies or other employment-related disclosure mechanisms."

The SA PID Act also takes a broad approach to who should be able to make a disclosure of environmental and health information. As discussed in the first section of this chapter, there is good reason to continue to limit the applicability of the special protections of the SA PID Act to disclosers of public administration information who, by virtue of their position, are likely to have valuable information but are also particularly vulnerable to retaliation. The justification for specially protecting *any person* who discloses environmental and health information is, presumably, the seriousness and urgency of matters relating to substantial risks to the environment or to public health and safety, and the attendant need to encourage and facilitate prompt disclosure.

The HRLC and TIA joint submission, while generally supportive of the SA PID Act continuing to govern disclosures of environmental and health information, commented that "best practice whistleblowing legislation is confined to workplace, employment, and contractor relationships." Laws – whether private sector whistleblower laws, public sector whistleblower laws or other statutes entirely – should at least provide special protections for private and public sector workers who report environmental and health information relating to the companies and agencies that employ them.

94 *SA PID Act* (n 8) s 5(5)(e).
95 Dr Gorvett observed that members of the public sometimes use the terminology of public interest disclosure to describe reports that do not qualify for protection under the *SA PID Act*.
96 *SA PID Act* (n 8) ss 7(1)(c)-(3)(b); *Public Interest Disclosure Guidelines (2022)* (SA) ('*SA PID Guidelines*') Guidelines 1 and 2.
97 *Lander Review* (n 3) 94.

It is beyond the scope of the Whistleblower Project to comprehensively assess what alternative channels exist for members of the general public, private sector workers or public sector workers to report information that raises a potential issue of a substantial risk to the environment or to public health or safety, or the adequacy of legislative protections engaged where reports are made via those channels. The HRLC and TIA joint submission suggests that gaps do exist which justify the SA PID Act continuing to govern disclosures of this kind, notwithstanding this may not reflect best practice and may involve some duplication. Provision is made for disclosures relating to the environment and public health issues to be protected in some other Australian jurisdictions as is apparent from Appendix C.

This report comes more than a decade after the last detailed examination of South Australia's whistleblower protection regime. It grapples with a wide range of significant issues identified by those who interact with the scheme. Any future review of South Australia's whistleblower protection regime conducted in accordance with oversight recommendations made in Chapter 5 is likely to have less to contend with. It may provide an opportunity to map existing alternative channels and consider how they might be enhanced to such an extent that it is no longer necessary for the SA PID Act to govern disclosures of environmental and health information.

Additional or new information?

In South Australia, a disclosure may not qualify for protection under the SA PID Act if it relates to information that has been previously disclosed to the same entity.

King v SA Psychological Board[98] was a case involving an appeal from a decision to order costs on the basis that a victimisation claim made under the previous SA WP Act had been frivolous or vexatious. To determine the appeal, it was necessary to consider the merits of the claim. A complaint was said to have been made in 1989 to the SA Psychological Board about the conduct of a certain psychologist. Following the commencement of the SA WP Act, the complaint was said to have then been re-submitted as a purported public interest disclosure to the Board in 1995. It was conceded that the purported public interest disclosure made in 1995 was "a repeat" of the initial complaint made in 1989. The premise of the victimisation claim was that the Board failed to properly investigate the disclosure made in 1995.

Justice Bleby considered that in order to have established that an act of victimisation had occurred, it would have been necessary to establish that: a disclosure was made; the disclosure was of public interest information as defined; the disclosure was appropriate; the appellant (or some other person) suffered detriment; the detriment was caused by the Board; and the detriment was caused on the ground (or substantially on the ground) that the appellant made the disclosure. In dismissing the appeal, Justice Bleby construed the first of these elements to require an "act of disclosing or opening something up to view or revealing it"; information must not have been previously revealed to the person to whom it is said to have been disclosed.[99] It was determined that, as the information had already been provided to the Board in 1989, nothing was disclosed in 1995.

While the terms of some of the relevant provisions in the SA WP Act differ from the terms of the equivalent provisions in the current SA PID Act, both use the terminology of disclosure. While the proposition that protected disclosures must contain additional or new information arises from a brief judgment handed down close to three decades ago, it has been applied much more recently. In *Gluck v Central Adelaide Local Health Network* (**Gluck v CALHN**),[100] the earlier decision was cited

98 [1998] SASC 6621.
99 Ibid 5.
100 [2025] SACAT 106 ('*Gluck v CALHN*').

with approval, and it was held that the following[101] needed to be considered in order to determine whether a disclosure of public interest information, within the meaning of the SA PID Act, had been made:

a. What matters capable of comprising public interest information were conveyed?
b. Did those matters come within the definition of public interest information?
c. **Had those matters been previously conveyed?**
d. Was the disclosure appropriate – in particular:
    a. Did the maker of the disclosure hold the requisite belief?
    b. Was the disclosure made to a relevant authority?

The HRLC submitted to the Whistleblower Project that it is not uncommon for its clients to make further disclosures containing information that is not necessarily new for the purpose of supporting a previously made disclosure. Frequently, the HRLC actually assists its clients to better articulate previously made disclosures with a view to shoring up legislative protections. The HRLC contended that where whistleblowers are unable to clarify initial disclosures they may not be protected and recipients may be hampered in their ability to investigate. The HRLC Whistleblower Project provides legal assistance in relation to matters across all Australian jurisdictions – it is not aware of the existence of a requirement that a disclosure contain new information anywhere else.

It may be appropriate to specify that subsequent disclosures need not contain additional or new information to initial disclosures in order to qualify for the protections of South Australia's whistleblower laws.

101 Of course, where the species of public interest information under consideration is public administration information, the disclosure must also have been made by a public officer.

Recommendation	5

That the next review of the operation of South Australia's whistleblower laws revisit the appropriateness of the scope of conduct about which protected disclosures may be made.

Recommendation	6

Where the reporting of reasonable suspicions of conduct falling short of disclosable conduct is encouraged or mandated, that public sector agencies and councils ensure internal policies and procedures prescribe:

i. adequate arrangements for receipt and handling of reports of this kind
ii. proportionate protections for those who make them.

Recommendation	7

That consideration be given to inserting into the PCD Act provisions providing an appropriate degree of protection to those who report information unlikely to qualify for special protection under South Australia's whistleblower laws.

Recommendation	8

That the definition of public administration information expressly include a potential issue of victimisation under the SA PID Act, or under another statute such as the ICAC Act or the Ombudsman Act, to improve clarity and accessibility.

Recommendation	9

That the definition of public administration information in South Australia's whistleblower laws exclude conduct solely related to personal workplace grievances except where such conduct may be sufficiently serious to have significant implications beyond the individual or where the conduct may amount to victimisation.

Recommendation	10

That the next review of the operation of South Australia's whistleblower laws consider how existing alternative channels for disclosures of environmental and health information might be enhanced to such an extent that it is no longer necessary for the SA PID Act to govern disclosures of this kind.

Recommendation	11
That South Australia's whistleblower laws specify that subsequent disclosures need not contain additional or new information to initial disclosures in order to qualify for protection.	

What state of mind should disclosers have?

At present in South Australia, a public officer must **"reasonably suspect"**[102] that disclosed information raises a potential issue of corruption, misconduct or maladministration in public administration to qualify for legislative protection.

Should belief replace suspicion?

Suspicion is something less than knowledge or even belief.[103] While state of mind requirements in whistleblower laws in most Australian jurisdictions are couched in terms of belief,[104] adopting that language in the SA PID Act has the potential to raise the bar to a height that may be beyond the reach of some disclosers or that some prospective disclosers may perceive is beyond their reach. It would be a step in the wrong direction given a core aim of our whistleblower laws is to encourage and facilitate reports.

Should genuine suspicion be enough?

The current test mixes subjective and objective elements – a discloser must genuinely hold a suspicion (subjective) and the suspicion must be reasonably held (objective). A recent example of the practical operation of the current test can be found in *Gluck v CALHN*.[105] That case involved a finding that it was not objectively reasonable for the applicant in a victimisation claim made under South Australian whistleblower laws to have held a suspicion in light of information available at the time.[106]

Two submissions to the Whistleblower Project advocated for the current test to be amended to remove the requirement that a suspicion held by a discloser be objectively reasonable. One of those submissions warned that a requirement to show objective reasonableness could lead a discloser to engage in investigative activities that are unlikely to be protected.[107] An exclusively subjective test might be more consistent with the purpose of South Australia's whistleblower laws as the requirement of objective reasonableness could have a chilling effect on some prospective disclosers. There is some precedent for such an approach – subjective belief that a public officer or public body has engaged in certain conduct is sufficient in Tasmania.[108] The SA PID Act already guards against deliberately false or misleading disclosures by imposing criminal penalties[109] and stipulating that legislative protections do not extend to such disclosures.[110] In any event, in most cases, disclosures made in the knowledge that they are false or misleading would not be based on genuinely held suspicions.

102 *SA PID Act* (n 8) s 5(4).
103 *George v Rockett* (1990) 170 CLR 104 at 115 ('*George v Rockett*').
104 *Public Interest Disclosure Act 2013* (Cth) s 26(1) ('*Cth PID Act*'); *NSW PID Act* (n 4) s 26(1); *Public Interest Disclosures Act 2012* (Vic) s 9(1)(b) ('*Vic PID Act*'); *Qld PID Act* (n 38) s 13(3)(a); *Public Interest Disclosure Act 2003* (WA) s 5(2) ('*WA PID Act*'); *Public Interest Disclosures Act 2002* (Tas) s 6 ('*Tas PID Act*').
105 *Gluck v CALHN* (n 100).
106 Ibid [156] – [159].
107 See the discussion in the next chapter about whether the scope of the immunity should be broadened to capture preparatory acts.
108 *Tas PID Act* (n 104) s 6. In addition, legislation in the Northern Territory and the Australian Capital Territory does not appear to contain any state of mind requirement at all.
109 *SA PID Act* (n 8) s 10(1).
110 Ibid s 10(2).

However, the immunity available to makers of qualifying disclosures of public administration information under the SA PID Act is broad. It may be undesirable for disclosures made on the basis of genuinely held but objectively unreasonable suspicions to attract legislative protection. A policy shift along these lines could conceivably result in disclosers being at liberty to cast aspersions on others they may be personally convinced are true, but which lack any reasonable foundation, with impunity. While it does appear that a narrow view is being taken as to what amounts to a reasonable suspicion, it is not recommended that the objective element of the existing test be removed at this time. South Australia's status quo is consistent with the majority of Australian jurisdictions.

Should it also be sufficient if information tends to show conduct?

Suspicion is something more than speculation.[111] In a different legal context, it has been observed that a reason to suspect that a certain state of affairs exists is something "more than a reason to consider or look into the possibility of its existence."[112] But what of the discloser who feels compelled to report but has not reached a state of suspicion? They may have observed something that raises the possibility of corruption, misconduct or maladministration in public administration but believe that there could be innocent explanations. They may consider that it is not possible to form a suspicion without conducting further enquiries it may be unwise for them to conduct.[113] They may have a partial picture but consider that their observations could ground a suspicion if combined with other evidence potentially available to others. Should they not be protected if they choose to report?

In addition, some ambiguity arises from the terms of the current provision as to whether what must be reasonably suspected is that the information that is the subject of the disclosure could potentially amount to corruption, misconduct or maladministration in public administration as a matter of law, or that the information is true, or both. A recent case seems to have proceeded on the basis that it is both.[114] If this is correct, it may be problematic in some contexts. For example, an employee may raise concerns with a supervisor about certain conduct without turning their mind at all to whether the conduct might be captured by the legal definition of corruption – should protections not also extend to them?

The information reported in the above examples is no less valuable than that reported by a discloser who has formed a suspicion. The risk of retaliation is no less great. While public officers are only legally obligated to report reasonable suspicions of potential corruption in public administration and expected to report reasonable suspicions of potential misconduct and maladministration in public administration,[115] reports based on less can be – and, in practice, are – received. Of the submissions to the Whistleblower Project that addressed what state of mind a discloser should be required to have in order for their disclosure to be protected, most favoured softening the current test.[116] Some progress towards encouraging and facilitating disclosures of the nature discussed in this section could be made by introducing an alternative exclusively objective test that does not direct attention to the discloser's state of mind. At the federal level,[117] and in some other Australian jurisdictions, it is sufficient if either information tends to show, or a discloser believes on reasonable grounds that information tends to show, conduct of the kind specified in the legislation. There is good reason to adopt a similar approach here.

111 *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266 at 303 cited in *George v Rockett* (n 103) at 115-116.
112 Ibid.
113 See the discussion in the next chapter about whether the scope of the immunity should be broadened.
114 *Gluck v CALHN* (n 100).
115 *OPI Directions and Guidelines* (n 87); *Ombudsman Directions and Guidelines* (n 87).
116 A few considered the current test was adequate and a few did not express a view about whether the current test should be altered but provided commentary.
117 *Cth PID Act* (n 104) s 26(1).

Should South Australia introduce an aid to proof?

South Australia should consider introducing a presumption akin to that in the NSW PID Act to aid proof that a suspicion was genuinely held. In NSW, disclosers must "honestly, and on reasonable grounds, believe" a disclosure shows or tends to show serious wrongdoing.[118] For the purpose of deciding whether or not that requirement has been satisfied, an express or implied indication by a discloser as to what they believe is, in the absence of evidence to the contrary, evidence that the discloser holds a belief honestly.[119] Several submissions to the Whistleblower Project were supportive of – and none opposed – introducing such a presumption here. To do so could provide some assistance to those seeking to establish that a disclosure qualifies for protection and some reassurance to prospective disclosers.

Should the tests for both types of public interest information be consolidated?

As noted elsewhere, the SA PID Act governs both disclosures of public administration information and disclosures of environmental and health information. A separate and distinct state of mind test exists for the latter – that the person believes on reasonable grounds that the information is true or the person is not in a position to form such a belief but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.[120] In many ways, the second limb of this test resembles the new alternative test discussed above.

Previously, the SA WP Act contained a single test for disclosures of both species of public interest information identical to that currently applicable to disclosures of environmental and health information. The Lander Review recommended a change to the language of reasonable suspicion to be consistent with reporting directions and guidelines.[121] The result was the creation of two different tests. It is unclear – but also beyond the scope of this report to consider in detail – why the test applicable to public administration information could not also apply to environmental and health information. Consolidating the tests would certainly enhance clarity and accessibility by simplifying the provisions.[122]

Irrelevant considerations: motivation and refutation

Whether or not a disclosure of public administration information attracts the protections of the SA PID Act is not currently contingent upon the motivation of the discloser nor whether allegations are ultimately substantiated. This remains appropriate.

Whistleblowers may have complex and multifaceted reasons for reporting. It is in the public interest to protect those who speak up about matters of public importance even where they may be motivated partially or predominantly by a personal agenda, provided the information is neither false nor misleading.[123] Such an approach directs attention to "the message rather than the messenger."[124]

118 *NSW PID Act* (n 4) s 26(1).
119 Ibid s 26(5).
120 *SA PID Act* (n 8) s 5(3).
121 *Lander Review* (n 3) 147-149. The recommendation to introduce a new alternative exclusively objective test does not cut across this. The concern of the Lander Review was that the reasonable suspicion threshold in the reporting directions and guidelines might be reached prior to the belief on reasonable grounds threshold in the *SA WP Act* being met, with the result that a person might be obligated or expected to report at a time when they might not be protected. A tends to show threshold, unlike a belief on reasonable grounds threshold, is lower than a reasonable suspicion threshold – it could not have the effect the Lander Review was concerned to avoid. In addition, the language of reasonable suspicion would be retained in the existing mixed test to maintain consistency.
122 While Chapter 6 contains a broader examination of issues relating to – and measures which could improve – clarity and accessibility, from time to time in the report it is more convenient to address such issues and measures in the context in which they arise.
123 *TI's best practice guide for legislation* (n 41) 15.
124 Ibid.

If protection could be denied on the basis that information was ultimately shown to be untrue or allegations were ultimately refuted, this would likely deter many prospective disclosers from speaking up. Agencies may have available to them – or be in a position to obtain – additional information that sheds a different light on reported information. Disclosers should be protected for speaking up regardless of outcome. In *Gluck v CALHN*,[125] it was observed that under the SA PID Act the reasonableness of a suspicion is not determined by reference to whether or not it was "true" but rather by whether or not it was reasonable to hold "in light of the information that was available to [the discloser]."[126]

125 *Gluck v CALHN* (n 100).
126 Ibid at [156].

Evaluation case study: the importance of assessing state of mind based on information available to disclosers at the time

When a complaint or report is made about a SA Police officer, IIS performs an assessment to determine, among other things, whether it raises a potential issue of corruption, misconduct or maladministration in public administration, whether it raises a breach of discipline, or whether there is good reason to take no further action. If one of those issues is raised, IIS also assesses whether the matter should be the subject of investigation or dealt with by way of management resolution. Management resolution is a mechanism under the PCD Act by which a less formal approach can be taken to resolving a complaint or report, for example by way of remedial education and training.

While the reporter might have suspected the information disclosed raised a potential issue of misconduct in public administration, the assessment process may establish that is not so. For example, IIS may review body-worn video footage or other material on SA Police systems and determine that only a breach of discipline is raised or there is good reason to take no further action.

There is some ambiguity as to whether IIS would treat a matter as a public interest disclosure within the meaning of the SA PID Act in these circumstances. There is a risk within any agency that a person assessing a report may determine whether the report engages the SA PID Act by reference to the information available to them rather than the information available to the discloser. IIS frequently has access to a significant body of information to assist in the assessment making process.

For a matter that proceeds to an investigation, as the investigation evolves, it may cast new light on the reasonableness of the reporter's suspicion. This can create a difficulty. If a reporter reasonably suspects information raises a potential issue of misconduct in public administration at the time of making a disclosure, even if the assessment or investigation finds something less than misconduct proven, that, in itself, should not change the assessment as to whether a report likely engages the SA PID Act. However, the current legislation is silent on this.

It may improve clarity for the words "at the time of making a disclosure" to be inserted into the provision in the SA PID Act stipulating the state of mind requirement as recommended below. Recommendations relating to awareness and training made in Chapter 6 may also assist to ensure all those receiving disclosures are reminded of the applicable test and how it should be applied.

Recommendation	12

That South Australia's whistleblower laws provide that it is sufficient to attract protection if, at the time of making a disclosure, either information disclosed tends to show – or a discloser reasonably suspects that information disclosed tends to show – a potential issue of corruption, misconduct or maladministration in public administration.

Recommendation	13

That consideration be given to introducing into South Australia's whistleblower laws a presumption akin to that in s 26(5) of the NSW PID Act to aid proof that a suspicion was genuinely held.

Recommendation	14

That consideration be given to whether the state of mind provisions in South Australia's whistleblower laws could be simplified by prescribing the same test for disclosures of environmental and health information as is prescribed for disclosures of public administration information.

Recommendation	15

That the words "at the time of making a disclosure" be inserted into the provision of South Australia's whistleblower laws stipulating the state of mind requirement.

Who should be able to receive protected disclosures of public administration information?

At present in South Australia, disclosures of public interest information – whether in the nature of environmental and health information or public administration information – must be made to a **"relevant authority"**[127] to qualify for legislative protection.

Section 5(5) of the SA PID Act provides that a disclosure is made to a relevant authority if it is made to:

a. where the information relates to a public officer—
   i. a person who is, in accordance with any guidelines prepared under section 14, designated as a person who is taken to be responsible for the management or supervision of the public officer or to the relevant responsible officer; or
   ii. a person who is, in fact, responsible for the management or supervision of the public officer or to the relevant responsible officer; or

b. where the information relates to a public sector agency or public sector employee—
   i. the Commissioner for Public Sector Employment; or
   ii. the responsible officer for the relevant public sector agency; or

c. where the information relates to an agency to which the *Ombudsman Act 1972* applies—the Ombudsman; or

d. where the information relates to a location within the area of a particular council established under the *Local Government Act 1999*—a member, officer or employee of that council; or

e. where the information relates to a risk to the environment—the Environment Protection Authority; or

f. where the information relates to an irregular and unauthorised use of public money or substantial mismanagement of public resources—the Auditor-General; or

g. where the information relates to the commission, or suspected commission, of any offence—a member of the police force; or

h. where the information relates to a judicial officer—the Judicial Conduct Commissioner; or

i. where the information relates to a member of Parliament—the Presiding Officer of the House of Parliament to which the member belongs; or

j. where the information relates to a person or a matter of a prescribed class—an authority declared by the regulations to be a relevant authority in relation to such information; or

k. a Minister of the Crown; or

l. OPI; or

m. any other prescribed person or person of a prescribed class.[128]

127 *SA PID Act* (n 8) ss 5(3)-(4).
128 No person or class of persons is prescribed in the *Public Interest Disclosure Regulations 2019* (SA) ('*SA PID Regulations*').

Is there a case for shortening, or lengthening, the list of relevant authorities?

Just under half of submissions to the Whistleblower Project addressed who should be able to receive protected disclosures. Of those, around 67 percent advocated for the above list to be expanded at least in some way. Around 22 percent advocated for the list to be condensed. Around 11 percent advocated for maintenance of the status quo.

Some of those who advocated for an increase in the number of relevant authorities were motivated by a desire to ensure disclosers are not penalised merely because they report to an entity not specified in the SA PID Act. A “no wrong door” approach holds some appeal where, as is the case here, legislation is difficult to navigate and there are barriers to accessing legal advice.[129] Others advocated for the inclusion of specific additional entities likely to be in a position to handle or refer matters, or to provide whistleblowers with support and advice, rather than wholesale expansion.

Those who advocated for a reduction in the number of relevant authorities did so with a view to simplifying the legislation, reducing confusion through greater consistency with reporting directions and guidelines, reducing the burden on agencies to train a broad range of potential recipients of internal reports, mitigating the risk that public interest disclosures may not be identified, and directing disclosers to entities with the expertise to guide them and appropriately handle their disclosures.

Uniformity or coverage?

Both the arguments for narrowing, and the arguments for broadening, the list of relevant authorities have considerable merit; which position should be preferred is a policy decision that may be finely balanced.

> “it would help everyone to reduce the number of agencies in South Australia to which you can make a public interest disclosure”
>
> **– OPI Director Vanessa Burrows speaking at ICAC’s 2026 Whistleblower Project Public Forum**

Ms Burrows, in the OPI’s submission to the Whistleblower Project, identified what she described as a “disconnect” between reporting directions and guidelines and the SA PID Act. The former obligate public officers to report reasonable suspicions of corruption in public administration to the OPI[130] and create an expectation that public officers will report reasonable suspicions of misconduct and maladministration in public administration to the Ombudsman (unless a reporter knows the conduct has already been brought to the attention of the OPI).[131] The latter sets out a laundry list of different agencies to which reports raising corruption, misconduct or maladministration in public administration may be made. Ms Burrows observed that this may confuse disclosers.[132]

129 See the discussion in the following section and in Chapter 2.

130 *OPI Directions and Guidelines* (n 87).

131 *Ombudsman Directions and Guidelines* (n 87).

132 Another submission shared the same view. Of course, even a reduced list of relevant authorities would need to retain some other pathways given that internal reports allow agencies to swiftly take corrective action and given the evidence that disclosers are most likely to report internally initially: Marika Donkin, Rodney Smith and A J Brown, ‘How do officials report? Internal and external whistleblowing’ in A J Brown (ed), *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU E Press, 2008) 83. The *Lander Review* advocated for the OPI to be the primary recipient but acknowledged the need for others: *Lander Review* (n 3) 108-114.

By contrast, several submissions advocated for a "no wrong door" approach, whereby an otherwise qualifying disclosure made to an entity that is not a relevant authority for the purposes of the SA PID Act would still attract legislative protection and recipients would still be obliged to refer such disclosures to the most appropriate individual or agency. NSW Deputy Ombudsman Tom Millett explained at the public forum that this is the approach now taken in NSW following the recent re-write of its whistleblower laws. Protected disclosures may be made to the head of any agency under the NSW PID Act; there is no requirement for a protected disclosure to relate to the sphere of responsibility of the agency.[133] The term "agency" is defined to include an integrity agency. For example, a disclosure is taken to have been made to the head of an agency where it is made in written correspondence sent to the agency's registered address or email address. Protected disclosures may also be made to certain other entities. The HRLC and TIA joint submission strongly endorsed adopting a "no wrong door" approach, as did some other submissions.

"... one of the consistent points of frustration for people that were looking to report wrongdoing is that they went through the wrong door, and as a result of going through the wrong door their disclosure wasn't classed as a public interest disclosure ...we now have a situation where you can make a disclosure to any agency...that agency then has an obligation to make sure that disclosure finds its way to either the right integrity agency or the agency that's the subject of the report"

– NSW Deputy Ombudsman Tom Millett speaking at ICAC's 2026 Whistleblower Project Public Forum

Ms Burrows also observed that the current broad approach may result in individuals who are not aware of their obligations under the SA PID Act receiving what are likely to be qualifying disclosures but failing to identify them as such. As mentioned earlier in this report, the SA PID Act obliges relevant authorities to notify the OPI of the receipt – and outcome – of public interest disclosures.[134] Ms Burrows noted that during the 2024-2025 financial year the OPI received just 100 notifications yet more than 122,000 individuals were employed in the public sector in that period.[135] She considers that it is "highly unlikely that all persons responsible for the management or supervision of public officers are aware of their obligations" under the SA PID Act. The SA Housing Trust's submission also reflected on the "real risk that a person receiving a disclosure may not recognise it as being a public interest disclosure."

Leaving aside the potential for increased and improved training to mitigate this risk, removing entities from the list of relevant authorities may not resolve this issue. Some prospective disclosers will research whistleblower laws while others will not. Only those prospective disclosers who research whistleblower laws could be directed to an entity more likely to be aware of their obligations under the SA PID Act by removing other entities from the list. That cohort of prospective disclosers will, in any event, be aware of the existence of the SA PID Act. They will likely self-identify as disclosers of public interest information. In many cases, this will prompt any recipient who is unaware of their obligations under the SA PID Act to refresh themselves. As such, the effect of narrowing the list might be expected to be largely neutral with respect to the risk of failure to identify reports as public interest disclosures. For those prospective disclosers who do not research whistleblower laws, on the other

133 *NSW PID Act* (n 4) s 27(1).
134 *SA PID Act* (n 8) ss 7(1)(c), (3)(b); *SA PID Guidelines* (n 96) 1 and 2.
135 Office of the Commissioner for Public Sector Employment, *State of the Sector* (Report, 2025) 5.

hand, condensing the list may actually have negative consequences. At present, these disclosers risk recipients being unaware of confidentiality and notification obligations, but removing entities from the list could also put immunity and redress for victimisation beyond the reach of disclosers.

The SA PID Act has multiple functions. It provides guidance to those who may be contemplating making a report, including about how to go about doing so. It also creates rights and duties that are enlivened irrespective of whether those to whom it applies are aware of their existence. While the uniformity[136] point is well made, it may be more important, in this context, to ensure broad coverage for whistleblowers. While this could potentially be achieved by reducing the number of relevant authorities but inserting into the SA PID Act a provision rendering substantial compliance sufficient to attract protections, this could itself create uncertainty.

The current list of relevant authorities provides multiple varied reporting pathways. Combined with the duty imposed on recipients to take action (contemplated to include referring matters elsewhere),[137] this minimises the risk that a reporter will be denied protections, or no action will be taken in relation to their report, simply because they went to the wrong place. Given agencies have expressed legitimate concerns about the breadth even of the current list (as discussed below), it may not be appropriate to adopt the NSW approach. The better approach may be to decline to reduce the number of relevant authorities, and to include specific additional relevant authorities where warranted, while focusing simplification efforts on other parts of the statute.

Expanding the list to include certain entities in a position to support or advise?

Several submissions were supportive of including legal practitioners, medical practitioners and union officials in the list of relevant authorities.

As discussed in greater detail in other chapters, whistleblowing laws can be complex and difficult to navigate; often it will be necessary for prospective disclosers and disclosers to access legal advice. In addition, whistleblowing can be a stressful experience which can sometimes take its toll on the mental health of prospective disclosers and disclosers. It is vital that those contemplating making, and those who have made, disclosures are able to access professional support and advice should they wish to. As things stand, they may be reluctant to engage the services of legal and medical professionals at all, or they may be hampered in their ability to effectively use these services, because they fear that revealing any of the information that is the subject of their disclosure may expose them to liability.

At the federal level, disclosures made to an Australian legal practitioner are protected where they are made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a disclosure.[138] In addition, the exposure draft of the Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025 (Cth) (**exposure draft**) proposes protecting disclosures made to medical practitioners or psychologists. The NSW Public Interest Disclosures Steering Committee recently recommended that consideration be given to protecting disclosures made to legal practitioners in the NSW PID Act.[139] The Wilson Review recommended that disclosures to both legal practitioners and treating

136 The term "uniformity" is preferred to "consistency" in this context because there is no suggestion that the list of relevant authorities in the *SA PID Act* contradicts, or conflicts, with reporting directions and guidelines. Rather, the criticism is that the two are not identical which may cause confusion.

137 *SA PID Act* (n 8) s 7(1)(a). See also ss 7(3), 8(1).

138 *Cth PID Act* (n 104) s 26(1). Certain other conditions must be satisfied including that the recipient holds the appropriate level of security clearance where the information has a national security or other protective security classification, and that the information does not include intelligence information.

139 NSW Ombudsman, *Oversight of the Public Interest Disclosures Act 2022* (Annual Report, 2024-25) Appendix B.

health practitioners in Queensland be protected[140] where certain conditions are satisfied.[141] South Australia should follow suit. However this may be achieved, it should be made clear that the duty to act provisions are not engaged by such disclosures.[142]

The more vexed question is whether disclosures made to union officials should be protected. The PSA observed in its submission to the Whistleblower Project that "[e]mployee associations are well placed to be authorised to receive external disclosures, given the advice and support function already provided to members". The HRLC and TIA joint submission was supportive of broadening the scope of eligible recipients of public interest disclosures to include not only legal and medical professionals but also employee associations. The exposure draft proposes protecting disclosures made to unions or professional associations at the federal level. This reflects a recommendation made a decade ago by the Moss Review.[143] Plainly, it would assist prospective whistleblowers and whistleblowers if they felt able to speak freely with the union officials in a position to support and advise them.[144]

On the other hand, public integrity can be undermined where official information is disseminated. The justification often given for allowing protected disclosures to be made to legal and medical professionals is that they are already subject to strict ethical obligations, including in relation to confidentiality. These separate stringent rules to which legal and medical professionals must adhere act as a safeguard; the likelihood that confidential information will be further disseminated in a way that causes damage to government generally or prejudices investigation of a report is low. The same may not be able to be said for others who may not be bound by similar ethical rules.

The short answer may be that union officials will sometimes be legal practitioners[145] and the support they provide to prospective disclosers and disclosers will sometimes be in the nature of legal advice and assistance. In such circumstances, disclosures made to them would likely be captured and protected. However, further consideration should be given to whether disclosures made to unions or professional associations should be generally protected in the context of future reviews of South Australia's whistleblower protection regime.

Disclosures made for the purpose of receiving guidance falling short of legal advice from any dedicated unit established for the reasons set out in Chapter 3 would likely be protected because any such unit is likely to be housed in an agency already listed as a relevant authority.

140 *Wilson Review* (n 38) 142.

141 The conditions include that the recipient has a relationship of confidentiality with the discloser and the disclosure is made under that relationship, and that the disclosure is made for the purpose of obtaining advice about whistleblower laws or how best to manage health during the whistleblowing process.

142 One method by which this could be achieved could be inserting a provision entitled "Disclosure to legal practitioners, medical practitioners and psychologists" before the existing provision entitled "Disclosure to journalist or member of Parliament." This would keep disclosures made to those in a position to handle or refer reports (relevant authorities) separate from disclosures made to those in a position to assist in other ways (journalists and members of Parliament, or legal and medical practitioners). Section 6 currently provides that a person makes an appropriate disclosure of public interest information for the purposes of the *SA PID Act* (other than section 7, being the provision imposing a duty to act), and so qualifies for legislative protection, where they disclose information to a journalist or member of Parliament in certain circumstances. Any similar provision governing disclosures to legal and medical professionals would also need to make clear that section 7 does not apply. Section 7(4) of the *SA PID Act* may also need to be revised if this method was adopted. Another, likely quicker, method by which this could be achieved could be to prescribe these categories of individuals as relevant authorities: s 5(5)(m). However, the need to consult multiple instruments, and the intermingling of entities in a position to handle or refer and agencies in a position to advise or support, could create additional complexity.

143 *Moss Review* (n 83) 56-57.

144 Union officials may also provide support and advice to individuals who are the subject of allegations, which may necessitate identification and management of conflicts of interest.

145 The term "Australian legal practitioner" is defined in the *Cth PID Act* with reference to the *Evidence Act 1995* (Cth), to mean "an Australian lawyer who holds a practising certificate under a law of a State or Territory specified in the regulations."

Expanding the list to include certain entities in a position to handle or refer?

While generally in favour of reducing the number of entities eligible to receive protected disclosures under the SA PID Act, Ms Burrows did suggest that it may be appropriate to extend eligibility to the Inspector. The role of the Inspector is to review the operations of integrity agencies.[146] The Inspector conducts annual reviews, reviews relating to complaints received, and own motion reviews or reviews at the request of the Attorney-General or the Crime and Public Integrity Policy Committee.[147] Where concerns raising issues within the Inspector's jurisdiction are reported to the Inspector, if the report would otherwise qualify for protection under the SA PID Act then it should not be deprived of that protection merely because the Inspector is not currently listed as a relevant authority. It is recommended that consideration be given to expanding the list of relevant authorities to include the Inspector.

Expanding the list to include an entity well placed to receive disclosures about risks to health and safety?

Although the list of relevant authorities in the SA PID Act does not generally[148] delineate which entities may receive disclosures of public administration information and which entities may receive environmental and health information, regard may be had to the functions and powers of the various relevant authorities in assessing the appropriateness of reporting a particular kind of disclosure to a particular entity.

Dr Gorvett, in the EPA's submission to the Whistleblower Project, raised that "there is no specific authority explicitly identified to receive disclosures concerning health or health and safety matters." The Lander Review similarly observed, in relation to the equivalent list of eligible recipients in the SA WP Act, the absence of any authority (apart from a Minister) that is well positioned to receive disclosures about substantial risks to public health or safety.[149] The Lander Review noted that the *Health and Community Services Complaints Act 2004* (SA) creates a separate specialist complaints regime for reports about the provision of health services to the community, but that this is not the only context in which conduct posing a threat to public health may arise.[150]

Again, it is beyond the scope of the Whistleblower Project to comprehensively assess the extent of any gaps in the coverage of existing schemes for reporting potential risks to public health or safety, or the adequacy of legislative protections engaged where reports are made under those schemes. It would not be appropriate for this report to recommend inclusion of a particular entity targeted to these kinds of disclosures in those circumstances.

In reality, the distinction between disclosures relating to public administration information and disclosures relating to environmental and health information may not always be clear. To use an example mentioned earlier in this report, information about a nurse or doctor in a public hospital who routinely fails to take appropriate anti-infection precautions in dealing with patients may raise a potential issue of misconduct in public administration and may also raise a potential issue of a substantial risk to the health or safety of a significant section of the public. Overlap may arise in other scenarios. In such circumstances, bearing in mind that the SA PID Act does not generally specify which kinds of protected disclosures may be made to which relevant authorities, an assessment could be made that the matter should be reported to the OPI or the Ombudsman given their remit.

146 The Inspector reviews the operations of ICAC, the OPI and Ombudsman SA.
147 *ICAC Act* (n 17) sch 4.
148 In the case of the EPA, it does specify "where the information relates to a risk to the environment": s 5(5)(e).
149 *Lander Review* (n 3) 95.
150 Ibid.

That said, in practice, the OPI reports that it only rarely receives disclosures of environmental and health information. The OPI considers that disclosures of this nature should be made to an agency equipped with the knowledge and skill to assess risk to the environment or to public health and safety.

Is there a case for adjusting the scope of certain relevant authorities?

Council members, officers or employees?

Some submissions raised concerns about the breadth of certain existing categories of relevant authorities. A submission from the Local Government Association (**LGA**) highlighted the wide range of persons to whom disclosures relating to matters within a council **area** may be made. Under the SA PID Act, such disclosures may be made to any "member, officer or employee of that council."[151]

To the extent that s 5(5)(d) is intended to provide a pathway for insiders within councils to disclose public administration information, the LGA observed that this category of relevant authority "goes considerably beyond the approach...in public sector agencies, where disclosures may...be made to designated responsible officers and managers or supervisors." Members, officers and employees of local government bodies are public officers.[152] This means that, pursuant to s 5(5)(a) of the SA PID Act, protected disclosures of public administration information relating to them may be made to their managers, supervisors or responsible officers. The current legislation provides only for public officers to make protected disclosures of public administration information. Public officers would be well positioned to raise any concerns with relevant responsible officers, managers and supervisors. It is unclear why additional provision would need to be made for them to make protected disclosures to any council members, officers and employees.

Perhaps this category of relevant authority is actually intended to provide an additional pathway for members of the public to make disclosures of environmental and health information. The reference to locations within council areas supports this interpretation. However, the phrase "where the information relates to a risk to the environment" used to introduce the EPA in s 5(5)(e) does not appear in s 5(5)(d). The position is uncertain. Even if s 5(5)(d) is intended to provide an additional reporting channel for members of the public to make disclosures of environmental and health information, the scope of the provision may be problematic. Council employees perform a wide variety of functions. It may not be practical to, for example, expect an individual performing landscaping work who is approached by a member of the public to identify and appropriately deal with any public interest disclosure made by that member of the public. The LGA noted councils have reported concerns about the breadth of this provision since the commencement of the SA PID Act.

Another submission to the Whistleblower Project advocated for s 5(5)(d) to refer to a specific role within councils and for the SA PID Act to require that individuals performing that role be identifiable and contactable via a webpage.

It may be appropriate to replace s 5(5)(d) with "where the information relates to a risk to the environment in the area of a particular council established under the *Local Government Act 1999* — the relevant responsible officer." To do so may provide clarity, reduce the burden on councils, and reduce the risk that public interest disclosures may not be identified or may not be properly handled. Principal officers are already obliged to prepare a procedure for making and dealing with public interest disclosures and make that procedure publicly available.[153] They are also already obliged to make the names and contact details of their responsible officers available to their officers and

151 *SA PID Act* (n 8) s 5(5)(d).
152 Ibid s 4; *ICAC Act* (n 17) s 4(1), sch 1.
153 Ibid s 12(4)-(5).

employees.[154] It may be necessary to amend that obligation to ensure the broader community has access to responsible officers within councils.

Managers, supervisors or responsible officers?

A submission from SA Housing Trust highlighted that "a person who is, in fact, responsible for the management or supervision of the public officer or to the relevant responsible officer"[155] may capture junior staff lacking the knowledge and skills to be able to identify and appropriately deal with public interest disclosures. While measures are in place to support such staff members, SA Housing Trust reflected that the breadth of persons to whom disclosures may be made places a significant burden on agencies to implement training across multiple levels of management and carries some risk.

Managers and supervisors provide an important channel for the making of public interest disclosures. The HRLC and TIA joint submission reports that 40 per cent of the HRLC's clients in the 2023-2024 financial year reported to their own manager prior to seeking legal assistance, 60 per cent reported to other internal management, and 27 per cent reported to both their own manager and other internal management. SA Housing Trust's breadth, burden and risk points are well made. However, the solution is likely to be increased education and training rather than narrowing the scope of this category of relevant authority. Several submissions to the Whistleblower Project advocated for the training ICAC offers to responsible officers to also be offered to managers and supervisors. Chapter 6 addresses what more can be done to raise awareness of South Australia's whistleblower regime both among those who may make, and those who may receive or handle, reports.

A separate issue arises for consideration in relation to this category of relevant authority. Some ambiguity arises from the terms of s 5(5)(a). Are disclosures made to managers and supervisors of public officers reporting suspicions, or disclosures made to managers and supervisors of public officers the subject of reports, that are protected? The introductory phrase "where the information relates to a public officer" and the subsequent use of the definite article before "public officer" in s 5(a)(i) and s 5(a)(ii) suggests the latter. It seems a curious result for disclosers to be protected where they approach the manager or supervisor of the person they suspect to have engaged in wrongdoing or serious incompetence but not where they approach their own manager or supervisor.

Disclosers are likely to feel more comfortable reporting their suspicions to a person with whom they have established a relationship. They may perceive that the manager or supervisor of the person the subject of their report is – or could be – inculpated in the conduct or loyal to that person. While there may be occasions on which it is necessary for disclosures made to managers or supervisors of those the subject of reports to be protected,[156] it seems more pressing for disclosures made to managers or supervisors of reporters to be protected. In NSW, provision is made for a disclosure to be made to a manager, but the legislation specifies that this means "a manager of the person making the disclosure."[157]

Further, it is unclear what s 5(5)(a)(i) contributes apart from convolution. The PID Guidelines do not, in fact, designate that any person is taken to be responsible for the management or supervision of any public officer. It is difficult to envisage circumstances in which it would be helpful for them to do so. It may be appropriate to replace the existing relevant authority relating to managers and supervisors with a simplified provision that captures both managers and supervisors of public officers the

154 Ibid s 12(3).
155 *SA PID Act* (n 8) s 5(5)(a)(ii).
156 For example, as raised by one submission, a reporter may consider the manager or supervisor of the individual the subject of the report to be better placed to investigate and take action.
157 *NSW PID Act* (n 4) s 27(1)(c).

subject of reports and managers and supervisors of public officers making reports. While concerns have been raised about the breadth even of the current scope of this category of relevant authority, broadening s 5(5)(a) in this way would not necessitate training any additional employees or, for that matter, providing any different training to the same employees. As things stand, managers and supervisors need to be able to identify public interest disclosures **about** public officers they manage and supervise. Should s 5(5)(a) be broadened in the way recommended, managers and supervisors would also need to be able to identify public interest disclosures **from** public officers they manage and supervise. Each involves the same cohort using the same skills.

How should relevant authorities facilitate receipt of disclosures?

The SA PID Act does not prescribe the manner in which protected disclosures are to be received by relevant authorities; it only provides that to qualify for protection disclosures must be made to a relevant authority.

International guidance suggests that reporting channels should be diverse, highly visible and easily accessible.[158] Transparency International's 2022 *Internal whistleblowing systems: Best practice principles for public and private organisations* (**TI's best practice guide for internal systems**) specifically recognises the importance of considering factors such as language barriers, illiteracy, disabilities and internet access when establishing channels for reporting.[159] It also suggests that organisations should consider diversity and inclusion when designating the people who will be responsible for handling reports.[160]

The below case studies raise issues relevant both to receipt of disclosures and the accessibility of South Australia's whistleblower protection regime. While the latter is covered more comprehensively in Chapter 6, it is convenient to position the case studies here because of the implications of s 5(5) of the SA PID Act for the use of tools to facilitate receipt of disclosures.

158 *G20 Principles* (n 21) principle 4.
159 Transparency International, *Internal whistleblowing systems: Best practice principles for public and private organisations* (Report, September 2022) 25 ('*TI best practice guide for internal systems*').
160 Ibid 20.

Evaluation case study: harnessing technology to increase accessibility

DHS delivers a wide range of programs and services to support and improve the wellbeing and safety of South Australians. This includes providing direct care to vulnerable members of the community including people living with disability as well as children and young people; conducting employment-related screening; delivering concessions and rebates; and delivering services in adult safeguarding, youth justice, family safety and support, and homelessness.

DHS is comprised of nine overarching divisions and 34 directorates. As of early 2026, its workforce was comprised of approximately 3,290 employees, 110 contractors, 16 students and 151 volunteers. Its workforce is diverse. For example, the Office of the Commissioner for Public Sector Employment's (OCPSE) Workforce Information Report Data Dashboard indicates that about 40 per cent of DHS employees are from a culturally and linguistically diverse (CALD) background. By comparison, CALD employees make up approximately 17 per cent of the public sector workforce overall. DHS' workforce is also physically dispersed across numerous sites. A significant proportion of DHS staff, including those working in disability services, do not work in a typical corporate environment and are not centrally located; many work in houses across metropolitan Adelaide and regional South Australia.

DHS' Public Interest Disclosure procedure sets out a range of avenues for the making of disclosures of public interest information relating to DHS. It provides that a discloser may make an external disclosure to a relevant authority (for example, the OPI or OCPSE), or an internal disclosure to a responsible officer or relevant manager. Internal disclosures can also be made by emailing a "PID inbox" dedicated to receiving public interest disclosures, or by contacting a general telephone number or postal address. The procedure states that any disclosures made via post are to be addressed to the "Public Interest Disclosure Responsible Officer" and marked "OFFICIAL: Sensitive".

For a department with a diverse and dispersed workforce, providing multiple complaint avenues ensures that those with varied communication abilities and preferences have the opportunity to raise concerns in a manner suited to their individual needs. A dedicated inbox, phone number and mailing address also provides a central point of contact for internal reports and simplifies the making of disclosures by removing the need for a prospective discloser to identify, and locate the details of, a responsible officer. Having multiple reporting channels increases the accessibility of the scheme and may be a necessity for agencies of a similar demographic to DHS.

Evaluation case study: a word of caution on the use of technology

Guideline 4 of the SA PID Guidelines contemplates that disclosures may be securely received using URL links, email addresses, telephone numbers and postal addresses, but does not specifically refer to use of shared or generic inboxes, numbers or addresses. The use of such reporting channels may carry some risk for agencies and disclosers. For instance, where measures are not put in place to restrict access to shared inboxes, there is a risk that confidentiality will be lost. Where adequate measures are not put in place to ensure that a disclosure is received by a relevant authority, there is a risk that a disclosure, which might otherwise have attracted protection, will not meet the definition of a public interest disclosure under the SA PID Act. Where it is unclear who will be receiving the disclosure, prospective whistleblowers may be dissuaded from reporting at all by concerns about confidentiality or loss of protection. The evaluations provide valuable insights into how shared inboxes, hotlines and mailboxes operate in practice and what more can be done to address these potential pitfalls.

SA Police has established a system for managing internal reports. SA Police officers are required to report conduct by another officer they reasonably suspect constitutes corruption, misconduct or maladministration in public administration by submitting a "PD185" form through "Blue Teams", SA Police's internal electronic reporting system. Alternatively, they can report the conduct externally to the OPI, although the overwhelming majority of SA Police officers submit reports internally. Internal reports are considered each business day by an allocations committee convened and chaired by IIS. During this process, the appropriate course of action is considered, including further investigation, management resolution, or no further action. However, PD185 forms are received by IIS as a section – not necessarily by the Officer in Charge of IIS. Although the Officer in Charge of IIS is a designated responsible officer, other members of IIS are not. SA Police has three responsible officers. They are the Officers in Charge of IIS, ACS and EPSB. For this reason, an otherwise qualifying report made via a PD185 form may not attract the protections in the SA PID Act.

The same issue arises in relation to a dedicated email inbox, referred to in SA Police's publicly available Public Interest Disclosure procedure, which provides an alternative internal reporting pathway for SA Police officers and public sector employees who work for SA Police. This email inbox is monitored by employees within EPSB (none of whom are responsible officers) who decide whether the matter needs to be forwarded to IIS for assessment.

It is likely that other public sector agencies have in place similar tools to facilitate receipt of disclosures that could inadvertently result in disclosers who might otherwise be eligible for protection being denied that protection. Indeed, during the course of the Whistleblower Project, ICAC identified two public authorities that engage a third party private company to receive complaints about the agency. Both agencies state that the purpose of this is to allow people to feel comfortable making anonymous reports. In both instances, the company receives reports and liaises with reporters, but information is fed back to the agency for assessment and investigation. One agency explicitly advises users that making a report to the third party will not engage the SA PID Act; the other expressly advises users to use the third party to make public interest disclosures. In both instances, the information will inevitably reach designated responsible officers, but the information is not directly disclosed to them.

Noting that s 5(5)(m) contemplates that a person or class of person may be prescribed as a relevant authority, and noting that amending regulations is likely to be much quicker than amending legislation, consideration should be given to prescribing as a relevant authority individuals who monitor designated repositories for public interest disclosures. In the interim, public sector agencies should review arrangements in place to ensure that they do not inadvertently penalise disclosers.

The evaluations of SA Police and DHS also highlighted that there may be room for improvement for agencies in terms of communicating the arrangements in place to staff. DHS' "PID inbox" is only accessible by two staff members, both of whom are designated responsible officers. The phone number listed in the PID procedure is DHS' general enquiries line, which is answered by DHS' central switchboard or general enquiries team, who triage calls and refer callers to the relevant business area or authorised officer. Any mail sent to the nominated postal address is received by DHS via central mail services. Where correspondence is clearly marked as confidential or relates to a public interest disclosure, it is not opened and forwarded directly to a responsible officer.

Guideline 4 requires agencies to specify in their PID procedures the precise way in which disclosures can be received. It also requires agencies to specify the steps that will be taken to ensure public interest information will be securely received and stored. While DHS has confirmed who has access to the PID Inbox, it is unclear, on the face of DHS' PID procedure, who has access to that shared inbox or who may receive disclosures made via phone or post. It became apparent during interviews conducted as part of the evaluation that confusion exists among staff as to who has access to, and monitors, the PID inbox.

Agencies making use of shared inboxes, hotlines or postal addresses to receive public interest disclosures should review arrangements in place to ensure compliance with the current legislative framework. They should also review procedures to ensure arrangements are adequately communicated to those who may wish to make a disclosure.

Related to this, the SA Housing Trust's submission to the Whistleblower Project observed that employees who raise issues with human resources staff members, for example, may not receive the protections of the SA PID Act, unless the human resources staff member is also a designated responsible officer or happens to be responsible for the management or supervision of the public officer the subject of the report. The SA PID Act places no limit on the number of responsible officers the principal officer of a public sector agency may designate. Public sector agencies should consider designating any staff member in a role that renders them likely to receive disclosures of public administration information, who would not otherwise be captured by the definition of a relevant authority in South Australia's whistleblower laws, as a responsible officer. This may have implications for resourcing training as discussed in Chapter 6.

Evaluation case study: improving access to responsible officers

DHS has six responsible officers designated under s 12 of the SA PID Act. Each of these responsible officers holds a management or executive role. The contact details for each of the responsible officers are located on the DHS Intranet. Responsible officers in DHS are currently position-based, where selection is based on the position held by the employee, as opposed to employees volunteering to be a responsible officer. It is understood that the particular positions selected are those that are most likely to receive and manage complaints and reports as part of their role, including those working in human resources. On occasion, these individuals may already be relevant authorities irrespective of their designation as responsible officers – managers and supervisors of public officers to whom reports relate are included in the list in s 5(5) of the SA PID Act.

Those interviewed generally agreed that it would be beneficial to have some responsible officers in less senior positions to increase accessibility and assuage any fears or anxieties associated with reporting. One staff member expressed that the role of responsible officer should at least be undertaken by a senior staff member, due to the seriousness of the role, as designating a more junior staff member may put unnecessary pressure on them or make them feel compromised.

All of DHS' responsible officers are centrally located in the same building in Adelaide's central business district. Given DHS' workforce is physically dispersed across South Australia, consideration should be given to having additional responsible officers based in sites or workplaces other than the main corporate office. These observations are capable of broader application to other public sector agencies.

Recommendation	16

That disclosures of public administration information made to legal practitioners, medical practitioners and psychologists be protected by South Australia's whistleblower laws where made in the context of a relationship of confidentiality and for the purpose of obtaining advice or assistance in connection with a disclosure. That it be made clear that the duty to act provisions are not engaged by such disclosures. That further consideration be given to whether disclosures made to unions or professional associations should be similarly protected in the next review of the operation of South Australia's whistleblower laws.

Recommendation	17

That consideration be given to expanding the list of relevant authorities in South Australia's whistleblower laws to include the Inspector where information relates to the Inspector's jurisdiction.

Recommendation	18

That the relevant authority in s 5(5)(d) of the current SA PID Act relating to council members, officers or employees be replaced with "where the information relates to a risk to the environment in the area of a particular council established under the *Local Government Act 1999* — the relevant responsible officer." That South Australia's whistleblower laws oblige principal officers of councils to make the names and contact details of their responsible officers publicly available.

Recommendation	19

That the relevant authority in s 5(5)(a) of the current SA PID Act relating to managers and supervisors be replaced with a simplified provision that captures both managers and supervisors of public officers the subject of reports and managers and supervisors of public officers making reports.

Recommendation	20

That public sector agencies and councils:

i. review whether current avenues for making internal public interest disclosures are sufficiently accessible having regard to the demographics of the organisation including its size, physical disbursement and education level
ii. where appropriate, expand the avenues by which public interest disclosures may be made internally to increase accessibility.

Recommendation	21

That consideration be given to prescribing as a relevant authority, pursuant to s 5(5)(m) of the SA PID Act, individuals who monitor designated repositories for public interest disclosures.

Recommendation	22

That public sector agencies and councils making use of shared inboxes, hotlines or postal addresses to receive disclosures of public administration information:

i. review their public interest disclosure procedure to ensure that it is compliant with s 12 of the SA PID Act and Guideline 4 of the SA PID Guidelines
ii. review arrangements in place relating to those reporting channels to ensure that confidentiality is maintained and disclosures are received by appropriate personnel having regard to the requirements of the SA PID Act
iii. review their public interest disclosure procedure to ensure that it adequately communicates arrangements in place relating to those reporting channels to staff.

Recommendation	23

That public sector agencies and councils consider designating any staff member in a role that renders them likely to receive disclosures of public administration information, who may not otherwise be captured by the definition of a relevant authority in South Australia's whistleblower laws, as a responsible officer.

Recommendation	24

That public sector agencies and councils:

i. review the seniority and location of their responsible officers
ii. consider whether additional responsible officers should be designated under s 12 of the SA PID Act to improve accessibility across the agency or council.

When should disclosers be protected if they disclose information outside of the public sector – such as to journalists and members of Parliament?

> "...the media has an important role to play in telling the stories of whistleblowers"
>
> **– 891 ABC Adelaide presenter and President of the SA Press Club Rory McLaren speaking at ICAC's 2026 Whistleblower Project Public Forum**

At present in South Australia, the protections of the SA PID Act[161] are engaged where:

a. **a person discloses information to a journalist[162] or a member of Parliament other than a Minister[163]**

b. **the person has already made a disclosure of substantially the same information and that initial disclosure qualifies for protection**

c. **the person has made their identity known to the recipient of that initial disclosure but not received status updates in accordance with the obligations set out in the final section of the next chapter**

d. **the person believes on reasonable grounds that the information is true.[164]**

The media plays a critical role in the democratic process by monitoring government activity and reporting on issues where it is in the public interest to do so. The capacity for investigative journalism, which relies heavily on whistleblowers, to act as a catalyst for change is perhaps typified by the Watergate scandal evoked by the image on the cover of this report. The Wilson Review provided a more recent and local example in the form of the serious deficiencies ultimately found to exist in the methods, systems and processes used in the collection, testing and analysis of DNA samples in Queensland.[165] There are many other examples. Public debate can spur action.

161 With the exception, for obvious reasons, of the provisions imposing act and notification obligations.
162 Defined to mean a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium: SA PID Act (n 8) s 4. The term "news medium" is defined in that same section to mean a medium for the dissemination to the public or a section of the public of news and observations on news.
163 Noting that a Minister is already deemed to be a "relevant authority" by s 5(5)(k).
164 *SA PID Act* (n 8) s 6.
165 *Wilson Review* (n 38) 96.

Disclosure of information outside of the public sector such as to journalists and members of Parliament is – with good reason – generally restricted by legislative provisions, contracts of employment and professional codes of conduct. In certain circumstances, such disclosure should attract legislative protections, including immunity from liability. While statistically rare,[166] public whistleblowing can provide an important pathway for some individuals. The Lander Review observed that it is a pathway that has been contentious historically; it reproduced a paragraph reflecting on why that might be so:

> "The Act is very powerful. Once a disclosure falls within its scope, it provides very complete protection against all legal action. It follows that it potentially protects the leakage of confidential information from all levels of the State public service. If a Parliamentarian was, as such, an 'appropriate authority', then any member of the public service could with impunity leak information to any Member of Parliament and could seriously compromise the integrity of Government."[167]

Expanding the grounds on which public disclosures may be made?

Several submissions to the Whistleblower Project supported expanding the grounds on which disclosures attracting the protections of the SA PID Act may be made outside of the public sector. It was suggested that dissatisfaction with the manner in which a report was actioned, reasonable belief internal processes are compromised, significant public interest, and imminent risk to public safety or the environment could each constitute sufficient grounds.

Public whistleblowing provisions in Australian jurisdictions differ considerably. At the federal level, a protected "external disclosure" may be made to any person other than a foreign public official on grounds relating to the adequacy and timeliness of an investigation into an internal report as well as the adequacy of a response to an investigation into an internal report.[168] Additional criteria must be satisfied, including that no more information is disclosed than is reasonably necessary to identify the disclosable conduct[169] and the disclosure is not, on balance, contrary to the public interest.[170] A list of matters to be considered in determining whether or not a disclosure is contrary to the public interest is provided, including the extent to which it would expose failure to address serious public sector wrongdoing, the principle that disclosures by public officials should be properly investigated and dealt with, any risk that the disclosure would cause damage to national security, the principle that Cabinet information should remain confidential unless already lawfully publicly available, and the risk that the disclosure could prejudice the administration of justice.[171]

A protected "emergency disclosure" may also be made to any person other than a foreign public official where a discloser "believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment."[172] Again, additional criteria must be satisfied, including that the extent of the information disclosed is no greater than is necessary to alert the recipient to the danger, but also that there are "exceptional circumstances" where an internal disclosure has not been previously made or an investigation into a previously made internal disclosure is not complete.[173]

166 *Best-practice whistleblowing legislation for the public sector* (n 35) 278.
167 Matthew Goode, 'Policy Considerations in the formulation of the Whistleblowers Protection Legislation: The South Australian Whistleblowers Protection Act 1993' (2000) 22 Adelaide Law Review 27, 38 cited in *Lander Review* (n 3) 115.
168 The *Cth PID Act* (n 104) deems a response to not be inadequate where it involves action being taken, or to be taken, by certain individuals including a Minister: s 26(2A).
169 Ibid s 26(1), item 2.
170 Ibid.
171 Ibid s 26(3).
172 Ibid s 26(1) item 3.
173 Ibid.

In a number of other Australian jurisdictions, the grounds for public whistleblowing extend beyond failure to provide updates within prescribed timeframes to declining to investigate, failing to investigate in a timely fashion, and declining to recommend the taking of action following investigation.[174]

The grounds on which disclosures attracting the protections of the SA PID Act may be made to entities outside of the public sector should be expanded. The grounds applicable to "external disclosures" at the federal level should be incorporated into South Australia's whistleblower laws. Similar limits should be placed on the making of disclosures of this kind as those which exist at the federal level – in particular, a public interest test with factors adapted to the South Australian context should be incorporated. While this could introduce a degree of uncertainty for disclosers who would need to weigh up the likelihood that their decision to disclose information outside of the public sector will be assessed as being in the public interest, this may be unavoidable. Facilitating public whistleblowing is important but so are considerations such as the risk of prejudice even to a stalled investigation and the potential for damage to be caused to the reputations of those the subject of disclosures. A balance must be struck.

It is not recommended at this time that some of the other suggestions arising from some submissions made to the Whistleblower Project be incorporated as grounds for public whistleblowing in the SA PID Act. Significant public interest, as a concept, may be too broad and uncertain. Where there is a concern that those involved in receiving and handling reports may be biased or implicated in concerning conduct, disclosers are able to report outside of their organisations to other public sector entities including integrity agencies. These external pathways may also be used where reporting internally carries a substantial risk of detriment.

Significantly, none of the additional grounds recommended above position public whistleblowing as anything other than an avenue of last resort. Each requires an internal report to have been made in the first instance. Former Australian Federal Police (**AFP**) whistleblower Frank O'Toole reflected at the Whistleblower Project public forum that "...whistleblowers tend to go public, tend to go to the media, not necessarily looking for an investigation to be done...but more to shine a light on how poorly the organisation has dealt with them as a whistleblower...it's a last resort." He considered that "...if those boxes aren't ticked, and you haven't given the organisation the opportunity to explore your, the information you've provided thoroughly...there is a fair argument that going to the press is not an appropriate step."

By contrast, where there exists an imminent risk to public safety or the environment requiring urgent attention, it may well be appropriate for disclosure outside of the public sector to be the first port-of-call. It may also be appropriate for South Australian whistleblower laws to incorporate the grounds – and limitations – applicable to "emergency disclosures" at the federal level.

174 See, for example, *Qld PID Act* (n 38) s 20(1); *WA PID Act* (n 104) s 7A(2)*; ACT PID Act'* (n 92) ss 27, 27A.

Expanding the entities to which public disclosures may be made?

Only the HRLC and TIA joint submission to the Whistleblower Project addressed whether protected disclosures should be able to be made to a wider variety of entities outside of the public sector than journalists and members of Parliament – it advocated for the approach taken at the federal level to be adopted in South Australia. Federally,[175] and in Victoria,[176] protected disclosures may be made to any person.[177] In many other Australian jurisdictions, public whistleblowing provisions capture only journalists and members of Parliament.

TI's best practice guide for legislation suggests that whistleblower laws should protect disclosures about urgent danger or persistently unaddressed conduct that could affect the public interest where made to a range of external parties.[178] Expanding the entities to which protected public disclosures may be made would provide whistleblowers with greater flexibility and potentially increase the likelihood that issues are brought to light. Bearing in mind the legitimate justifications that exist for keeping government information secure and confidential, it may be appropriate for this to occur in a measured way – perhaps certain additional groups such as civil society organisations could be included rather than a shift to any person. However, given the limited input received in relation to this particular issue, it may be appropriate for any future review of South Australia's whistleblower laws to examine this issue in greater detail.

Recommendation 25

That the grounds on which disclosures attracting the protections of South Australia's whistleblower laws may be made to entities outside of the public sector be expanded. In particular, that the grounds applicable to "external disclosures" and "emergency disclosures" at the federal level be incorporated. That similar limits be placed on the making of disclosures of this kind as exist at the federal level – in particular, that a public interest test with factors adapted to the South Australian context be incorporated.

Recommendation 26

That the next review of the operation of South Australia's whistleblower laws examine whether the entities outside of the public sector to whom protected disclosures may be made in South Australia should be expanded.

175 *Cth PID Act* (n 104) *s 26.*
176 *Vic PID Act* (n 104) *s 38A(1).*
177 Victoria specifies "person or body": ibid.
178 *TI's best practice guide for legislation* (n 41) *40.*

Chapter 2: How should those who make disclosures be protected?

"I have been a whistleblower and paid dearly for it."

– A respondent to ICAC's 2024 Public Integrity Survey

One of the principal means by which the SA PID Act seeks to achieve its purpose of encouraging and facilitating public interest disclosures is by providing protection for those who make such disclosures. There is a clear moral imperative to protect individuals who support public integrity by reporting suspected wrongdoing at considerable personal risk. More than this, though, there is an obvious pragmatic imperative – ensuring that those who speak up are protected encourages others to do the same. Evidence gathered by ICAC suggests some changes should be made to ensure that whistleblowers in South Australia are adequately and effectively protected.

Immunity from liability

Where wrongdoing or serious incompetence in public administration is reported in the public interest, particularly where it is reported in accordance with a legal obligation,[179] disclosers should be shielded from any form of liability flowing from the making of the report. At present in South Australia, if a public officer makes an appropriate disclosure of public administration information **"the person is not subject to any liability as a result of that disclosure".**[180] The term "liability" is defined to include disciplinary action.[181] Immunity applies despite any duty of secrecy or confidentiality or any other restriction on disclosure applicable to the person.[182] However, a person who makes a disclosure of information they know to be false or misleading is not protected.[183]

Should the scope of immunity be clarified?

Although the point could equally be made in Chapter 6, South Australia's whistleblower laws should make clear that neither civil liability nor criminal liability is incurred by making a public interest disclosure. It might be expected that a court or tribunal would construe the term "liability" in s 5(1)(b) to include both civil liability and criminal liability but the terms of the SA PID Act should make it clear to whistleblowers and prospective whistleblowers that both forms of liability are immunised. Previously, s 5(1) of the SA WP Act specified that "a person who makes an appropriate disclosure of public interest information incurs no civil or criminal liability by doing so". The rationale for not retaining that prescription in the SA PID Act is unclear.

179 *OPI Directions and Guidelines* (n 87); *Ombudsman Directions and Guidelines* (n 87).
180 *SA PID Act* (n 8) s 5(1)(b).
181 Ibid s 4.
182 Ibid s 5(2).
183 Ibid s 10(2).

All other Australian jurisdictions expressly state in some way that individuals are not subject to any civil, criminal or administrative liability (including disciplinary action) for making public interest disclosures. Many do so in addition to including catch-all "or any other restriction on disclosure" provisions akin to s 5(2) of the SA PID Act. Some Australian jurisdictions go so far as to specify that, for example, a defence of absolute privilege is available in defamation proceedings,[184] or the making of a public interest disclosure is not a breach of professional etiquette or ethics, a rule of professional conduct or contempt of a parliament.[185]

The section of the SA PID Act containing the immunity – or the section of the SA PID Act defining the term "liability" – should be amended to clarify that administrative, civil and criminal liability is not incurred by making a public interest disclosure.

Should the scope of immunity be broadened?

Any reform of South Australia's whistleblower laws should grapple with whether or not – and, if so, in what circumstances – preparatory acts should be immunised. The South Australian Court of Appeal recently confirmed that conduct engaged in prior to – and for the purpose of – making a public interest disclosure, such as gathering supporting evidence, does not attract immunity under federal whistleblower laws.[186] Given the similarity of the terms of those laws and South Australia's whistleblower laws, it might be expected that proceedings under the SA PID Act raising the same issue would result in the same outcome.[187]

While the task of the Court of Appeal was to interpret and apply existing legislative provisions in a particular factual context, aspects of submissions made in the course of the legal argument in that case may be relevant to consideration of the desirability of legislative reform. For example, in support of a wide construction of the immunity it was contended that if preparatory acts are not immunised then it may be harder for disclosers to reach the state of mind necessary to make a protected disclosure,[188] unsupported allegations may be more readily dismissed, and a disclosure to a journalist or member of Parliament may be of limited utility where no supporting evidence is provided to justify taking the matter further. In support of a narrow construction of the immunity, it was contended, among other things, that disclosed information need not be conclusive, and that separate provision is made for a person other than the discloser to investigate the allegations.

Five submissions were in favour of – and no submissions were opposed to – broadening the scope of immunity to capture preparatory acts. The HRLC and TIA joint submission observed that "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." The Wilson Review recommended that provision be made in Queensland for a court to find that immunity attaches to preparatory acts, at its discretion, having taken into account certain factors, including whether the preparatory acts created

184 See, for example, *NSW PID Act* (n 4) s 41(1).

185 See, for example, *ACT PID Act* (n 92) s 35.

186 *Boyle v Director of Public Prosecutions* (Cth) [2024] SASCA 73. See also *Boyle v Commonwealth Director of Public Prosecutions & Anor* [2024] HCASL 282 A16/2024.

187 As pointed out by Ms Burrows in her submission on behalf of the OPI, s 50 of the *ICAC Act* (n 17) does provide some immunity for the disclosure of confidential information outside of an organisation where a public interest disclosure is made to the OPI but even then the OPI makes it clear to public officers during education sessions that reports do not need to be accompanied by evidence. Section 50 provides only that no obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of reports, complaints, assessments and investigations under the *ICAC Act* (n 17) – this would seem to immunise disclosure of information uncovered in the ordinary course of employment but not accessing of information through investigation.

188 The point that ability to reach the necessary state of mind may be hampered if preparatory acts are not immunised may have some force in light of the observations in *Machado v Underwood* [2016] SASCFC 65 at [161] ('*Machado v Underwood'*) that "it will not always be the case that a potential whistleblower will be obliged to conduct an investigation or make inquiries" but "in some cases, inquiries will need to be made before such a person will be found to have reasonable grounds to believe the truth of the information published" (as the test was formulated under the *SA WP* Act).

risks for any third parties and whether those risks were more serious than the risks posed by the alleged wrongdoing that was the subject of the disclosure.[189]

Plainly, a balance must be struck between competing policy considerations. The integrity of the public sector may be jeopardised by public officers engaging in unlawful conduct in order to access or copy information. The integrity of the public sector may also be jeopardised if public officers are hindered in their ability to disclose information about suspected wrongdoing or serious incompetence in public administration. It may be that broadening the scope of the immunity to capture preparatory acts in appropriate circumstances could strike that balance.

A majority of supportive submissions suggested limiting any immunity for preparatory conduct to acts that are reasonably necessary for the making of a public interest disclosure or something similar. While introducing such a test risks introducing a degree of uncertainty into the legislation, reasonable necessity tests are used in a range of different statutory contexts.[190] At the very least, the SA PID Act should clarify the position with respect to preparatory acts – a prospective whistleblower contemplating taking steps to gather some material relevant to a complex issue they intend to report should be in a position to readily determine whether or not such acts are likely to be protected.

It remains appropriate that persons who make public interest disclosures knowing that they are false or misleading are not immunised[191] or otherwise protected by the SA PID Act, in addition to being criminally liable.[192]

It is convenient to address here, where the scope of immunity is under discussion, that legislation in some other Australian jurisdictions specifies that liability for a person's own conduct is not affected by the person's disclosure of that conduct under whistleblower laws.[193] The SA PID Act is currently silent about this issue. It may be beneficial to expressly state that this is the case in the SA PID Act so that it is clear to all that where a disclosure touches on a reporter's own wrongdoing or serious incompetence, liability arising from that wrongdoing or serious incompetence will not be immunised.

Should a process be established for claiming immunity?

Immunity could be raised in a wide variety of legal proceedings and could potentially be heard in a wide variety of forums. The SA PID Act is silent as to how a claim of immunity is to be made. This is likely to result in confusion for prospective whistleblowers and whistleblowers, some of whom may be deterred from claiming immunity – even from making a disclosure – at all.

It could also lead to the adoption of inconsistent approaches in legal proceedings, some of which may disadvantage whistleblowers. It leaves open the possibility that claims for immunity might be determined in the course of substantive proceedings[194] and that evidence given in support of claims for immunity might then be used to establish liability where claims for immunity fail.[195] Whistleblowers

189 *Wilson Review* (n 38) 179.
190 See, for example, the *Surveillance Devices Act 2016 (SA)*.
191 *SA PID Act* (n 8) s 10(2).
192 Ibid s 10(1).
193 See, for example, *Qld PID Act* (n 38) s 39; *NSW PID Act* (n 4) s 41.
194 While there is a dearth of published cases involving claims of immunity under either the *SA PID Act* or the *SA WP Act* it replaced, it can be inferred from *Machado v Underwood* (n 188) that a "defence" under the immunity provision of the *SA WP Act* (which was in similar terms to the immunity provision in the *SA PID Act*) was raised and rejected in the course of a Magistrates Court defamation trial.
195 By way of example, in disciplinary proceedings alleging that a reporter failed to maintain the integrity and security of official information by disclosing that information to the OPI, to rely on the immunity it would be necessary to establish that an appropriate disclosure of public administration information had been made. This would, in turn, necessitate establishing that the public officer disclosed public administration information they reasonably suspected raised a potential issue of corruption, misconduct or maladministration in public administration to a relevant authority. If the immunity claim was ultimately unsuccessful, admissions about the disclosure having been made could potentially be used to establish the failure to maintain the integrity and security of the information.

should be free to litigate immunity claims without incriminating themselves in the process.

The Cth PID Act prescribes the following process which appears to address concerns about both clarity and self-incrimination. In addition, it places the burden of persuading the person tasked with determining the immunity claim on the party asserting that the discloser is liable:

23 Claims for protection

1. If, in civil or criminal proceedings (the ***primary proceedings***) instituted against an individual in a court, the individual makes a claim (relevant to the proceedings) that, because of section 10, the individual is not subject to any civil, criminal or administrative liability for making a particular public interest disclosure:
   a. the individual bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and
   b. if the individual discharges that onus—the party instituting the primary proceedings against the individual bears the onus of proving that the claim is not made out; and
   c. the court must deal with the claim in separate proceedings; and
   d. the court must adjourn the primary proceedings until the claim has been dealt with; and
   e. none of the following:
      i. any admission made by the individual in the separate proceedings;
      ii. any information given by the individual in the separate proceedings;
      iii. any other evidence adduced by the individual in the separate proceedings;

      is admissible in evidence against the individual except in proceedings in respect of the falsity of the admission, information or evidence; and
   f. if the individual or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.
2. To avoid doubt, a right under section 126K of the *Evidence Act 1995* not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.

The PSA's submission to the Whistleblower Project advocated for a clear process to claim immunity to be communicated to employee associations and potential disclosers. The City of Tea Tree Gully similarly advocated for the SA PID Act to prescribe such a process. No submissions raised any opposition. The Wilson Review concluded that the approach taken at the federal level was apt for introduction into Queensland's whistleblower laws.[196]

Chapter 4 recommends that consideration be given to introducing a mechanism to provide greater certainty about whistleblower status at an earlier time. Without pre-empting the discussion in that chapter, South Australia's whistleblower laws could be amended to allow for an authority to determine that a disclosure is an appropriate disclosure of public administration information. Further, the laws could be amended to render written notice of such a determination admissible as evidence in legal proceedings of the fact that a disclosure is an appropriate disclosure of public administration information.

196 *Wilson Review* (n 38) 182.

It might be thought that amending South Australia's whistleblower laws in this way would remove the need for a process to be established for claiming immunity. However, reporters might not request (either through ignorance or otherwise) that a determination be made at an early stage. Further, determinations may not be made in respect of internal reports, which are common. There might be other circumstances in which a formal process for claiming immunity in legal proceedings could still be necessary.[197]

The SA PID Act should prescribe a process for making a claim of immunity akin to that in s 23 of the Cth PID Act. Further, the SA PID Act should render any admissions made with a view to invoking immunity inadmissible to establish liability. The SA PID Act should not distinguish, in this regard, between admissions made informally – for example, in a response to a letter alleging misconduct – or formally – for example, in legal proceedings.

Recommendation 27

That the section of South Australia's whistleblower laws containing the immunity – or the section defining the term "liability" – be amended to clarify at least that administrative, civil and criminal liability is not incurred by making a public interest disclosure.

Recommendation 28

That consideration be given to broadening the scope of the immunity to capture acts preparatory to the making of a public interest disclosure where they are reasonably necessary for the making of the disclosure. That, at a minimum, South Australia's whistleblower laws clarify the position with respect to preparatory acts.

Recommendation 29

That South Australia's whistleblower laws expressly state that a person's liability for their own conduct is not affected by the person's disclosure of that conduct under those laws.

Recommendation 30

That South Australia's whistleblower laws prescribe a process for making a claim of immunity akin to that in s 23 of the Cth PID Act – in particular, that they render any admissions made with a view to invoking immunity, whether made prior to or in the course of legal proceedings, inadmissible to establish liability.

197 For example, an assessment might be made that a disclosure does not amount to an appropriate disclosure of public administration information, or the person/body empowered to make the assessment might consider that they had insufficient material to enable such an assessment to be made.

Protections against victimisation

"...you whistle blow on anything, you start looking for another job, its the only thing that this place has taught me, just keep your mouth shut, opinions to yourself, get in, do your work, go home..."

– A respondent to ICAC's 2024 Public Integrity Survey

Those who report suspected wrongdoing or serious incompetence in public administration in the public interest should be protected against retaliatory action, sometimes referred to as victimisation. Victimisation can take many forms including threats, intimidation, bullying, harassment, unreasonable scrutiny of work, ostracism, allocation of unsafe or humiliating work, allocation of too much or too little work, loss of entitlements or denial of opportunities, demotion, transfer, suspension and termination.[198]

Whistleblower laws can employ a range of different mechanisms to address victimisation, including imposing obligations on those in a position to proactively protect whistleblowers from victimisation; compensating whistleblowers for harm suffered where victimisation does occur; and criminally punishing those who engage in victimisation.

The SA PID Act makes victimisation a criminal offence. It also provides a pathway for civil remedies to be sought. An act of **victimisation** occurs, for the purposes of the SA PID Act, **where a person causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information**.[199] The term "detriment" is defined to include loss or damage (including damage to reputation); injury or harm (including psychological harm); intimidation or harassment; discrimination, disadvantage or adverse treatment in relation to employment; or threats of reprisal (express or implied, conditional or unconditional).[200]

In addition, the SA PID Act obliges principal officers of public sector agencies and councils to include the following information in public interest disclosure procedures:

- clear obligations to take action to protect disclosers
- risk management steps for assessing and minimising detrimental action against disclosers as well as detriment to those against whom allegations are made.[201]

Yet, fear that negative consequences may flow from making a public interest disclosure remains a significant barrier to reporting wrongdoing for many South Australian public officers. The statistics presented in Figure 1 below are concerning both in number and trend, and suggest that the current scheme, of which the SA PID Act is an integral part, does not provide adequate reassurance.

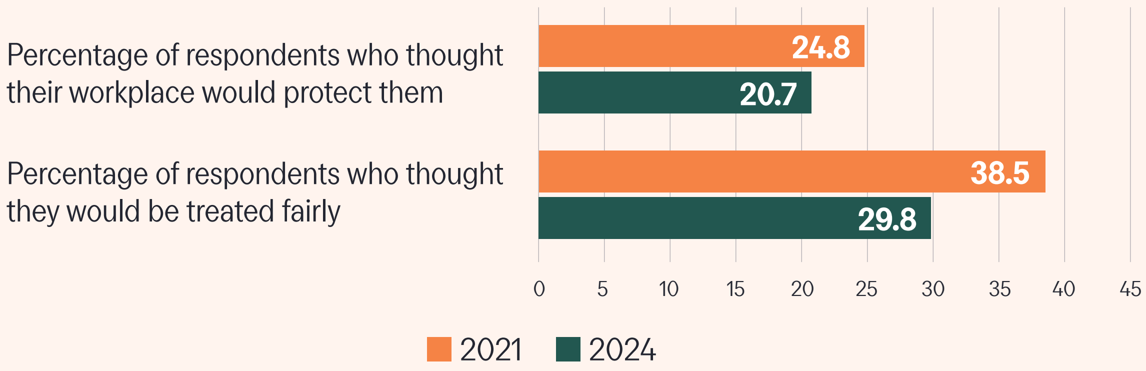
198 See, for example, Rodney Smith and A J Brown, 'The good, the bad and the ugly: whistleblowing outcomes' in A J Brown (ed), *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU E Press, 2008) 129. There is some evidence that men and women experience different forms of victimisation –men are more likely to have their employment terminated whereas women are more likely to be subject to harassment and bullying which can lead to forced resignations: HRLC, *Women Speaking Up: Gender Dynamics in Australia's Whistleblowing Landscape* (Report, August 2025) 18 ('*Women Speaking Up report')*. There can be additional challenges associated with seeking civil remedies for victimisation of the latter kind.

199 *SA PID Act* (n 8) s 9(1).

200 Ibid ss 9(7), 9(8).

201 Ibid s 12(5).

Figure 1: Responses to ICAC's Public Integrity Survey



On paper, mechanisms to protect[202] whistleblowers from victimisation already exist in the SA PID Act; in reality, more could be done to ensure whistleblowers in South Australia are adequately and effectively protected. All submissions to the Whistleblower Project expressing a view about the issue considered that protections against victimisation should be strengthened at least in some way.

How effective are civil remedies for victimisation under the SA PID Act?

> "...there is an urgent need to improve remedies under the current regime"
>
> **– HRLC and TIA joint submission to the Whistleblower Project**

Effective civil remedies for victimisation are a key component of any whistleblower protection regime. Currently in South Australia, an act of victimisation may be dealt with either as a tort,[203] or as if it were an act of victimisation under the EO Act, but not both.[204]

The EO Act renders victimisation unlawful. A person commits an act of victimisation for the purposes of the EO Act if they treat another person unfavourably on the ground that they have done various things associated with lodging a complaint or assisting with proceedings under the EO Act. Relevantly, Part 8 of the EO Act establishes a process for complaints to be made, investigated, conciliated and adjudicated. The Commissioner for Equal Opportunity (**the Commissioner for EO**) is required to endeavour to resolve a matter by conciliation if it is capable of being resolved in that way, unless the Commissioner for EO declines to take any action because, for example, the matter is misconceived or lacking in substance. If the Commissioner for EO considers the matter cannot be conciliated, the matter must be referred to the South Australian Civil and Administrative Tribunal (**SACAT**) for hearing and determination, unless it involves an allegation arising in a workplace context in which case it must be referred to the South Australian Employment Tribunal (**SAET**).

202 It is convenient to categorise the mechanisms in the *SA PID Act* that address victimisation as "protections". However, it is acknowledged that civil remedies and criminal penalties do not actually prevent victimisation from occurring, except in the indirect sense that the prospect of being ordered to pay compensation or being imprisoned may deter some individuals otherwise inclined to engage in this kind of behaviour.
203 A tort is an act committed by one person or entity against another that causes injury, loss or damage, which may give rise to a legal remedy.
204 *SA PID Act* (n 8) s 9(2).

Significantly, if SACAT – or SAET – then finds that a person has breached the EO Act, it may make orders: requiring the person to pay compensation for loss or damage (including to feelings) arising from the breach; requiring the person to refrain from further breaching the EO Act; or requiring the person, or any other party to the proceedings, to perform specified acts to remedy loss or damage arising from the breach or remedy a discriminatory or unlawful act.[205] Interim orders may be made to prevent prejudice to a person affected by – or to dismiss – proceedings.[206]

The SA PID Act also creates a statutory cause of action in tort which provides an alternative pathway to civil remedies for those who experience victimisation. In this way, **civil remedies for victimisation under the current SA PID Act may be sought either via proceedings brought under the EO Act or by an action in tort instituted in the civil jurisdiction of a court**. In practice, though, it is rare for individuals to attempt to secure civil remedies for victimisation under South Australia's whistleblower laws and it is rarer still for such attempts to be successful.

One measure of the adequacy and effectiveness of the provisions of our whistleblower laws dealing with civil remedies might be the frequency with which reliance is placed on them. A 2023 national survey of cases involving whistleblower laws did not find a single judgment in which reliance had been successfully placed on a provision of the SA PID Act.[207] This is consistent with ICAC's research.[208] A handful of cases under the SA WP Act[209] and SA PID Act have been identified in which: remedies have been sought unsuccessfully; the public record does not disclose whether or not remedies were ultimately awarded; or mention is made of victimisation under whistleblower laws in various contexts but the issue for determination was not whether or not to award a remedy.

In recognition of the limitations inherent in this research – including that not all decisions are published – data was also sought directly from key stakeholders associated with the EO Act pathway to civil remedies for victimisation under the SA PID Act,[210] including Equal Opportunity SA. While Equal Opportunity SA does not capture data relating specifically to complaints of victimisation under the SA PID Act brought under the EO Act, it does capture data relating to complaints of victimisation more broadly. Figure 2 below shows that victimisation complaints represent a small percentage of the total number of complaints received by Equal Opportunity SA.

205 *EO Act* (n 93) ss 96(1), 96(3).

206 Ibid s 96(2).

207 HRLC, *Cost of Courage: Fixing Australia's Whistleblower Protections* (Report, August 2023) 9.

208 Research has been conducted over the course of the Whistleblower Project to identify any cases in which remedies have been sought, using either of the pathways outlined above, for victimisation under either the *SA PID Act* or the *SA WP Act* it replaced.

209 The victimisation provisions in the *SA WP Act* closely resemble those in the *SA PID Act*.

210 Of course, the EO Act is only one of two pathways to civil remedies provided by the *SA PID Act*. To determine with certainty the frequency with which civil remedies for victimisation under the *SA PID Act* are sought or awarded, data would also need to be sought from any court with jurisdiction to hear an action asserting tortious liability. Not all such courts publish decisions in every case. Even in higher courts – where judgments would typically be published – no decision would be published if a matter was to settle and decisions can be suppressed. Given the resources that would likely be required to source data from all such courts, and given that in every case relating to victimisation provisions of South Australian whistleblower laws identified by the Whistleblower Project proceedings were brought under the EO Act, the data obtained from stakeholders associated with the EO Act pathway provides a sufficient foundation for inferences to be drawn about frequency.

Figure 2: Equal Opportunity SA Victimisation Complaints as a Percentage of Total Complaints: 2022–2025

Year	Total complaints	Victimisation Complaints	Victimisation Complaints (%)
2022 - 2023	314	54	17.20
2023 - 2024	293	44	15.02
2024 - 2025	322	44	13.66
TOTAL	**929**	**142**	**15.29**

In addition, Figure 2 below shows that the vast majority of the victimisation complaints which are made are declined at the initial assessment stage. The former Commissioner for Equal Opportunity, Jodeen Carney, has advised that victimisation complaints are most often assessed to be misconceived or lacking in substance; she suggested that this may reflect limited public knowledge about what amounts to victimisation at law. Figure 3 also highlights the infrequency with which victimisation complaints are conciliated or referred for adjudication.

Figure 3: Outcome of Equal Opportunity SA Victimisation Complaints: 2022–2025

Year	Referred (Accepted)[1]	Referred (Declined)[2]	Declined	Withdrawn	Out of Jurisdiction	Conciliated
2022 - 2023	3	5	33	12	0	1
2023 - 2024	3	0	37	3	1	0
2024 - 2025	1	0	38	4	1	0
Total	**7**	**5**	**108**	**19**	**2**	**1**

1 Complaints that are accepted by Equal Opportunity SA where the matter is unable to be conciliated.
2 Complaints that are declined by Equal Opportunity SA where the complainant has requested to go to a Tribunal.

The data demonstrates that complaints alleging victimisation under the SA PID Act brought under the EO Act are infrequently made, infrequently progressed beyond initial assessment, infrequently conciliated, and infrequently referred for adjudication. It supports inferences arising from the survey of cases conducted as part of the Whistleblower Project that proceedings for civil remedies for victimisation under the SA PID Act are rarely instituted and that there has **never** been a successful action for a civil remedy for victimisation under the SA PID Act.[211]

Of course, there would be no cause for concern if there was no evidence that victimisation was, in fact, occurring. However, a number of responses to ICAC's repeated Public Integrity Survey, and a

211 Data obtained from SACAT and SAET also supports these inferences. This appears to be broadly reflective of global trends: International Bar Association Legal Policy and Research Unit, *Are whistleblowing laws working? A global study of whistleblower protection litigation* (Report 2021) 71.

number of submissions sharing personal experiences, suggest that it is. A major national research project conducted between 2005 and 2009 suggested that between 20 and 30 per cent of whistleblowers report mistreatment from co-workers or management and observed "this proportion is still sizeable, has direct impacts on the willingness of others to report and in some public agencies runs to a very much higher figure."[212] More recently, the HRLC published that on average seven out of 10 of its clients who had made previous disclosures reported that they had suffered reprisal for those disclosures.[213]

In some cases, those who experience conduct potentially amounting to victimisation under the SA PID Act may access legal redress through other remedial pathways unconnected with the SA PID Act. For example, a public sector employee who reports suspected wrongdoing or serious incompetence in public administration and whose employment is then terminated might allege the decision was harsh, unjust or unreasonable and seek relief for unfair dismissal under the *Fair Work Act 1994* (SA). By way of further example, if a public sector employee considers that an unfavourable employment decision constitutes victimisation they may challenge it by external review under the *Public Sector Act 2009* (SA) or, alternatively, seek to pursue proceedings under the *Work Health and Safety Act 2012 (SA)* if the issue is related to work health and safety.

It is difficult to assess the frequency with which this occurs. It is also beyond the scope of the Whistleblower Project to comprehensively document the overlapping pathways that might be taken by those who experience conduct potentially amounting to victimisation under the SA PID Act. Suffice to say, it remains concerning that neither of the two remedial pathways that have been specified in South Australia's whistleblower laws for decades appear to have been successfully utilised despite the likely prevalence of victimisation.

If it were the case that proceedings were being instituted with a frequency generally consistent with the likely incidence of victimisation but remedies were not being awarded, attention might first be directed to challenges associated with **proving** that an act of victimisation has occurred.[214] However, in light of the above, the priority should be identifying, and removing, barriers that may exist to the **bringing** of actions for civil remedies for victimisation under the SA PID Act.[215]

212 See, for example, A J Brown and Jane Olsen, 'Whistleblower mistreatment: identifying the risks' in A J Brown (ed), *Whistleblowing in the Australian Public Sector: Enhancing the theory and practice of internal witness management in public sector organisations* (ANU E Press, 2008) 137.

213 *Women Speaking Up* report (n 198) 17.

214 Noting that a high percentage of the small number of complaints which are made are declined at the initial assessment stage on the ground that they are misconceived or lacking in substance, recommendations made earlier in this report with respect to what should amount to a protected disclosure, and recommendations made later in this report with respect to accessibility and clarity, could result in an increase in the number of viable complaints.

215 In addition to the key barriers identified in the ensuing sections, another barrier may be awareness –reports may not be identified as public interest disclosures, retaliation may not be identified as victimisation, and even those who are aware their reports are likely to be public interest disclosures and reprisals experienced by them are likely to be victimisation may not be aware that civil remedies are potentially available. Recommendations in Chapter 6 may assist to reduce this barrier. Another barrier may be that those who experience retaliation after reporting suspected wrongdoing may be less inclined to then report victimisation, fearing that the perpetrator may become aware of the further report and the retaliation may escalate. Recommendations in Chapter 2 could assist to reduce this barrier.

Should costs be reduced to improve access to civil remedies?

"…it's unfair for a public interest whistleblower to be digging into their own pockets…"

– Research Director at the Centre for Public Integrity (CPI) Professor Gabrielle Appleby speaking at ICAC's 2026 Whistleblower Project Public Forum

The potential financial impact of commencing legal proceedings under the SA PID Act is likely to act as a significant barrier for many individuals. Those contemplating litigation may be concerned both about costs associated with their own legal representation and about the risk that they may be ordered to pay costs incurred by the opposing party in the event that they are unsuccessful. In a submission first made to the Lander Review and then provided to the Whistleblower Project (on the basis that a number of the issues raised within it are yet to be resolved), Professor A J Brown of the Centre for Governance and Public Policy at Griffith University suggested "…costs impediments and risks have likely been the single most significant barrier to civil remedies to date".

By reporting suspected wrongdoing and serious incompetence in public administration, whistleblowers help to maintain public integrity. In many cases, they may be under a legal obligation to do so. There is a strong argument that where they suffer loss or injury as a result, they should be assisted to attempt to secure civil remedies.

As discussed in Chapter 6, aspects of the SA PID Act are complex – it may not be realistic to expect individuals to commence legal action without legal advice and/or representation. Legal advice and representation can come at a considerable cost, particularly where matters proceed in courts rather than tribunals. Many individuals may not be able to afford such a cost, particularly those seeking a civil remedy for victimisation in the form of termination of employment. While the EO Act makes limited provision for public funds to be applied to secure representation in tribunal proceedings generally,[216] the above data demonstrates that PID Act matters rarely even reach that stage. While the HRLC's Whistleblower Project provides free legal advice and representation to some whistleblowers, its resources are limited. The South Australian Legal Services Commission also provides free access to general legal information and advice.

Several submissions were in favour of – and no submissions were opposed to – implementing measures to ensure those who disclose information in the public interest are financially assisted to seek civil remedies for any detriment incurred as a result of the making of the disclosure. A question arises about how this might be achieved. Chapter 3 considers whether a standalone or co-located whistleblower support unit should be established in South Australia and the functions such a unit might have. One such function could potentially be provision of legal advice and representation to whistleblowers.

The HRLC and TIA joint submission noted that the potential for conflicts of interest between different functions is frequently raised as an issue in relation to determining where to house various whistleblower support functions. Ms Burrows cautioned, in her submission, that there may be risks associated with the OPI, for example, being tasked with and resourced to provide legal advice and representation, as opposed to general information and guidance, given the function of the OPI to

216 *EO Act* (n 93) s 95C.

impartially assess complaints and reports to determine whether matters should be investigated and by whom. While conflicts of interest and the potential for privileged information to be inadvertently disclosed could perhaps be managed by separating teams and maintaining strict information barriers between them, there does appear to be a potential incompatibility – or at least tension – between any advocacy function and the OPI's existing impartial assessment function.

Without pre-empting the discussion in Chapter 3, the NSW Ombudsman established a whistleblower support function in late 2024. Through that function, general information and guidance is provided to any public official who has reported, or is thinking about reporting, serious wrongdoing.[217] An ethical wall is maintained between this function and others within the office of the NSW Ombudsman, including its complaint handling function, to ensure "a public official can speak freely to the whistleblower support function with no risk of making a PID unintentionally". The whistleblower support function does not itself provide legal representation; it has implemented a referral scheme to enable public officials to access free legal advice.

The Wilson Review considered in detail the merits of providing financial assistance through various mechanisms and ultimately recommended allocation of special purpose funding to existing community legal centres for a pilot advice and representation program.[218] Consideration should be given to establishing such a scheme in South Australia to provide advice and representation for whistleblowers seeking to assert their rights.

> "there's obviously a desperate need for people to be able to access legal advice, legal representation, legal assistance…I don't think that you should have to be personally footing the bill…when you're trying to speak up in the public interest"
>
> **– HRLC Whistleblower Project Lawyer Anneliese Cooper speaking at ICAC's 2026 Whistleblower Project Public Forum**

Whistleblowers may also be concerned that if proceedings they institute fail then they may be ordered to pay the legal costs of the opposing party. Usually, parties bear their own costs in SACAT and SAET proceedings.[219] However, orders can be made requiring a particular party to pay costs incurred by others in some circumstances.[220] Further, where a whistleblower opts to seek remedies via the statutory cause of action in tort in the SA PID Act, proceedings would be heard in the civil jurisdiction of a court.

Several submissions to the Whistleblower Project were in favour of – and none were opposed to – ensuring whistleblowers were protected from costs orders.

Recommendation 20 of the Lander Review was that a whistleblower taking action for victimisation or breach of a statutory duty should not be liable for costs unless the relevant court or tribunal rules that the whistleblower has conducted his or her litigation unreasonably or vexatiously, or has brought the proceedings without reasonable cause. Some other Australian jurisdictions contain provisions to this effect.[221]

217 The function is intended to complement rather than replace the duties and responsibilities of agencies under the *NSW PID Act*.
218 *Wilson Review* (n 38) 213.
219 *South Australian Civil and Administrative Tribunal Act 2013* (SA) s 57(1) ('*SACAT Act*'); *South Australian Employment Tribunal Act 2014* (SA) s 52(1).
220 See, for example, *SACAT Act* (n 219) ss 57(2), 57(3).
221 *Cth PID Act* (n 104) s 18; *NSW PID Act* (n 4) s 38.

South Australia's whistleblower laws should protect whistleblowers from costs orders except where a court or tribunal finds that they have instituted legal proceedings vexatiously, or that an unreasonable act or omission by them caused the opposing party to incur costs. The laws should also make this position clear to whistleblowers who may consult legislation when considering whether to pursue legal action.

Should civil remedies for victimisation be expanded to include injunctions?

> "Reported a serious misconduct . Negative repercussions came next in the form of targeting, bullying, unfair treatment, unable to have a fair chance to apply for another position and being isolated and made a scape goat of the perpetrator"
>
> **– A respondent to ICAC's 2024 Public Integrity Survey**

Several submissions to the Whistleblower Project were in favour of – and none were opposed to – providing whistleblowers with access to injunctive relief[222] where they apprehend a risk of victimisation.

Access to compensation for loss suffered as a result of victimisation is important but whistleblowers may sometimes seek to prevent anticipated acts of victimisation from occurring at all. While SACAT and SAET are empowered to make orders requiring individuals to refrain from further contraventions,[223] they can only do so once a breach has been found to have occurred. At the time of the Lander Review, the then Commissioner for Equal Opportunity observed that "Individuals who telephone the EOC...are often disheartened when they hear that the EOC can only act once they have suffered a detriment."[224] It is also not clear that this limited power, described as a power to make orders requiring individuals to refrain from further contraventions of the EO Act, even extends to making orders requiring individuals to refrain from engaging in further acts of victimisation under the SA PID Act. Those who experience victimisation are unlikely to seek legal redress if they consider that available remedies cannot achieve their desired outcome.

Recommendation 19 of the Lander Review was that an injunctive remedy be available to a whistleblower who can demonstrate a risk of victimisation. That recommendation should be implemented. This would bring South Australia's whistleblower laws in line with a number of other Australian jurisdictions.[225]

Amending the terms of the EO Act to broaden the power to make orders would have implications for other matters – unconnected with whistleblowing – dealt with under the EO Act.[226] The absence of any direct reference to specific remedies in the victimisation provisions of the SA PID Act is unlikely to assist with accessibility. Consideration should be given to stating in the SA PID Act that an injunctive remedy is available in addition to the suite of remedies in the EO Act or listing all remedies available for victimisation in the SA PID Act.

222 Injunctions are orders compelling entities to do – or refrain from doing – certain things.
223 *EO Act* (n 93) s 96(1)(b).
224 *Lander Review* (n 3) 134.
225 See, for example, *Cth PID Act* (n 104) s 15; *ACT PID Act* (n 92) s 42; *Vic PID* Act (n 104) s 49; *Qld PID Act* (n 38) s 48.
226 It is beyond the scope of the Whistleblower Project to consider whether or not this is warranted. It is to be noted that a call has been made to comprehensively review the EO Act in its entirety: *Royal Commission into Domestic, Family and Sexual Violence* (Report, 14 August 2025) 626.

How effective is criminalisation of victimisation under the SA PID Act?

> "Where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers"
>
> **– Preamble to Parliament and Council Directive EU 2019/1937 on the protection of persons who report breaches of Union law**

Under the SA PID Act, a **person who personally commits an act of victimisation is guilty of an offence punishable by a maximum fine of $20,000 or two years of imprisonment**.[227] Proceedings for an offence of victimisation may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.[228]

The Lander Review recommended that victimisation be criminalised under South Australia's whistleblower laws. In doing so, it acknowledged that victimisation can be subtle and may in many cases "fall short of the provable discrete acts that are necessary to found criminal liability."[229] However, it considered that a criminal offence should be available, nonetheless, to capture more tangible forms of victimisation and to deter those who might otherwise be minded to engage in it.[230] Of course, where there may be a perception that the likelihood of prosecution is low, that deterrent effect is significantly weakened.

The infrequency with which prosecutions of offences of victimisation under the SA PID Act are commenced speaks volumes about how effective this protection is in practice. In the ordinary course, a prosecution for an offence of victimisation would be commenced in the Magistrates Court.[231] As sentencing remarks following a guilty plea – and reasons for verdict following a trial – in the Magistrate Court are not generally published, ICAC requested data from the Magistrates Court about the number and outcome of any prosecutions of SA PID Act victimisation offences since 2021. Her Honour Judge Mary-Louise Hribal, Chief Magistrate, confirmed that records indicated that **no** prosecutions of this nature had been instituted in that period.

Should investigation of alleged offences under the SA PID Act come within ICAC's jurisdiction?

There are a number of possible explanations for the lack of SA PID Act victimisation prosecutions, including: victimisation is not occurring; victimisation is not being reported; alleged victimisation is not being criminally investigated; or alleged victimisation is not being charged following criminal investigation. The first of these possible explanations can be discounted on the basis of information gathered by ICAC, including through its longitudinal surveys and over the course of the Whistleblower Project. The remaining possible explanations are interconnected in the sense that disclosers may be unlikely to report victimisation if there is a perception that it may not be criminally investigated or prosecuted.

227 Ibid s 9(5).
228 Ibid 9(6).
229 *Lander Review* (n 3) 139.
230 Ibid 142.
231 Offences attracting a maximum penalty of, or including, imprisonment for two years or less are classified as summary offences: *Criminal Procedure Act 1921* (SA). Summary offences are generally heard and determined in the Magistrates Court: *Magistrates Court Act 1991* (SA).

An evaluation case study appearing earlier in this report details some of the varied activities in which SA Police engages. SA Police must adjust its operations in accordance with shifting policing priorities in order to keep the South Australian community safe. Further, investigation of the full gamut of criminal offences under South Australian law falls within the jurisdiction of SA Police. It seems unlikely that resources would extend to investigation of alleged victimisation offences under the SA PID Act except in the most serious of cases.

In the absence of a specialist investigative agency with capacity and appetite to pursue alleged victimisation offences, it is unsurprising that no such offences appear to have been prosecuted, at least in recent years. Given its remit and expertise, ICAC is well positioned to investigate – and, where appropriate, refer for prosecution – such offences. In many cases ICAC may already have knowledge of, and be investigating, the substantive matter the reporting of which is said to have precipitated the victimisation. Where several different, but closely connected, offences are alleged, it can be efficient for a single investigative agency to have conduct of all matters.

Ms Burrows, in her submission to the Whistleblower Project on behalf of the OPI, considered that the OPI should be able to refer allegations of offences contrary to the SA PID Act to ICAC.[232] In the event that it could, it might be expected that alleged victimisation would be investigated and referred for prosecution more often. Not only might this provide a sense that particular perpetrators have been held accountable for individuals who have experienced victimisation, but it might also generally dissuade others from committing acts of victimisation and assist prospective whistleblowers to feel safe to report.

ICAC's jurisdiction should be broadened to include investigation of alleged offences under the SA PID Act. This would also capture alleged breaches of confidentiality,[233] alleged false and misleading reporting,[234] and alleged preventing or hindering of reporting.[235]

Should the onus of proof be reversed in both civil and criminal victimisation proceedings?

> "...victimisation tends to be perhaps death by a thousand cuts, very subtle, very difficult to detect..."
>
> **– Director of the OPI, Vanessa Burrows, speaking at ICAC's Whistleblower Project Public Forum in April 2026**

Where a whistleblower institutes proceedings with a view to securing a remedy or remedies for an act or acts of victimisation, they must prove various things in order to succeed in their claim. In particular, they must establish that they suffered detriment within the meaning given to that term in the SA PID Act, and that the detriment was caused on the ground (or substantially on the ground) that they (or another person) made (or intended to make) a disclosure of public interest information.[236] Similar elements would need to be established for a criminal offence of victimisation.

232 Ms Burrows also observed that she has previously submitted to the Crime and Public Integrity Policy Committee that the OPI should be able to refer allegations of offences contrary to the *ICAC Act* to ICAC for investigation.
233 *SA PID Act* (n 8) s 8(1). Her Honour Judge Mary-Louise Hribal, Chief Magistrate, also confirmed that records indicated that *no* prosecutions of offences contrary to this provision have been instituted since 2021.
234 Ibid s 10(1).
235 Ibid s 11.
236 *SA PID Act* (n 8) s 9(1).

Establishing these things on the balance of probabilities in order to make good a civil claim for victimisation, or beyond reasonable doubt in order to prove a criminal offence of victimisation, may be no mean feat. This is particularly so where victimisation takes the more subtle form of incivility or where it is dressed up as appropriate performance management. In addition, the PSA's submission to the Whistleblower Project noted the difficulties associated with proving a connection between detriment and disclosure.

The NSW PID Act provides that in civil victimisation proceedings the defendant bears the onus of proving, in relation to detrimental action established by the plaintiff to have been taken by the defendant:

- that the defendant did not have the necessary suspicion, belief or awareness including about the plaintiff having made, possibly having made or proposing to make a public interest disclosure, or
- if the defendant did have the necessary suspicion, belief or awareness, it was not a contributing factor to the taking of the detrimental action.[237]

Further, the NSW PID Act provides that in criminal victimisation proceedings the accused bears the onus of establishing the matters in the dot points immediately above where the prosecution establishes that the accused took detrimental action.[238]

In another related context, South Australia has seen fit to reverse the onus of proof.[239]

South Australia's whistleblower laws should reverse the onus of proof so that the defendant or accused in civil or criminal victimisation proceedings bears the burden of disproving that any detriment established to have been caused was retaliatory. Several submissions made to the Whistleblower Project were supportive – and none were opposed – to this course.

Should modifications be made to the definition of victimisation?

> "I called out corruption in a former department and it cost me my career and my health."
>
> **– A respondent to ICAC's 2024 Public Integrity Survey**

237 *NSW PID Act* (n 4) s 35(4).
238 Ibid s 33(4).
239 *Work Health and Safety Act 2012* (SA), s 110.

Comparison of public sector whistleblowing laws in Australian jurisdictions highlights that certain enhancements could be made to the definition of victimisation in the SA PID Act. The following modifications may increase the prospects of success in victimisation claims and prosecutions:

- lowering the causation threshold by replacing the requirement that detriment be caused "on the ground, or substantially on the ground" that a person or third party made or intended to make a public interest disclosure with a requirement that this formed "part of the reason" or a "contributing factor" for engaging in the detrimental conduct[240]
- expanding the states of mind sufficient to prove victimisation – under the SA PID Act, detriment must be caused on the ground, or substantially on the ground, that the person or a third person "has made or intends to make" a public interest disclosure, whereas in some other jurisdictions additional states of mind are sufficient including "may have made"[241]
- expanding the reach of the provision to include those who fail in their attempts to cause detriment or engage proxies to cause detriment by including the words "or attempts, conspires or induces another to cause" after the words "a person who causes" in the introductory words of s 9(1) of the SA PID Act.[242]

However, there is a need to ensure that reasonable management action is excluded from the definition of victimisation. This could be management action taken either in response to legitimate performance issues or in response to the making of a public interest disclosure but with a view to protecting the discloser from victimisation. Whistleblowers are not immune from reasonable performance management. South Australia's whistleblower laws should exempt reasonable management action from the definition of victimisation in a manner similar to that in s 31 of the NSW PID Act.

Prevention is better than cure

> "We talk about our Act providing protections against victimisation – in fact it provides a punishment or remedy for it, it doesn't stop the conduct in the first place. So I think it would be really helpful to have a scheme or a system...to have an advocate for that person...how are they going to attend a meeting when the person they've blown the whistle against is going to be there?"
>
> **– Director of the OPI Vanessa Burrows speaking at ICAC's 2024 Whistleblower Project Public Forum**

240 See, for example, *Cth PID Act* (n 104) s 19(1)(c); *NSW PID Act* (n 4) s 33(1)(b); *ACT PID Act* (n 92) s 40(3).

241 See, for example, *Cth PID Act* (n 104) s 13(1)(b); *NSW PID Act* (n 4) s 33(1)(a). The *NSW PID Act* (n 4) also specifies that it is not a defence that a suspicion or belief that a person or third person has made, may have made, may make or proposes to make a public interest disclosure was mistaken: *NSW PID Act* (n 4) ss 33(2), 35(3). Deputy Ombudsman Tom Millett speaking at ICAC's 2026 Whistleblower Project Public Forum observed that it should be sufficient to establish victimisation where a person takes detrimental action against a person they "suspect" has made a public interest disclosure.

242 See for example, *Vic PID Act* (n 104) s 43(1)(b); *Qld PID Act* (n 38) s 40(1)-(2); *WA PID Act* (n 104) s 14(2); *Tas PID Act* (n 104) s 19(2)(b). Former Chief Executive Officer of the Logan City Council, Sharon Kelsey, who reported concerns about conduct engaged in by the former Mayor which led to a criminal prosecution, raised in her submission to the Whistleblower Project that adverse action was taken against her by "third party actors". Those individuals would likely be captured by the current definition of victimisation in the *SA PID Act* but any person who enlisted them to take the action likely would not.

At present in South Australia, the principal officer of a public sector agency or council must ensure that a document setting out procedures for a person who wants to internally report a public interest disclosure, and for those dealing with such public interest disclosures, is prepared and maintained.[243] That **procedure document must include:**

- clear obligations on the public sector agency or council and its officers and employees to take action to protect disclosers
- risk management steps for assessing and minimising:
  - detrimental action against people because of public interest disclosures
  - detriment to people against whom allegations are made in a disclosure.[244]

In addition, s 9(4) of the SA PID Act provides that in **proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person**, it is a defence to prove that the person exercised all reasonable diligence to ensure the employee or agent would not commit the act of victimisation.[245]

> "take my case, I could complain and say well these people were talking to me yesterday and then when I got into the lift they purposely got out and mumbled something under the breath…it's really hard to investigate and take action…it comes back to the point of communication right at the beginning with the whistleblower…this is possibly going to happen…what can we put around you in terms of support, not necessarily dealing with that behaviour because maybe it can't be dealt with"
>
> **– Former AFP whistleblower Frank O'Toole speaking at ICAC's 2024 Whistleblower Project Public Forum**

Some other Australian jurisdictions impose a clear positive obligation on agencies, where they are aware a public interest disclosure has been made that either relates to the agency or was made by a public official associated with the agency, to take steps to assess and minimise the risk of detrimental action being taken against a person (whether that person is the maker of the disclosure or a person the subject of the allegations).[246] In NSW, agencies are civilly liable where injury, damage or loss is suffered as a result of a failure to comply with the positive obligation.[247] The onus of proof is reversed so that the agency must prove it did not fail to comply or the injury, damage or loss was not suffered as a result of its failure.[248] Exemplary damages may be awarded.[249]

The Lander Review recommended that South Australia's whistleblower protection laws provide for a duty on agencies to take reasonable steps to prevent victimisation and provide for agencies' vicarious liability for victimisation of employees at the hands of other employees where agencies breach their duty.[250] While some other Australian public sector whistleblowing laws appear to go

243 *SA PID Act* (n 8) s 12(4). See also *SA PID Guidelines* (n 96) Guideline 4.
244 Ibid s 12(5)(a).
245 Ibid s 9(4).
246 See, for example, *NSW PID Act* (n 4) s 61. See also, for example, vicarious liability provisions in the *Vic PID Act* (n 104) s 48 and *QLD PID Act* (n 38) s 43.
247 Ibid s 62(1).
248 Ibid s 62(3).
249 Ibid s 62(4).
250 *Lander Review* (n 3) 138.

further than the SA PID Act currently does, it seems that a pathway does exist to pursue civil action against employers. Some submissions to the Whistleblower Project also raised that imposing further obligations on employers in the SA PID Act could cause confusion and involve undue duplication given existing obligations to manage psychosocial risks under the *Work Health and Safety Act 2012* (SA).

It may be more effective to focus efforts on ensuring that training provided by the designated oversight body for the SA PID Act[251] extends to principal officers of public sector agencies and councils, and:

- addresses the importance of compliance with legislative obligations to include in internal procedures clear obligations to take action to protect disclosers and risk management steps to assess and minimise risk
- addresses the importance of diligent compliance, in practice, with these clauses of internal procedures
- provides practical scenario-based guidance about how the risk of detrimental action may be minimised in different circumstances.

251 See the discussion in chapters 3 and 5 in particular.

Evaluation case study: preventing victimisation at DHS

DHS' Public Interest Disclosure procedure states that DHS is committed to protecting informants by, among other things, providing support and information about the SA PID Act, encouraging disclosers to raise concerns they have about potential detrimental outcomes arising from disclosures (including with a DHS responsible officer, the OPI or the OCPSE) and addressing and minimising the risk of potential detrimental outcomes in accordance with its Risk Management Policy. The Public Interest Disclosure procedure does not impose an obligation to protect informants on any particular person or people, and does not include any specific risk management steps for preventing detrimental action.

In practice, the evaluation showed that DHS takes a proactive approach to preventing victimisation and responding to victimisation concerns, including by ensuring confidentiality and issuing directions to disclosers and those the subject of allegations (if they are aware of the report). Such directions include transferring staff to different locations/roles, limiting access to systems, greater supervision, or a direction to refrain from contacting a person. Whilst putting parameters in place is often necessary to protect disclosers, one interviewee observed that it is important that directions not punish disclosers.

No specific recommendation is made in this report for principal officers of public sector agencies and councils to review their internal reporting procedures to ensure that they are compliant with s 12(5) because Recommendation 22 encompasses this.

Recommendation	31

That special purpose funding be allocated to existing community legal centres in South Australia for a pilot advice and representation program to assist prospective whistleblowers and whistleblowers seeking to understand – or assert – their rights.

Recommendation	32

That South Australia's whistleblower laws protect whistleblowers – and make clear to whistleblowers that they are protected – from costs orders except where a court or tribunal finds that they have instituted legal proceedings vexatiously or that an unreasonable act or omission by them caused the opposing party to incur costs.

Recommendation	33

That an injunctive remedy be available to a whistleblower who can demonstrate a risk of victimisation. That this be achieved by stating in the SA PID Act that an injunctive remedy is available in addition to the suite of remedies in the EO Act or listing all remedies available for victimisation in the SA PID Act.

Recommendation	34

That ICAC's jurisdiction be broadened to include investigation of alleged offences under South Australian whistleblower laws, including alleged victimisation; alleged breaches of confidentiality; alleged false and misleading reporting; and alleged preventing or hindering of reporting.

Recommendation	35

That South Australia's whistleblower laws reverse the onus of proof so that the defendant in civil or criminal victimisation proceedings bears the burden of disproving that any detriment established to have been caused was retaliatory.

Recommendation	36

That the threshold for causation be lowered in the definition of victimisation in South Australia's whistleblower laws. In particular, that the requirement to establish that detriment was caused "on the ground, or substantially on the ground" that a person or third party made or intended to make a public interest disclosure be replaced with a requirement to establish that this formed "part of the reason" or a "contributing factor" for engaging in the conduct.

Recommendation	37

That the states of mind sufficient to prove victimisation under South Australia's whistleblower laws be expanded so that it is sufficient if part of the reason or a contributing factor for engaging in the conduct was that the person or a third party "may have made" a public interest disclosure.

Recommendation	38

That the words "or attempts, conspires or induces another to cause" be inserted after the words "a person who causes" in the introductory words of the definition of victimisation currently in s 9(1) of the SA PID Act.

Recommendation	39

That South Australia's whistleblower laws exempt reasonable management action from the definition of victimisation in a manner similar to that in s 31 of the NSW PID Act.

Recommendation	40

That training provided by the designated oversight body for South Australia's whistleblower laws extends to principal officers of public sector agencies and councils, and:

i. addresses the importance of compliance with legislative obligations to include in internal procedures clear obligations to take action to protect disclosers and risk management steps to assess and minimise risk
ii. addresses the importance of diligent compliance, in practice, with these clauses of internal procedures
iii. provides practical, scenario-based guidance about how the risk of detrimental action may be minimised in different circumstances.

Protection of identity

"I have considered speaking with HR or with senior executive, however I do not trust that my concerns would be kept confidential and there wouldn't be repercussion"

– A respondent to ICAC's 2024 Public Integrity Survey

At present in South Australia, **it is a criminal offence to knowingly divulge the identity of the maker of a qualifying public interest disclosure without their consent except in certain specified circumstances**. Section 8(1) of the SA PID Act is in the following terms:

1. A person to whom an appropriate disclosure of public interest information is made, or a person to whom such a disclosure is referred or who otherwise knows that such a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant except—

   a. so far as may be necessary to ensure that the matters to which the information relates are properly investigated; or

   b. in accordance with any applicable guidelines prepared under section 14.

   Maximum penalty: $20,000 or imprisonment for 2 years.

The SA PID Guidelines provide that the identity of a discloser may also be divulged:

- where it is reasonably believed to be necessary to prevent or minimise an imminent risk of serious physical injury or death to any person; and
- where the identity of the discloser is divulged to an entity believed on reasonable grounds to be the most appropriate entity to be able to take action to prevent or minimise that risk.[252]

The prohibition on knowingly divulging the identity of a discloser **trumps other South Australian laws** that might otherwise require disclosure of identifying information. Section 8(2) of the SA PID Act is in the following terms:

2. The obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.

Notwithstanding these provisions, data from ICAC's 2024 Public Integrity Survey suggests some South Australian public officers are reluctant to "blow the whistle" because they have little faith their report will be treated confidentially. The PSA's submission to the Whistleblower Project also reported member feedback to this effect. Where there are concerns that anonymity may not be preserved, this may exacerbate fears of repercussions because exposure can leave the door open for victimisation. Such concerns and fears can have a chilling effect on those with valuable information about improper conduct in public administration coming forward.

252 *SA PID Guidelines* (n 96), Guidelines 1 and 3.

Adjusting the scope of the exceptions to the prohibition on divulging reporter identity

> "...the breadth of the exception in section 8(1) should cause all prospective whistleblowers concern"
>
> **– A submission to ICAC's Whistleblower Project**

Some disclosers will be prepared to provide a statement for use in administrative or criminal processes. They may readily consent to identifying information[253] being provided to the person who is the subject of their report. Other disclosers may not wish to assist with any proceedings beyond the making of the initial report. They may be anxious to ensure that their identity remains confidential.[254]

That a discloser does not wish to assist will not always, or even often, be fatal to a prosecution or disciplinary proceedings. An initial report may be in the nature of intelligence; it may provide investigators with leads used to obtain other sufficient usable information or admissible evidence.[255] As has been observed in the context of police informants: "In many cases the contribution of an informant will form only a minor part of an otherwise compelling prosecution case and will have served no role other than to alert the police that a particular individual may be involved in criminal activity".[256]

However, depending on the facts of a particular case, an investigation may reach a point at which it is not possible to progress matters further without divulging information to others that could identify the initial reporter, whether directly or indirectly. A submission to the Whistleblower Project observed that in some circumstances an initial reporter will be one of only a small number of people privy to information; in those circumstances, even revealing that an investigation is underway may risk identifying them. As things stand in South Australia, a recipient[257] of a public interest disclosure is permitted to divulge the identity of an initial reporter, even without consent, where they consider this "may be necessary to ensure that the matters to which the information relates are properly investigated".[258]

The submission also observed that it may not be apparent to disclosers that where they make a public interest disclosure to a responsible officer, that responsible officer may be obliged to report the disclosure to the OPI. Further, it may not be apparent to disclosers that reporting the matter to the OPI may lead to an investigation, for example by ICAC, nor that the exception enables divulgence of identifying information without consent wherever necessary to properly investigate. The submission gave the example of a junior staff member who may report concerning behaviour so that a record is made and/or so that they may access support, not intending to be involved in

253 This term is used in this report to capture information tending to identify the reporter whether directly or indirectly.

254 Public sector employees who are potential witnesses or are otherwise capable of assisting are obliged to actively cooperate with any investigation into suspected conduct of another public sector employee that, if proven, would amount to corruption, misconduct or maladministration in public administration, and any other processes relating to management of such suspected conduct: *Code of Ethics* (n 79). This obligation is only enforced where appropriate taking into account work health and safety concerns.

255 It may be that there is scope for ICAC's existing internal investigations training to incorporate practical scenario-based guidance in relation to how independent evidence might be obtained. Recognising SA Police's particular skill and expertise in human source management, it may be that opportunities for partnership in the delivery of this training should be explored.

256 Chris Taylor, 'In the Public Interest: Public Interest Immunity and Police Informants' (2001) 65(5) Journal of Criminal Law 435, 442.

257 This term is used in this context to mean a person to whom a qualifying disclosure is made, a person to whom a qualifying disclosure is referred, or a person who otherwise knows a qualifying disclosure has been made.

258 *SA PID Act* (n 8) s 8(1)(a).

any formal investigation. The submission suggested that the SA PID Guidelines could be revised to better communicate to prospective disclosers the consequences that may flow from the making of a disclosure, and that training of responsible officers could address the provision of such information to prospective disclosers.

Where an investigation cannot be progressed without divulging identifying information, the most appropriate course may be for consent to be sought from the initial reporter and, absent consent being provided, for the investigation to be discontinued. The agency of those who report suspicions of wrongdoing or serious incompetence in public administration should be paramount. If it is not treated as such, a core purpose of South Australia's whistleblower laws – to encourage and facilitate reports – may be thwarted because whistleblowers may have little confidence that their anonymity will be preserved. The community's interest in ensuring a vital source of information about wrongdoing and serious incompetence does not dry up may outweigh the community's interest in individual investigations being pursued at all costs.

The exception in s 8(1)(a) confers a staggeringly broad discretion on those handling reports. Consideration should be given to its repeal. This may represent a deviation from whistleblower laws in many other Australian jurisdictions where there are numerous exceptions to prohibitions on divulgence of confidential information relating to disclosures.[259] However, a new approach may be warranted. Whistleblowers are critically important to the detection of corruption, misconduct and maladministration in public administration. There is compelling evidence that they are reluctant to come forward because they fear exposure and retaliation. A policy position that weighs preservation of reporter anonymity more heavily in the balance than investigative outcomes may be justified.

It is to be remembered that, in many cases, it will not be necessary to divulge the identity of an initial reporter in order to investigate or even pursue criminal proceedings or administrative processes. In cases where it is necessary, consent may sometimes be given. Even where consent is not given, there may be alternative means of addressing the mitigating risks associated with the conduct reported. Pursuing particular alleged perpetrators is but one way of addressing improper conduct in public administration. For example, where an integrity agency has conducted an investigation that has been discontinued for the reasons discussed, it might be that a deidentified version of the initial report could be provided to the relevant agency so that it could consider what general measures should be taken to address the issues raised.

Further, it is to be remembered that the SA PID Guidelines already permit divulgence of the identity of a discloser where a recipient believes on reasonable grounds that it is necessary to prevent or minimise an imminent risk of serious physical injury or death, and where divulgence is to an entity the recipient believes on reasonable grounds is the most appropriate entity to take action to prevent or minimise the risk. For reasons set out in the below evaluation case study, it may be appropriate to lower the threshold to include harm (serious or otherwise, physical or psychological) and remove the requirement of imminence. It may also be appropriate to remove the requirement that divulgence be made to an entity the recipient believes on reasonable grounds is the most appropriate entity to take action to prevent or minimise the risk.

This would still allow for escalation to another entity such as SA Police or SafeWork SA, for example, but it would also allow for an internal or external investigation to continue, even where divulgence of identity is necessary and not consented to, in the limited circumstances in which there is a risk of physical or psychological harm. It would not allow for a range of other investigations (for example, where the alleged conduct only poses a risk to the public purse) to continue where divulgence of

259 See Appendix D.

identity is necessary but not consented to, as is currently permitted. To aid clarity and accessibility, that exception could be incorporated into the SA PID Act itself.

It might be suggested that deletion of s 8(1)(a) could inadvertently hamper the general referral of matters to agencies best suited to handle disclosures. It may be an unsatisfactory answer to say that consent could be obtained prior to referral because current capabilities may not always allow for consent to be sought from anonymous reporters who do not provide contact details. Even a report made anonymously has the potential to reveal the identity of the discloser – for example, because the information contained in the report could only be known to one person or a small number of individuals. It may be desirable for an additional confined exception to be introduced capturing divulgence of identity for the purposes of referring a public interest disclosure to an agency best placed to deal with it, where a disclosure has been made anonymously and it is not possible to seek consent. It might be expected that the maker of an anonymous disclosure will have deidentified the disclosure to a level they are comfortable with.

Even if the recommendations in relation to removal of the exception in s 8(1)(a) and revision of the exception in the SA PID Guidelines are accepted, some limited scope for discloser identity to be divulged without consent will remain. Whenever it is proposed that the identity of a discloser be revealed notwithstanding that the discloser does not consent, it is vitally important that the discloser be provided with adequate notice so that steps may be taken to manage any risk of retaliation. The SA PID Act should oblige any person who proposes to reveal the identity of a discloser without their consent to provide the discloser with adequate notice.

Evaluation case study: divulgence of discloser identity to prevent or minimise risk of harm

In some cases, it may be necessary for an agency to take action to address conduct giving rise to safety concerns. In fact, in some cases agencies may have a legislative obligation under an alternative scheme to report conduct to an external authority where it gives rise to a risk of harm. For example, DHS has obligations under the *Children and Young People (Safety) Act 2017* (SA), *Criminal Law Consolidation Act 1935* (SA) and National Disability Insurance Scheme Act 2013 (Cth). In many cases, it will not be necessary to divulge the identity of the discloser, directly or indirectly, to take action to address conduct giving rise to safety concerns, but in some cases it might.

As set out in the preamble to this section of the report, the SA PID Guidelines allow for the identity of a discloser to be divulged where it is believed to be necessary to prevent or minimise an imminent risk of serious physical injury or death, and divulgence is to an entity believed to be the most appropriate to act. The threshold is high – risk must be "imminent" and "of serious physical injury or death". It is appropriate that disclosure be permitted where risk is imminent (the nature of the information may demand urgent action rendering it impracticable to seek consent from a discloser), but it may also be appropriate for disclosure to be permitted where it is not (the nature of the information may reveal a less immediate risk, allowing for consent to be sought from a discloser, but the discloser may decline to provide consent). It is appropriate that disclosure be permitted where there exists a risk of serious physical injury or death, but it may also be appropriate for disclosure to be permitted where there exists a risk of harm (serious or otherwise, physical or psychological). The position of this report that whistleblower agency should be weighted more heavily than investigative outcomes yields to safety concerns.

Although ICAC could itself make the necessary revisions to the SA PID Guidelines, recommendations are made later in this report to the effect that ICAC may no longer be the most appropriate agency to publish guidelines under the SA PID Act. It may be preferable for the issue of ongoing responsibility to be determined prior to substantive changes being made to the existing guidelines. Further, as noted above, it may aid clarity to incorporate the exception into the SA PID Act itself.

How might technology be leveraged to improve secure receipt and storage of public administration information?

> "Public authorities and other recipients of disclosures currently lack consistent systems and capabilities to protect whistleblower confidentiality. Whether this is done through legislative changes or similar, it should be reformed to mandate secure reporting platforms, standardised confidentiality protocols, and specialised training for disclosure recipients..."
>
> **– City of Tea Tree Gully submission to the Whistleblower Project**

The SA PID Guidelines require that procedural documents for internal reports specify the steps that will be taken to ensure public interest information will be "securely received and stored". They do not stipulate how public sector agencies and councils are to securely receive and store this information.

One public sector agency raised during the Whistleblower Project that a high level of confidentiality is required but organisations may not have available to them case management systems that enable sensitive files to be truly locked down – for example, it may be that even restricted files are accessible by staff providing technical support.

Various recommendations and suggestions are made in this report with respect to provision of external training to recipients and handlers of public interest disclosures, including exploring opportunities for partnership with SA Police. It may be that such training could address practices used by law enforcement to securely store information in relation to human sources, including the use of registers and pseudonyms. However, in smaller agencies reporter identity may be readily apparent even where such precautions are taken. Further consideration should be given to whether technological tools, including a case management system with capacity to restrict files, could be made available to public sector agencies and councils to assist them to preserve discloser identity.

Ms Burrows, both in her submission on behalf of the OPI and at the public forum, observed that externally reporting to the OPI may increase the likelihood that reporter identity will be preserved. Ms Burrows noted that the OPI does have available to it secure case management systems but also that, where a disclosure is not assessed to raise a potential issue of corruption, misconduct or maladministration in public administration, if it has been externally reported then it need not ever come to the attention of the relevant public sector agency or council.

However, Ms Burrows observed that anonymous reporting can limit the action the OPI is able to take[260] because information may be insufficient to determine whether a potential issue of corruption, misconduct or maladministration in public administration is raised. She suggested that this could be alleviated through use of an online portal allowing for ongoing communication between anonymous discloser and recipient but that this had neither been costed nor budgeted for. Indeed, international guidance recommends that consideration be given to "ways to allow and support whistleblowers to make a report without revealing their own identity while being able to communicate with the recipient of a report".[261]

260 This sentiment was echoed by other organisations in submissions to the Whistleblower Project.
261 *G20 principles* (n 21) Principle 5.

Dr Joshua Bon, a Lecturer in Data Science at Adelaide University, in his submission to the Whistleblower Project, suggested that open-source tools may already be available:

> "The best example of secure transmission of information and documents from anonymised sources is SecureDrop (https://securedrop.org). SecureDrop is an opensource system, managed by the Freedom of the Press Foundation, that allows whistleblowers to anonymously submit documents to news organisations and similar bodies. It protects the transmission of information by routing communications through a network that disguises the source's identity and location, whilst ensuring that received documents are handled on computers physically isolated from the internet, preventing remote interception. It should be noted that SecureDrop protects only the channel of communication, not the content of the documents themselves. SecureDrop does facilitate ongoing communication and transmissions with a whistleblower."

There may be benefit in the designated oversight body for South Australia's whistleblower laws, recommended below to be the OPI, reviewing open-source technological tools to consider the appropriateness of their use to facilitate ongoing communication with anonymous disclosers, with a view to providing guidance to other recipients of public interest disclosures about the same.

Dr Bon's submission also suggested that tools based on mathematical sciences could potentially be leveraged to efficiently determine:

- the likelihood of a whistleblower being identified from a particular document (or, related to this, the volume of outside information that would be required in order to identify a whistleblower from a particular document)
- how a document should be anonymised in order to reduce the risk of identification.

Such tools could be extremely useful to those investigating public interest disclosures.

In addition, Dr Bon raised current and emerging threats posed by Artificial Intelligence and Machine Learning, observing that those without expertise may be emboldened to attempt re-identification of anonymised materials by technical advances:

> "...the scale of information that a Large Language Model (LLM, for example) utilises and can process presents a new risk. Tasks such as reconstruction of redacted documents, author attribution based on writing style, or cross-referencing a large corpus of documents now use (and/or can process) a breadth of information not possible by a human analyst...These tools will not replace a human analyst but do augment and increase potential threats."

Evaluation case study: SA Police practices in relation to confidentiality

Perhaps unsurprisingly, given the core functions of SA Police and the core skills of many of its employees, the evaluation found that confidentiality is managed well notwithstanding that reports are infrequently assessed as engaging the operation of the SA PID Act.

By design, the PCD Act assists SA Police to keep whistleblower information "locked down" within the organisation to those people who need to know about it. It requires SA Police to have a section (IIS) dedicated to receiving, assessing and investigating complaints and reports about police conduct. SA Police is also required to have a case management system (for recording information about receiving, assessing and investigating those complaints and reports) that is entirely separate and restricted from the rest of the organisation. Further, the PCD Act requires all persons engaged with the receipt, assessment or investigation of complaints or reports about police conduct to adhere to strict confidentiality requirements.

Law enforcement bodies are well positioned to handle whistleblower disclosures, with experience managing highly sensitive information, including human source information, intelligence holdings, and operational material. IIS places high importance on carefully handling information about whistleblowers, consistent with ordinary policing practice.

Notwithstanding the above, there may be tension between aspects of the PCD Act and its Regulations and the confidentiality provisions in the SA PID Act. Broadly speaking, if there is action to be taken against a designated officer following an investigation, the outcome will either be a Management Resolution process, or progression to the Police Disciplinary Tribunal (**PDT**). At both ends of the spectrum, there are legislative requirements that can lead to the identity of a whistleblower being disclosed. Matters resolved by Management Resolution require a report to be provided to the officer whose conduct has been investigated. The report is required to include the name and contact details of the complainant. While s 8(1) of the SA PID Act likely trumps the requirement to name the complainant in the report because of s 8(2), most SA Police complaints and reports are not assessed to be public interest disclosures for reasons discussed in other evaluation case studies in this report. When a matter proceeds to the PDT, SA Police is required to follow the rules of evidence and disclosure. SA Police officers involved in that process often attempt to maintain confidentiality by redacting documents and seeking, where possible, to resolve matters without the need for lengthy PDT proceedings. There still remains a risk that a whistleblower's identity will be divulged by the nature of information disclosed throughout the process.

Evaluation case study: DHS practices in relation to confidentiality

DHS' Public Interest Disclosure procedure outlines its commitment to protecting disclosers who make appropriate disclosures of public interest information. It states that the identity of the informant will be kept secure and the recipient will not reveal the identity or any information that could reveal the identity of an informant unless one of the exceptions in the SA PID Act or SA PID Guidelines applies. One of the practical ways DHS endeavours to protect identity is by "locking things down" in its records management system so that information is only able to be accessed by those authorised to do so. Similar restrictions are in place for the grievance portal, used to receive complaints about workplace grievances; only a select few staff in Human Resources have access to the complaints received. To further ensure confidentiality, DHS adjusts naming conventions of files when saving information related to public interest disclosures in its records management system.

Information regarding grievance investigations is usually disclosed on a "need to know" basis and complainants will be asked if they wish to remain anonymous. If complainants elect to remain anonymous, they are often advised that this may hinder DHS' ability to conduct a fulsome investigation. It was acknowledged that this may disincentivise those within DHS to make a report. That said, it is important that communication with disclosers is open and transparent.

Within DHS, anonymous reports can be made by post or email (if a de-identified email address is used by the discloser). An anonymous disclosure may also be made by phone – for example, a blocked number could be used – but there is a risk that a person may be identified by voice. DHS would likely benefit from any secure portal the OPI may review for suitability.

Should provision be made for identifying information to be provided to the Inspector?

As set out in Chapter 1, the Inspector has a statutory function to review the operations of integrity agencies. The Inspector conducts annual reviews, reviews relating to complaints received, and own motion reviews or reviews at the request of the Attorney-General or the Crime and Public Integrity Policy Committee.[262]

The former Inspector Sam Abbott KC has observed in other contexts that integrity agencies are not able to disclose information to the Inspector's office where to do so might contravene the prohibition on revealing the identity of a discloser in s 8 of the SA PID Act, unless the discloser has provided consent. He recommended to the Crime and Public Integrity Policy Committee that s 8(1)(a) be amended "so far as may be necessary to ensure that the matters to which the information relates are properly investigated or reviewed pursuant to Schedule 4 to the ICAC Act…".

Disclosure of identifying information to the Inspector is unlikely to be of concern to disclosers because of the confidential basis on which it would be disclosed, because of the secure systems the Inspector must use given the sensitivity of the work the Inspector's office does, and because of the limited purpose for which it would be disclosed. The earlier recommendation that it should be a legislative requirement that those proposing to divulge identifying information without consent in reliance on an exception provide the discloser with adequate notice, if accepted, would ensure that disclosers are advised where information is to be provided to the Inspector. Given the earlier recommendation that s 8(1)(a) of the SA PID Act be repealed, an additional confined exception should be enacted so that the Inspector is not hampered in their ability to perform their functions.

262 *ICAC Act* (n 17) sch 4.

Recommendation 41

That the exception to the prohibition on divulging the identity of a maker of a public interest disclosure in s 8(1)(a) of the SA PID Act be repealed.

Recommendation 42

That an additional confined exception to the prohibition on divulging the identity of a maker of a public interest disclosure be included in South Australia's whistleblower laws capturing divulgence for the purposes of referring a disclosure to an agency best placed to deal with it, where the disclosure has been made anonymously and it is not possible to seek consent.

Recommendation 43

That an additional confined exception to the prohibition on divulging the identity of a maker of a public interest disclosure be included in South Australia's whistleblower laws capturing divulgence for the purposes of providing access to information in connection with a review pursuant to Schedule 4 to the ICAC Act.

Recommendation 44

That an additional confined exception to the prohibition on divulging the identity of a maker of a public interest disclosure be included in South Australia's whistleblower laws mirroring the current exception in the SA PID Guidelines but:

i. removing the word "imminent"
ii. replacing the words "serious physical injury" with the words "physical or psychological harm"
iii. removing the requirement that divulgence be to an entity believed to be the most appropriate to take action.

Recommendation 45

That South Australia's whistleblower laws oblige any person who proposes to divulge discloser identity without consent, in reliance on an exception, provide the discloser with adequate notice so that steps may be taken to manage any risk of retaliation. That training provided to those eligible to receive disclosures of public administration information, including responsible officers and managers and supervisors, address provision of information to prospective disclosers about the consequences that may flow from the making of a disclosure.

Recommendation	46

That further consideration be given to whether technological tools could be made available to public sector agencies and councils to assist them to preserve discloser identity.

Recommendation	47

That the designated oversight body for South Australia's whistleblower laws review open-source technological tools to consider the appropriateness of their use to facilitate ongoing communication with anonymous disclosers, with a view to providing guidance to other recipients of public interest disclosures about the same.

Obligations to assess, act and notify

At present, in South Australia, a person may be entitled to make a protected public disclosure to a journalist or member of Parliament where:

- the person has not received a notification of action taken, or the reasons for no action being taken, within **30 days** after making an initial disclosure, or
- has not received notification of outcome within **90 days** after making an initial disclosure (or such longer period as may be communicated to the disclosure within the 90-day period).[263]

The Whistleblower Project received very little feedback about the adequacy or otherwise of the current provisions imposing obligations on those who receive and handle public interest disclosures to provide disclosers with status updates.[264] Notwithstanding that the recommendations in this report do not specifically relate to these provisions, plainly they are critically important. Whistleblowers should be kept abreast of action taken in respect of matters they have raised; where they are not, there may be a perception (fair or unfair) that nothing has been done. There are other provisions in the SA PID Act that do not specifically form the subject of recommendations in this report (for example, those relating to false and misleading disclosures and the preventing and hindering of disclosure) – this reflects the absence of feedback in relation to those provisions rather than a view about their relative importance.

263 *SA PID Act* (n 8) s 6(b)(iii).

264 Some submissions to the Whistleblower Project expressed more general concerns about the timeliness of investigations in practice but not specifically with reference to timeframes prescribed in the *SA PID Act*.

Chapter 3: Establishing a South Australian whistleblower support authority

"The biggest barrier, as we know, is a fear of retribution. Anxiety and other things come into that; they don't know what's going on, they don't know what lays ahead of them. It's a really awful place...they're highly emotionally charged when they start this process because they've made the decision...to come forward"

– Former AFP whistleblower Frank O'Toole speaking at ICAC's 2026 Whistleblower Project Public Forum

Is there a need for a specific authority to support whistleblowers?

Whistleblowing can be a stressful and isolating experience. Added to this, the legislative framework whistleblowers are expected to navigate is not straightforward. Not only is the SA PID Act itself unduly complex, but it also intersects with a range of other complex laws. This complexity is problematic not just for disclosers but also for those tasked with handling disclosures.

All but one submission to the Whistleblower Project addressing the topic favoured establishing a specific authority to support whistleblowers in South Australia. The single outlier neither supported nor opposed establishment of such an authority but shared views and ideas on the topic. A common theme from submissions sharing experiences of whistleblowing was a lack of support throughout the process. This is reflective of broader Australian research.[265]

There is a strong case for establishing a central authority to act as a first port-of-call for prospective disclosers, and to support and guide those who make, or handle, public interest disclosures in South Australia.

Considerable progress has been made in some other Australian jurisdictions in recent times. Momentum has been building for structural reform of whistleblower legislation at the federal level, with a view to establishing an authority to better support whistleblowers, for some time. Last year the Whistleblower Protection Authority Bill 2025 (Cth) sought to establish a new independent statutory authority — with jurisdiction over all federal whistleblower laws — to provide information, advice, assistance, guidance and support to whistleblowers.[266] The Bill envisaged that a Whistleblower

265 See, for example, Inez Dussuyer and Russell Smith, 'Understanding and responding to victimisation of whistleblowers' (Research Paper No 549 Trends & issues in crime and criminal justice, Australian Institute of Criminology, 2018) 9.

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

Protection Commissioner would be established with a range of functions including providing, or arranging for the provision of, legal advice and representation to whistleblowers, and investigating as well as commencing proceedings in relation to reprisals. Ultimately, the Senate Legal and Constitutional Affairs Committee recommended that the Bill not be passed but that the evidence received be considered as part of the Australian Government's consideration of existing proposed reforms.

The exposure draft now proposes to establish a new Whistleblower Ombudsman, an additional statutory role to be held by the Commonwealth Ombudsman. It proposes that the Whistleblower Ombudsman be able to make use of the existing powers and capacities of the Commonwealth Ombudsman to carry out additional functions. The Commonwealth Ombudsman's submission on the exposure draft summarises the functions proposed to be conferred on the Whistleblower Ombudsman, identifying where those functions are additional to those already exercised by the Commonwealth Ombudsman, as follows:

> The Bill would provide the following functions to this new role:
>
> - handling complaints, disclosures and enquiries
> - conducting investigations into complaints and disclosures including complaints and disclosures in relation to reprisal allegations
> - conducting own motion investigations in relation to the PID Scheme
> - education and training on the PID Scheme
> - developing Model PID procedures, PID standards and guidelines to assist disclosers and agencies navigate the PID Scheme
> - conducting alternative dispute resolution and restorative engagement sessions to resolve complaints and disclosures under the PID Scheme
> - overseeing investigations under the PID Act
> - intervening in certain legal proceedings.
>
> Of these functions, the two new functions are:
>
> - the ability to resolve a complaint or disclosure through alternative dispute resolution or restorative engagement
> - the ability to intervene in legal proceedings as an intervener or amicus to the court.[267]

"…our office…recognised that we needed to approach this work a little bit differently…they made the decision to establish a whistleblower support team within our branch but they operate largely independently…"

– NSW Deputy Ombudsman Tom Millett speaking at ICAC's 2026 Whistleblower Project Public Forum

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

Senior Deputy Ombudsman Chris Clayton, in his submission to the Whistleblower Project on behalf of the NSW Ombudsman, described the whistleblower support function, operational since November 2024, through which the NSW Ombudsman now provides general information and guidance to whistleblowers as well as to agencies responsible for implementing the NSW PID Act. While the NSW Ombudsman whistleblower support function has no specific statutory basis, it is considered to come within the NSW Ombudsman's existing statutory functions, and to have been a necessary development to achieve the aims of the existing legislative framework. It is intended to complement rather than replace agency responsibilities. It meets the need for disclosers to have access to independent support as well as support that is available prior to, and following, the making of an internal disclosure.

The NSW Ombudsman whistleblower support function provides confidential information and guidance primarily via phone and email (including after hours with prior notice). An ethical wall has been erected between this function and other functions of the NSW Ombudsman including its complaint handling function. The whistleblower support function aims to provide information and guidance to empower whistleblowers to make informed choices. It does not provide legal advice or representation, but a Whistleblower Legal Referral Scheme commenced in 2025 partnering with the HRLC Whistleblower Project. A Whistleblower Wellbeing Referral Scheme, which allows the NSW Ombudsman whistleblower support function to refer individuals for free and confidential counselling services in certain circumstances, also commenced last year.

ICAC has also recognised the need to support those who disclose information in connection with its investigations into corruption in public administration. Its newly established witness welfare service aims to support the psychosocial wellbeing of witnesses as well as persons who are the subject of ICAC investigations and others impacted by the exercise of any of ICAC's powers and functions. Central to this, is an outreach service through which information about ICAC processes, support during interviews or hearings, and referrals to community-based support services are provided by a Witness Welfare Officer to witnesses. However, this important service is necessarily targeted to those involved in ICAC investigations.

> "When I think of reporting corruption and/or improper conduct, I think of major anxiety and stress"
>
> **– A respondent to ICAC's 2024 Public Integrity Survey**

ICAC understands, anecdotally, that prospective disclosers and disclosers as well as, on occasion, recipients of disclosures under the SA PID Act, often contact the OPI seeking advice. However, at present, the OPI has neither the statutory remit nor the resources to provide comprehensive guidance and assistance.

What functions should such an authority have and where should it be housed?

"We also know that potential whistleblowers are not coming forward because they do not believe that they will get protection, or they do not believe that anything will happen… so we know that there is a trust issue…you need to house that support in an institution that is trusted…that's going to be different in different jurisdictions…the work that the Whistleblower Support Unit is doing in a really well-established Ombudsman's office in NSW…the fact that the requests are growing shows that there is a public trust building…so that may be working in that jurisdiction…"

– Research Director at the CPI Professor Gabrielle Appleby speaking at ICAC's 2026 Whistleblower Project Public Forum

Interrelated questions then arise about the structure such an authority should adopt and the functions that should be conferred on such an authority.

Some submissions to the Whistleblower Project considered that a standalone authority should be established to avoid conflicting interests between, and to prevent dilution of, various functions. Others considered that an existing integrity agency ought to house such an authority for efficiency reasons and to avoid confusion. Still others were supportive of establishing an authority but less concerned about its accommodation.

The CPI's submission to the Whistleblower Project acknowledged that co-locating a new authority within the office of an existing authority may be efficient but warned that any proposal to do so would need to "…carefully consider issues of independence, resourcing and conflicting functions". The CPI recommended that if such an approach was to be taken, the role be established independently within the office (rather than simply extending the functions of the existing authority). It also highlighted the importance of establishing a transparent and merit-based process for appointment of head of the new authority. The HRLC and TIA joint submission, while strongly supportive of a standalone authority at the federal level, considered that an authority could be housed within an existing agency at the state level, provided information barriers were erected between the various functions and adequate resources were allocated. It suggested either Ombudsman SA or the OPI would be appropriate locations.

The Wilson Review was not persuaded that a standalone authority should be established in Queensland, heeding the Coaldrake Report's[268] warning about the creation of additional integrity bodies in an already crowded integrity landscape in that jurisdiction.[269] A number of submissions to the Whistleblower Project echoed that sentiment, suggesting that the existence of multiple integrity agencies in South Australia already causes confusion. The NSW experience speaks to the benefits of co-location.

The OPI may be the most appropriate existing agency to house a whistleblower support authority in South Australia, given its focus on receipt and referral of disclosures, and given its existing (albeit limited) oversight functions under the SA PID Act. Bearing in mind the OPI's existing functions

268 Peter Coaldrake, *Let the sunshine in: Review of the culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) pp 1, 31-32.

269 *Wilson Review* (n 38) 148.

and expertise, and bearing in mind the functions and expertise of other integrity agencies in South Australia, an independent centralised whistleblower support authority co-located within the OPI should have the following functions:

- providing information and guidance to prospective disclosers about South Australia's whistleblower protection regime, including how to make a disclosure and the circumstances in which a disclosure will attract legislative protections as well as the nature of legislative protections
- providing information and guidance to disclosers about South Australia's whistleblower protection regime, including the circumstances in which a disclosure will attract legislative protections and the nature of legislative protections
- referring prospective disclosers and disclosers to pilot programs providing free access to legal advice and counselling services[270]
- receiving public interest disclosures and, where necessary, referring them to appropriate entities for potential investigation, bearing in mind restrictions on divulgence of discloser identity[271]
- potentially, conferring whistleblower status[272]
- providing information and guidance to public sector agencies and councils, including responsible officers and managers and supervisors, about how they should identify, receive and handle public interest disclosures, including how material might be gathered without breaching the prohibition on divulgence of reporter identity
- otherwise promoting awareness and providing guidance about South Australia's whistleblower protection regime, including through publishing guidelines and creating accessible resources[273]
- receiving notifications from public sector agencies about public interest disclosures and periodically reviewing/reporting on the operation of the SA PID Act.[274]

It is not recommended that the authority investigate disclosures given there are existing integrity agencies in South Australia performing investigative functions, but the authority should consider and develop strategies for public sector agencies and councils for the effective investigation of disclosures without confidentiality being lost. While ICAC remains well placed to deliver (potentially in partnership with SA Police as discussed in Chapter 2) internal investigations workshops, it would be necessary for any authority providing guidance and training to those identifying, receiving and handling public interest disclosures to also develop knowledge and skills in this area. Internal investigations workshops and training in the identification, receipt and handling of public interest disclosures would need to be consistent and care would need to be taken to avoid undue duplication.[275]

Plainly, the success of a new whistleblower support authority within the OPI would depend on its statutory independence and the adequacy of funding.

270 Ms Burrows observed, in the OPI's submission, that that there may be risks associated with the OPI providing legal advice or representation to whistleblowers given its existing role to independently and impartially assess disclosures. That is to be accepted. Chapter 2 recommends a pilot program to provide free legal advice to prospective disclosers and disclosers in the context of seeking civil remedies for victimisation, but equally such a program should be available for prospective disclosers anxious to ensure they disclose in a way that preserves their protections.

271 Including referring alleged victimisation under the SA PID Act to ICAC as recommended in Chapter 2.

272 See the discussion in Chapter 4.

273 Discussed further in Chapter 5.

274 Discussed further in Chapter 5.

275 As things stand, ICAC delivers multiple streams of training to multiple audiences, including internal investigations training to those involved in conducting investigations in public sector agencies and public interest disclosure training to responsible officers designated under the SA PID Act.

Recommendation	48

That special purpose funding be allocated to existing community counselling services in South Australia for a pilot program to assist prospective whistleblowers and whistleblowers seeking wellbeing support.

Recommendation	49

That an independent whistleblower support function be established within the office of the OPI with statutory authority and adequate resources to:

i. provide information and guidance to prospective disclosers and disclosers about South Australia's whistleblower protection regime
ii. refer prospective disclosers and disclosers to programs providing free access to legal advice and counselling services
iii. receive public interest disclosures and, where necessary, refer them to appropriate entities for potential investigation, bearing in mind restrictions on divulgence of discloser identity
iv. provide information and guidance to public sector agencies and councils, including responsible officers, about identification, receipt and handling of public interest disclosures
v. otherwise promote awareness and provide guidance about South Australia's whistleblower protection regime, including through publishing guidelines and creating accessible resources
vi. receive notifications from public sector agencies and councils about public interest disclosures and periodically review/report on the operation of South Australia's whistleblower protection regime.

Chapter 4: Providing early certainty about whistleblower status

"...the whistleblower is in a state of heightened anxiety at the beginning of this process and if they don't understand the protections that are available to them, or there is ambiguity around that, uncertainty around that, we're adding to that anxiety...we're then creating a heightened risk of that person withdrawing from the process, which is not what you want obviously, or at least going through the process but becoming deeply affected by it, negatively affected by it"

– Former AFP whistleblower Frank O'Toole speaking at ICAC's 2026 Whistleblower Project Public Forum

The stress and distress often associated with whistleblowing can be compounded by the fact that there is currently no mechanism for a binding decision to be made and communicated about whether or not a disclosure meets the threshold, and therefore engages legislative protections, at an early stage. Whether or not a disclosure attracts legislative protections can only be formally determined by a court or tribunal if proceedings are commenced asserting, for example, that the whistleblower has breached a duty of confidentiality or that another person has victimised the whistleblower. Not unreasonably, many individuals may wish to know with some certainty whether or not legislative protections apply at a much earlier time.

Submissions to the Whistleblower Project expressing a view about this topic were unanimously in favour of providing early certainty. Many cited the importance of enabling whistleblowers to make informed choices and the need to reduce stress associated with whistleblowing as justification. Inability to provide early certainty under South Australia's current whistleblower protection regime undoubtedly deters some prospective disclosers from coming forward with valuable information. The question seems to be less whether provision of early certainty is desirable and more what mechanism might be used to provide early certainty.

Some public sector whistleblower laws in other Australian jurisdictions contain mechanisms that may be instructive. In particular, the NSW PID Act provides for heads of agencies to deem disclosures to be voluntary public interest disclosures "even if the disclosure would not otherwise [qualify]".[276] A determination may be made at the request of the maker of the disclosure or on the agency head's

276 *NSW PID Act* (n 4) s 29(1).

own initiative.[277] It must be communicated in writing to the discloser.[278] It must not be made unless the agency head believes – honestly and on reasonable grounds – that the disclosure shows or tends to show serious wrongdoing.[279] The written determination is then admissible in criminal or civil proceedings as evidence that the disclosure is a qualifying public interest disclosure.[280] Where an agency head's belief was not held honestly or on reasonable grounds, the validity of the determination is unaffected.[281] Determinations have effect from the time they are made[282] and may be revoked where agency heads subsequently form the view that the discloser wilfully made a false or misleading statement.[283]

Further, some Australian jurisdictions require recipients of disclosures to assess whether disclosures meet the statutory threshold and communicate their decision to disclosers.[284] While the status of such assessment and communication in subsequent legal proceedings is unclear, it may have some relevance or persuasive force in some contexts. Further, it may provide disclosers with a level of comfort.

While individuals within public sector agencies and councils could potentially be permitted to confer whistleblower status, it may provide consistency for that role to be centralised. The whistleblower support authority recommended in Chapter 3 may be best suited to fulfil any such role. Importantly, internal disclosures could still be made in the usual way with the status of disclosures being determined in proceedings when issues arise, but disclosers seeking early certainty could opt to make an external disclosure to a whistleblower support authority accommodated by the OPI.

Judicial consideration of the provisions identified in this section is limited. In the case of the newly revised NSW PID Act, it is understood that no cases have yet tested the operation of s 29. In fact, s 29 was inserted not to necessarily provide early certainty but, rather, to allow for flexibility where disclosures do not otherwise meet the statutory threshold for protection (one example given was that of disclosures by former public officers).[285] It is unclear why the maker of a deemed disclosure should be reassured that they will be able to rely on their written determination to prove the status of their disclosure if necessary but the maker of a disclosure that appears to otherwise qualify should not.[286] If a determination that a disclosure is a qualifying public interest disclosure for the purposes of the SA PID Act was to be admissible as evidence of that fact, a substantial issue relevant to criminal liability (for example for breaching the prohibition on divulgence of reporter identity) would be determined before a matter was ever heard by a court or tribunal. Such a provision would have significant implications.

Ms Burrows, in the OPI's submission to the Whistleblower Project, considered that it may be difficult for the OPI to confer whistleblower status at the time of assessing a report, including because of the limited nature of inquiries made at that time. At the public forum, Professor Appleby reflected on the interconnectedness of issues and possible reforms in this space, observing that if uncertainties and ambiguities in the SA PID Act were addressed then there may not be a need for a mechanism to

277 Ibid s 29(2)(a).
278 Ibid s 29(2)(b).
279 bid ss 29(2)(c)-(3).
280 bid s 29(5).
281 Ibid s 29(4).
282 Ibid s 29(6).
283 Ibid s 29(8).
284 See, for example, *Independent Commissioner Against Corruption Act 2017* (NT) s 98; *Tas PID Act* (n 104) Part 5; *Vic PID Act* (n 104) pt 3 div 2.
285 *2017 NSW parliamentary committee review* (n 67) 10-13.
286 It is also unclear why a determination has effect from the time it is made – presumably information has been disclosed at an earlier time and a discloser may seek protection for the disclosing of that information.

confer whistleblower status at an early stage. Likewise, greater access to legal advice could empower those contemplating making a disclosure to make informed choices and could provide those who have made a disclosure with reassurance about the likelihood that legislative protections could be relied upon if necessary.

Further consideration should be given to the mechanism by which greater certainty might be provided to disclosers.

Recommendation 50

That further consideration be given to:

i. whether South Australia's whistleblower laws should be amended to allow for an authority to determine that a disclosure qualifies for legislative protections
ii. whether South Australia's whistleblower laws should be amended to provide for written notice of such a determination to be admissible in legal proceedings as evidence of the fact that the disclosure qualifies for legislative protections.

Chapter 5: Optimising oversight

At present in South Australia, **oversight of the SA PID Act is minimal**:

- A person to whom a disclosure that engages the SA PID Act is made must provide the OPI with information relating to the disclosure in accordance with the SA PID Guidelines.[287]
- A person who takes action in relation to a disclosure that engages the SA PID Act must provide the OPI with information relating to the outcome of that action in accordance with the SA PID Guidelines.[288]
- ICAC may publish guidelines for the purposes of the SA PID Act.[289]
- ICAC may approve training courses that designated responsible officers under the SA PID Act must have completed.[290]

All but one submission to the Whistleblower Project that addressed whether oversight measures in the SA PID Act should be strengthened considered that they should. Whistleblower laws in most other Australian jurisdictions feature comparatively more robust oversight measures. By way of example, the recently amended NSW PID Act:

- requires agencies to notify the NSW Ombudsman at various points such as when the agency:
  - becomes aware of an allegation that a detrimental action offence has been committed arising from a public interest disclosure relating to the agency or relating to a public official associated with the agency[291]
  - refers evidence of an alleged detrimental action offence for prosecution or becomes aware of the outcome of such a prosecution against a public official associated with the agency[292]
  - decides neither to investigate nor to refer a disclosure, or decides to cease investigating a matter without completing the investigation or referring the matter[293]
  - enters into an arrangement with another agency or entity to exercise any of its functions under the NSW PID Act[294]
- confers various functions on the NSW Ombudsman such as:[295]
  - promotion of public awareness and understanding of the NSW PID Act
  - provision of information, advice, assistance and training to agencies and public officials on matters relevant to the NSW PID Act

287 *SA PID Act* (n 8) s 7(1)(c).
288 Ibid s 7(3)(b).
289 Ibid s 14(1).
290 *SA PID Regulations* (n 128) reg 4. In practice, ICAC not only approves but also conducts such training courses.
291 *NSW PID Act* (n 4) s 34(4)(a), (d).
292 Ibid s 34(4)(b), (c).
293 Ibid s 55(3).
294 Ibid s 81(4).
295 Ibid s 72.

- › publishing of guidelines and other materials to assist agencies and public officials in connection with the NSW PID Act
- › auditing and monitoring of the exercise by agencies of their functions under the NSW PID Act[296]
- › provision of reports and recommendations to the Minister about proposals for legislative and administrative change to further the objects of the NSW PID Act

- provides for the NSW Ombudsman to conciliate disputes arising in connection with the NSW PID Act[297]
- provides for the NSW Ombudsman to submit annual reports to the Minister (among others) in relation to its own activities and compliance by agencies with the NSW PID Act (among other things)[298]
- provides for the NSW Ombudsman to submit special reports to Parliament in connection with the exercise of its functions under the NSW PID Act[299]
- establishes a Public Interest Disclosures Steering Committee, consisting of the NSW Ombudsman and a range of other statutory office holders and senior public sector executives,[300] to provide advice to the Minister about the operation of the NSW PID Act and recommendations for reform, among other functions[301]
- provides for a joint committee of members of Parliament to review the NSW PID Act, in consultation with each member of the Public Interest Disclosures Steering Committee, as soon as possible after five years from the commencement of the new legislation, and report the outcome to Parliament.[302]

296 Provision is also made for the NSW Ombudsman to require agencies to produce material in connection with its auditing and monitoring functions: Ibid s 75. In addition, provision is made for agencies to provide annual returns to the NSW Ombudsman including information about receipt of voluntary public interest disclosures, action taken to deal with such disclosures, and measures taken to promote a culture in which such disclosures are encouraged: Ibid s 78.
297 Ibid s 74.
298 Ibid s 76.
299 Ibid s 77.
300 Ibid s 67.
301 Ibid s 68.
302 Ibid s 89. The Minister is obliged to respond within six months of the report being tabled: ibid s 89(6).

Providing for periodic review

"...integrity reform...is never set and forget..."

– Research Director at the CPI Professor Gabrielle Appleby speaking at ICAC's 2026 Whistleblower Project Public Forum

Perhaps the most glaring omission in the SA PID Act in relation to oversight is the absence of any mechanism to periodically review its operation. International guidance recognises the importance of this measure.[303] The last review of whistleblower laws in South Australia was conducted over a decade ago.[304] The Whistleblower Project has been conducted pursuant to general functions and powers in the ICAC Act in response to evidence that the framework was not operating as effectively as it should be, and in circumstances in which the SA PID Act does not itself provide for periodic review. The recommendations in this report might not have been quite so voluminous or substantial had such a lengthy period of time not elapsed since the previous review.

The SA WP Act required the Attorney-General to conduct a review of the operation and effectiveness of the legislation; required the Attorney-General, or a person conducting the review on their behalf, to consult with the Independent Commissioner Against Corruption (unless that person was conducting the review); and required the Attorney-General to prepare a report based on the review within 12 months of the first appointment of an Independent Commissioner Against Corruption, and table the report within 12 sitting days of its preparation.[305] It is unclear why some form of provision for legislative review was not provided for in the SA PID Act.

South Australia's whistleblower laws should stipulate that the designated oversight body (elsewhere recommended to be the OPI) must conduct a review of the operation of the SA PID Act at specified intervals. Ms Burrows, in her submission to the Whistleblower Project, observed that "...the PID Act is silent on what the OPI should do with the information that it receives." These notifications could prove to be a valuable source of information for use in the preparation of a report following completion of such a review.

As suggested by several submissions made to the Whistleblower Project, oversight of South Australia's whistleblower protection framework may also be enhanced by requiring public sector agencies and councils to include in their annual reports (in an appropriate way so as not to offend confidentiality obligations) not only information about the number of public interest disclosures received but also information about the timeliness and outcomes of investigations of those matters. Further, in some jurisdictions, annual returns to oversight bodies under public sector whistleblowing laws must detail measures taken to promote a culture in which public interest disclosures are encouraged.[306]

303 *G20 Principles* (n 21) principle 11. See also *TI's principles for legislation* (n 40) principle 26.
304 *Lander Review* (n 3).
305 *Whistleblower Protection Act 1993* (SA) s 13.
306 See, for example, *NSW PID Act* (n 4) s 78(3)(c).

Transferring oversight functions to a more appropriate entity

A further legitimate issue raised in several submissions made to the Whistleblower Project relates to the appropriateness of ICAC continuing to be the agency permitted to publish guidelines and approve training courses connected with the current regime.

The purpose of the SA PID Act is to encourage, facilitate and oversee public interest disclosures. In simple terms, it establishes procedures for the making of disclosures and it establishes protections for those who make them. It has always been the function of the OPI to receive and oversee reports. It was logical for ICAC to be responsible for the oversight functions detailed at the commencement of this section when ICAC had responsibility for the OPI. As the OPI is now independent from ICAC, it is no longer logical. The OPI, as the agency whose core function it is to receive and assess disclosures, is better placed to issue guidelines including about information to be provided to it, and to deliver tailored training addressing current issues and trends to those handling disclosures. Further, following the amendment to ICAC's jurisdiction, ICAC is no longer the appropriate agency to investigate two of the three categories of conduct about which qualifying disclosures may be made.

One submission to the Whistleblower Project appropriately described the conferral of oversight functions under the SA PID Act on ICAC as an "anachronism". Indeed, the Lander Review recommended that ICAC be the oversight body for South Australia's whistleblower laws at a time when the OPI was the responsibility of ICAC – specific reference was made to the nature of ICAC's connection with the OPI in doing so.[307] Ms Burrows agreed, in her submission on behalf of the OPI, that responsibility to publish guidelines should be transferred to the OPI. Other submissions identified that current gaps in oversight should be filled by the dedicated whistleblower support unit recommended to be established and accommodated within the OPI in Chapter 3. Plainly, for the recommendations made in Chapter 3 and Chapter 6 to be successful adequate resources would need to be allocated, but it is clear that the OPI is now the more appropriate agency to perform oversight functions in respect of the SA PID Act.[308]

One of the stated objects of the SA PID Act is to ensure that there is appropriate oversight of public interest disclosures. The HRLC and TIA joint submission considered that "...the most prominent missing piece in oversight for the PID Act in South Australia is the oversight and enforcement of whistleblower protections". Much could be done to enhance oversight in this jurisdiction. At a minimum, provision should be made for periodic review of South Australia's whistleblower laws and oversight functions should be transferred to the OPI.

307 *Lander Review* (n 3) 158.

308 For completeness, ICAC also anomalously has the ability to grant exemptions to the provisions obliging principal officers to prepare and maintain public interest disclosure procedures: *SA PID Act* (n 8) s 12(6)(b).

Recommendation 51

That South Australia's whistleblower laws stipulate that a review must be conducted of their operation by the designated oversight body at specified intervals.

Recommendation 52

That South Australia's whistleblower laws require public sector agencies and councils to include in their annual reports (in an appropriate way so as not to offend confidentiality obligations) not only information about the number of public interest disclosures received but also information about the outcomes of investigations of those matters. Further, that information be included about steps taken during the reporting period to promote a culture in which reporting is encouraged and facilitated.

Recommendation 53

That current oversight functions including the publishing of guidelines and the approval of training courses (in practice, delivery of training courses) be transferred from ICAC to the OPI.

Chapter 6: Enhancing the accessibility and clarity of whistleblower laws

> "...I'm a very trained public lawyer, I read lots of statutes, I can't work out what this means and whether I would be protected in certain circumstances – how would anyone in a vulnerable situation be able to navigate this?"
>
> **– Research Director at the CPI Professor Gabrielle Appleby, describing her experience of reviewing the Bill that became the Cth PID Act more than a decade ago, at ICAC's 2026 Whistleblower Project Public Forum**

The complexity of South Australia's whistleblower protection regime – in particular, the SA PID Act – has been a recurring theme throughout the Whistleblower Project. Submissions addressing the issue were overwhelmingly in favour of simplifying the SA PID Act as well as increasing awareness and training to improve accessibility.

All laws should be clear and accessible. It is fundamental to any democracy that its citizens know the rules by which they are governed, so that they understand their rights and duties. Disclosers, and recipients of disclosures, are the primary audience for whistleblower laws. Those who have reported, or are contemplating reporting, wrongdoing or serious incompetence within their organisation are likely to be experiencing considerable stress if not distress. They are unlikely to be in a position to discuss their predicament with others. Most often, they will not be legally qualified or trained and they may not be in a position to access legal advice. The consequences for them if they err in their interpretation of the law may be significant. It is also vital that recipients are able to readily decipher their responsibilities if public interest disclosures are to be appropriately identified, received and handled.

For all of these reasons, changes should be made to the structure and text of the SA PID Act, and measures should be implemented to better communicate the meaning and effect of the SA PID Act to all those who interact with it. Several issues and recommendations to enhance clarity and accessibility are woven throughout this report in the specific sections to which they relate. The below list adds to these.

- It may improve the clarity and accessibility of South Australia's whistleblower laws if they are revised to:
  - remove or minimise the need to move between multiple pieces of legislation – for

example, where key definitions are linked to other laws such as the ICAC Act, the Ombudsman Act or the Public Sector Act, those definitions could be reproduced, even if that may necessitate consequential amendment where definitions are revised[309]

› adopt a more logical structure – for example, it is unclear why the definition of a qualifying disclosure of public administration information is found under the heading “Immunity for appropriate disclosure of public interest information” in s 5(4) of the SA PID Act when it is equally relevant to many other parts of the SA PID Act, including those conferring protections relating to confidentiality and victimisation

› replace convoluted phrases like “appropriate disclosure of public administration information” with simpler language

› expressly state that disclosures may be anonymous – in practice, anonymous disclosures are received and treated as public interest disclosures but the SA PID Act is largely silent as to the form disclosures must take (although it contemplates that some disclosures may be anonymous in s 6(b)(ii))[310]

› mandate refresher training for responsible officers and other relevant authorities under the SA PID Act, including managers and supervisors.[311]

- The whistleblower support authority, recommended to be established in Chapter 3, should be adequately resourced to:

  › promote awareness of the existence and operation of South Australia’s whistleblower protection laws both in the public sector and more broadly in the community, including to any new categories of eligible disclosers and to existing categories that may not fully appreciate their current eligibility (for example, contractors)

  › create a range of plain English, and multilingual, resources to explain key provisions of the SA PID Act to whistleblowers, including factsheets and short videos[312]

  › create a range of resources to assist those tasked with identifying, receiving and handling public interest disclosures, including a ready reckoner or handbook for quick reference. These resources could be distributed by public sector agencies and councils in induction and other in-house training sessions

  › develop and deliver practical, scenario-based training to responsible officers but also others eligible to receive public interest disclosures such as managers and supervisors, focussing on appropriate identification and handling without offending the prohibition on divulging discloser identity.[313]

- Consideration should be given to consolidating some of the numerous instruments that those who make, and receive, public interest disclosures must navigate and reconcile, including the SA PID Act, SA PID Regulations, SA PID Guidelines as well as applicable codes of conduct and

309 This is essential where even reproducing the definition of corruption in public administration in the SA PID Act will still require movement to other pieces of legislation because the definition itself lists offences contrary to certain other laws.

310 Some submissions to the Whistleblower Project shared concerns about this proposed measure, noting the difficulties associated with effective investigation of anonymous disclosures. However, the point relates to clarity given anonymous disclosures are already made and received under the current regime. Data from ICAC’s 2021 and 2024 Public Integrity Surveys suggests close to 80 per cent of South Australian public officers prefer to report anonymously. Further, there may be value in facilitating reports about serious conduct even where they may not be able to be formally investigated. Further still, recommendations made in Chapter 2 may assist in this regard.

311 The need for targeted training to be provided to this group was highlighted at various times during the Whistleblower Project, including in submissions and in the DHS evaluation.

312 NSW Deputy Ombudsman Tom Millett spoke to the success of what he termed “PID bites” videos in that jurisdiction during the public forum.

313 As discussed in Chapter 3, adequate resources would need to be provided in order for a program of training of this kind to be delivered. In addition, online courses and short videos may allow for a wider audience to be reached efficiently.

internal reporting procedures. It may be that the limited content in the SA PID Regulations could be consolidated into the SA PID Act.

> "Maybe even the name whistleblower is problematic…and perhaps public interest disclosure – even though it doesn't quite roll off the tongue…is more accurate because then it sort of says…seeing bad things and pointing them out and the organisation learning from it…is not exceptional…is an important cultural shift"
>
> **– Research Director at the CPI Professor Gabrielle Appleby speaking at ICAC's 2026 Whistleblower Project Public Forum**

Consideration was also given to whether a return to the language of whistleblowing in the title of South Australia's whistleblower laws might increase the visibility of the regime. Views were divided among those who expressed an opinion about this, whether in a submission or at the public forum. Some felt the term "whistleblowing" would more readily convey to the public the nature and effect of the legislation. A 2025 survey of NSW public officials suggests the term "whistleblowing" now has fewer negative connotations than it has in the past. However, the survey data also suggests that reporting is now more commonly referred to as "speaking up" or "making a PID" than "whistleblowing" in that jurisdiction. In the context of exploring the merits of incorporating a public interest test into public sector whistleblower laws, TI's best practice guide for legislation observes that the phrase "public interest disclosure" can have the advantage of shifting the focus from the reporter to the disclosure itself and portraying the reporter as a responsible citizen.[314] All public sector whistleblower laws in other Australian jurisdictions use the language of public interest disclosure. There is some utility in retaining that basic level of harmony. As discussed in Chapter 8, it may also be beneficial for language in the legislation to convey that reporting is unexceptional and simply part of a person's role.

> "Clear, accessible information and consistent processes are critical to building trust and encouraging reporting. This cannot be overstated"
>
> **– Commissioner for Public Sector Employment, Erma Ranieri, in a submission to the Whistleblower Project**

There is a pressing need to simplify and reduce ambiguity in the SA PID Act. At the same time, more should be done to enhance awareness and understanding of South Australia's whistleblower protection regime within the South Australian community through the provision of self-help resources and increased training. This is an area in which action is likely to make a considerable difference to the effectiveness of the regime.

Where recommendations listed above have not been recommended in another chapter, they are included, in short form, in the recommendations box at the end of this section.

314 *TI's best practice guide for legislation* (n 41) 10.

Evaluation case study: SA Police's experience of interacting with the SA PID Act

A recurring issue raised throughout evaluation interviews with officers responsible for managing disclosures within SA Police was the complexity of the SA PID Act itself. Officers indicated that the legislation can be difficult to interpret and apply in practice, particularly within the operational realities of a complex policing environment. This raises broader questions about whether the current legislative framework achieves an appropriate balance between clarity, comprehensiveness, and operational practicality.

Evaluation case study: integration of overlapping pathways in internal DHS procedures

Given the breadth and nature of DHS' functions, there are multiple Commonwealth and State regulatory schemes DHS staff must comply with. For instance, DHS staff have statutory obligations to make reports relating to the suspected abuse or neglect of a child and must notify the National Disability Insurance Scheme where there has been a reportable incident. In addition, DHS has a comprehensive framework of policies and procedures, which set out a variety of internal complaint or reporting pathways for different types of behaviour. Each business unit also has its own procedure for general complaint handling, as required by DHS' Customer Feedback and Complaints Policy. These policies and procedures sit alongside the DHS' Public Interest Disclosure procedure; sometimes, they will overlap. For example, complaints or reports regarding employment decisions, harassment, discrimination, child safety and the level of care provided to a client could also fall within the ambit of public administration information if a potential issue of corruption, misconduct or maladministration is raised.

The existence of multiple, possibly overlapping, reporting pathways increases the risk that disclosures will not attract legislative protection due to technical non-compliance, or will not be dealt with appropriately. For instance, a staff member who would otherwise be eligible for protection may not have the benefit of those protections if they have used a reporting pathway that meant their disclosure was not made to a "relevant authority". Equally, a person receiving a disclosure under a different pathway may not be alive to the disclosure's likely status under the SA PID Act.

These issues are not unique to DHS; it is envisaged that different regulatory schemes exist across the public sector, particularly in agencies such as the Department for Health and Wellbeing, the Department for Child Protection, the Department for Education and the Department for Correctional Services.

Information obtained from the DHS evaluation suggests that greater consideration could be given to the application of the SA PID Act in drafting and reviewing other internal policies and procedures and in developing complaint systems targeted to alternative kinds of reports. It was acknowledged that work could be done within DHS to better integrate SA PID Act considerations into other complaint or reporting pathways.

Recommendation	54

That South Australia's whistleblower laws be revised to:

i. remove or minimise the need to move between multiple pieces of legislation so that they are as self-contained as possible
ii. adopt a more logical structure
iii. replace convoluted phrases with simpler language
iv. expressly state that disclosures may be anonymous
v. mandate initial and refresher training for responsible officers and other relevant authorities, including managers and supervisors.

Recommendation	55

That any newly established whistleblower support authority be adequately resourced to:

i. promote awareness of the existence and operation of South Australia's whistleblower protection laws both in the public sector and more broadly in the community, including to any new categories of eligible disclosers and to existing categories that may not fully appreciate their current eligibility
ii. create a range of plain English, and multilingual, resources to explain key provisions of the SA PID Act to whistleblowers, including factsheets and short videos
iii. create a range of resources to assist those tasked with identifying, receiving and handling public interest disclosures, including a ready reckoner or handbook for quick reference
iv. develop and deliver practical, scenario-based training to responsible officers but also others eligible to receive public interest disclosures such as managers and supervisors, focussing on:
    a. appropriate identification of public interest disclosures
    b. handling public interest disclosures without offending the prohibition on divulging discloser identity, including training in relation to the recommended exceptions to this prohibition.

Recommendation	56

That consideration be given to consolidating some of the numerous instruments that those who make, and receive, public interest disclosures must navigate and reconcile, including the SA PID Act, SA PID Regulations, SA PID Guidelines as well as applicable codes of conduct and internal reporting procedures.

Recommendation	57

That public sector agencies and councils strengthen the integration of South Australia's whistleblower laws within other internal policies and procedures relating to the making of complaints and reports. This should include referring to South Australia's whistleblower laws in those other internal policies and procedures and providing guidance about interrelationship.

Chapter 7: Exploring the feasibility of financial incentives

Whether monetary rewards should be provided to whistleblowers has been, and continues to be, the subject of much debate in South Australia and in other Australian and international jurisdictions. No Australian jurisdiction has yet introduced a scheme to financially incentivise whistleblowing.

Effective models and precedents

Financial incentive schemes can take many forms. A little over a month ago, the HRLC published a detailed report examining the feasibility of financially incentivising both public and private sector whistleblowing at the federal level.[315] The report presents two models, either of which, it concludes, could be introduced to encourage reports:

- ***qui tam* laws**[316] allowing whistleblowers to pursue legal action directly against the individuals the subject of their disclosures, with a view to securing a portion of recovered funds and fines[317]

- **"tip-off" schemes** allowing government regulators to financially reward whistleblowers who provide information used to take action which leads to the imposition of a financial penalty.[318]

Financial reward schemes have the potential to incentivise those with information to come forward, increasing the likelihood that issues will be promptly investigated and addressed as necessary. This has been the experience of the United States of America, where financial rewards for whistleblowing have been used extensively since the time of the Civil War. During that period, procurement of military supplies increased exponentially and government resources did not allow for close monitoring of all contractors. In response, legislation was enacted to allow citizens to file claims on behalf of government in exchange for monetary rewards where they discovered fraudulent activities.[319] Between 1986, when that legislation was revised, and 2022, *qui tam* actions filed by citizens recovered in excess of US$50 billion, with whistleblowers receiving over US$7 billion.

Other countries that provide financial incentives to whistleblowers have "overwhelmingly chosen to do so by implementing cash-for-information schemes" rather than by introducing *qui tam* laws. The HRLC's recent report acknowledged that implementing a tip-off scheme in Australia "faces substantially fewer legal and structural hurdles" than implementing a *qui tam* scheme.

315 HRLC, *Rewarding Australian Whistleblowers: Design Options for Whistleblower Incentive Programs* (Report, April 2026) ('*Rewarding Australian Whistleblowers report*').

316 The term "*qui tam*" originates from a Latin phrase meaning "[he] who sues on behalf of the King, as well as for himself": Wim Vandekerckhove, Bethania Antunes and Kate Kenny, *What do we know about rewards for whistleblowers*, (Report, March 2018) 27 cited in Eliza Lockhart, *The Inside Track: The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime* (Report, December 2024) p 13 ('*The Inside Track report*').

317 *Rewarding Australian Whistleblowers report* (n 315) 22.

318 Ibid 34.

319 Terry Dworkin and A J Brown, 'The Money or the Media? Lessons from Contrasting Developments in US and Australian Whistleblowing Laws' (2013) 11(2) *Seattle Journal for Social Justice* 653, 665.

Legislation passed in the wake of the Global Financial Crisis also allows the United States of America's Securities and Exchange Commission (**SEC**) to pay whistleblowers for information that leads to the imposition of sanctions. On average, between 2019 and 2022, each year the SEC has received 9,164 tips and awarded US$257 million across 78 awards. Professor Vivienne Brand of the College of Business Government and Law at Flinders University – an expert in the field of private sector whistleblowing – identified, in her submission to the Whistleblower Project, empirical research which supports the view that financial incentive schemes are effective in a business context.

> "...a whistleblower reward scheme is about recognising the whistleblower's contribution to the public interest. So it's not necessarily about financially compensating them for what they've lost in terms of their lost employment or their legal fees or whatever. It's just about saying 'What you've done is valuable and has contributed to society and has resulted in whatever outcome' and recognising that"
>
> **– HRLC Whistleblower Project Lawyer Anneliese Cooper speaking at ICAC's 2026 Whistleblower Project Public Forum**

In addition to incentivising whistleblowers to report, financial rewards may provide some relief where whistleblowers have incurred loss that has not been compensated for whatever reason (see the discussion in Chapter 2). Financial rewards may also assist with providing recognition for – and influencing attitudes towards – whistleblowers. An audience question at the public forum convened as part of the Whistleblower Project sparked a conversation among the panellists about financial rewards recently reported in the media.[320] Some contended that financial rewards can play an important role in acknowledging the value of whistleblowing to society. Where financial rewards are apportioned by reference to funds recovered and/or sanctions imposed, they may even assist to dispel any stigma associated with reporting by shifting the focus to the positive outcome for the public purse and the undesirability of the conduct reported.

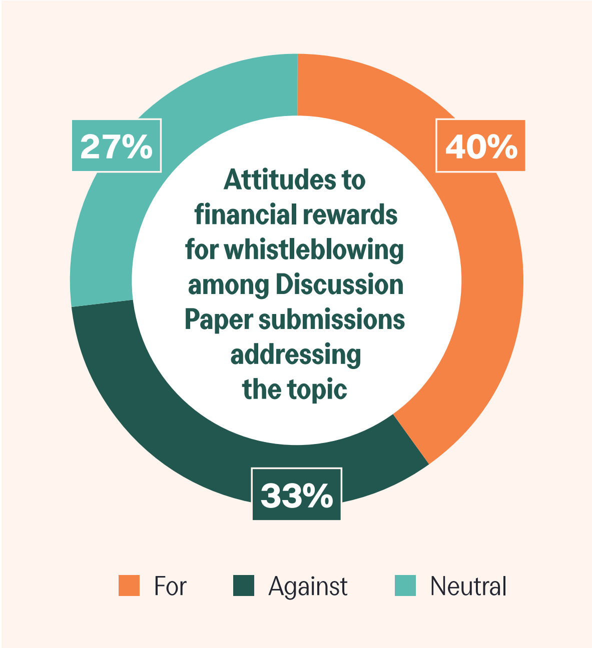
However, several questions relevant to whether or not there is a place for financial rewards for whistleblowing in the South Australian public sector remain unanswered.

Unresolved questions

Arguments commonly put against provision of monetary rewards for public sector whistleblowing in particular include:

- the absence of an obvious pool of funds from which they might be drawn
- incompatibility or tension with public sector values
- potential for abuse in the form of making false reports (and potential for administration costs to outweigh the benefits of such a scheme)
- potential for abuse in the form of delaying reporting (where rewards are fixed with reference to penalties, and penalties are imposed with reference to seriousness, whistleblowers may be motivated to allow concerning conduct to fester before making a report)
- potential for payment of whistleblowers to undermine prosecutions.

320 Elizabeth Henson, 'Independent Commissioner Against Corruption weighs cash rewards for SA whistleblowers', *The Advertiser* (Adelaide, 30 April 2026); Helen Karakulak, 'Pay not punish SA whistleblowers', *InDaily* (Adelaide, 30 April 2026).



Only a relatively small proportion of submissions to the Whistleblower Project – around 35 per cent –addressed the issue of introducing monetary rewards. Of those, views were fairly evenly divided – six submissions were generally supportive, five were generally opposed, and four remained neutral while raising concerns or sharing ideas. A number of the arguments referred to above were raised. In particular, several submissions raised concerns about compatibility with public sector values and existing obligations to report.

The issue of financial incentives was also considered at the time of the Lander Review. Ultimately, the Lander Review recommended that South Australia not adopt a financial reward scheme for public sector whistleblowing, largely on the basis of the issues identified in the first two dot points above. The balance of this chapter focuses on those issues. That is both because of the prominence of those issues and because persuasive responses to the problems identified in the remaining dot points have, for the most part, been provided in recent commentary.[321]

How compatible would financial incentives be with public sector values?

In *The Inside Track: The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime*, Eliza Lockhart reflects – albeit in the context of private sector whistleblowing – upon the "moral objection to reward programmes that is common in countries such as Australia and the UK."[322] Ms Lockhart observes that in these jurisdictions "rewards have often been seen as having a polluting influence on an act that should be done out of a sense of civic duty".[323]

To assess compatibility, it is necessary to first identify public sector values in South Australia with some precision. The South Australian Public Sector Values and Behaviours Framework, developed in consultation with nearly 600 public sector employees, lists honesty and integrity as public sector values and characterises failure to report unethical behaviour or misconduct as taboo.[324] Similarly, the Code of Ethics for the South Australian public sector identifies honesty and integrity as public sector values.[325] Reporting of serious wrongdoing and incompetence is an integral part of public service in South Australia. In some cases, it is a legal requirement.[326] In ICAC's experience, public

321 In relation to the potential for abuse in the form of making false reports, the *Rewarding Australian Whistleblowers report* (n 315) noted that agencies administering tip-off schemes often have dedicated units to screen claims, suggested barring future claims from those who have exceeded a certain number of meritless disclosures, and reported that evidence suggests the benefits outweigh the cost of dealing with excess disclosures. It also suggested delayed reporting could be discouraged through imposition of tight limitation periods or only offering rewards to the first person to report. While Ms Lockhart presents some responses to the potential for payment of whistleblowers to undermine prosecutions in *The Inside Track report*' (n 316), including that whistleblowers may not be required to testify at all and, where they are, it may be expected that they would have multifaceted reasons for reporting, experience in the criminal context suggests any promise of a reward would be used to call into question witness credibility. It is beyond the scope of this report to explore this issue in detail nor is it necessary given the position the Whistleblower Project ultimately adopts.

322 *The Inside Track report*' (n 316) 31.

323 Ibid, 32.

324 Office of the Commissioner for Public Sector Employment, *South Australian Public Sector Values and Behaviours Framework* (Framework, July 2015).

325 *Code of Ethics* (n 79).

326 *OPI Directions and Guidelines* (n 87); *Ombudsman Directions and Guidelines* (n 87). See also *Code of Ethics* (n 79) 9.

officers in South Australia are frequently motivated to report serious wrongdoing and incompetence because they consider that it is the right thing to do. Indeed, the recent HRLC report refers to studies undertaken in the private sector to suggest ethics may be insufficient to motivate reporting where there exists a high risk of reprisals.[327]

In one sense, a financial rewards scheme for public sector whistleblowing could be consistent with those values and taboos insofar as its purpose would be to increase reporting of concerning conduct. In another, it could have a corrosive effect insofar as it would bring personal financial gain into an equation otherwise governed by ethics and duties. In declining to recommend that a financial rewards scheme for public sector whistleblowing be implemented in Queensland, the Wilson Review remarked that "the public service in Australia has a generally honourable history" and that this honour is preserved and enhanced where wrongdoing is exposed without the need for financial incentives.[328]

The recent HRLC report posits that "Australia's ongoing perception that whistleblowers should be wholly altruistically motivated and only entitled to compensation for unjust reprisals" fails to take account of "the reality of whistleblowing in Australia: that protections are often ineffective, compensation difficult to access, and the personal detriment associated with whistleblowing too high to make it attractive to any but the exceptionally morally astute."[329] Of course, where protections are adequate, this argument falls away. Many of the recommendations made in this report aim to address fear of repercussions as a barrier to reporting concerns. Measures directed at reducing the risk of victimisation and increasing access to compensation where victimisation occurs should be implemented as a priority, as should measures directed at ensuring all those who interact with South Australia's whistleblower protection regime are able to clearly understand the rights and obligations it creates.

In a similar though not identical vein, the Lander Review also observed that "people who work in the public sector are expected to have, as their ultimate goal, serving the public good according to the will of the Government of the day."[330] It cautioned that "a bounty scheme could have the unintended effect of providing a financial incentive for workers to move into areas where there is a greater prospect of obtaining a bounty. It is not known how this could affect the ethos of the public service."[331]

The foregoing highlights that whether financial rewards for whistleblowing are compatible with public sector values in South Australia remains uncertain.

327 Jessica Mesmer-Magnus and Chockalingam Viswesvaran, 'Whistleblowing in Organizations: An Examination of Correlates of Whistleblowing Intentions, Actions, and Retaliation' (2005) 62(3) *Journal of Business Ethics* 277, 294; *The Inside Track report*' (n 316) 32 cited in *Rewarding Australian Whistleblowers report* (n 315) 17.

328 *Wilson Review* (n 38) 104.

329 *Rewarding Australian Whistleblowers report* (n 315) 16-17.

330 *Lander Review* (n 3) 153.

331 Ibid.

Where would the money come from?

> "there's also an equity issue around how do you get the right amount of money to people, and it's not just based on how much money an individual might save the State...can the public interest be quantified in that way...the devil would be in the detail"
>
> **– Research Director at the Centre for Public Integrity Professor Gabrielle Appleby speaking at ICAC's 2026 Whistleblower Project Public Forum**

In addition, it remains unclear how a South Australian financial reward scheme for public sector whistleblowing would be resourced. Professor Brand acknowledged in her submission to the Whistleblower Project that "there are grounds for accepting that the Australian case for financial incentives...has been strengthened" in the last decade but "the primary examples of successful incentives schemes are located in financial and corporate settings, providing greater access to potential financial pools from which to pay incentives."[332] While certain disclosures of public administration information in South Australia have the potential to lead to the imposition of fines and/or orders to pay an amount equal to any profit resulting from improper conduct,[333] often such disclosures do not have that potential at all.[334] Even where they do, fines for public sector offences can be in the order of thousands of dollars[335] whereas fines for private sector offences can be in the order of millions of dollars.[336] The frequency with which even the more modest fines prescribed for public sector offences are actually imposed is also difficult to determine.

The HRLC's recent report suggests a possible solution to problems of this kind in the form of diverting a portion of funds paid and/or recovered as a result of private sector whistleblowing to a "broad-based support scheme for all whistleblowers or discretionary rewards for whistleblowers in sectors with non-monetary penalties."[337] However, the focus of that report is whistleblowing at the federal level.[338] The South Australian Government is not the beneficiary of funds paid and/or recovered under federal legislation governing the private sector – it is not in a position to divert funds flowing from private sector whistleblowing to rewards for public sector whistleblowing.

It is clear that financial rewards can be an effective tool, in conjunction with other measures, to encourage those with information to come forward. However, it remains unclear at this time how a scheme for the provision of financial rewards could be adequately resourced in the context of the South Australian public sector, and whether financial rewards are compatible with public sector values.

332 Both the recent HRLC report and Lockhart's detailed policy paper also are expressly focused (in the case of the former) and confined (in the case of the latter) to whistleblowing in the private sector: *Rewarding Australian Whistleblowers report* (n 315) 37; *The Inside Track report*' (n 316) 11.

333 For example, some offences against the *Public Sector (Honesty and Accountability) Act 1995* (SA) ('*PSH Act*') that amount to corruption by virtue of s 5(1)(b) of the *ICAC Act* (n 17) attract financial penalties and civil liability.

334 For example, none of the offences against the *Criminal Law Consolidation Act 1935* (SA) that amount to corruption by virtue of s 5(1)(a) of the *ICAC Act* (n 17) attract financial penalties – the maximum penalty for each offence is a term of imprisonment.

335 For example, the most severe financial penalty prescribed for an offence against the PSH Act is a fine not exceeding $20 000: PSH Act (n 340) read with s 54 of the *Legislation Interpretation Act 2021* (SA).

336 For example, the most severe financial penalty prescribed for an offence against the *Corporations Act 2001* (Cth) by an individual is the greater of 5 000 penalty units – equivalent to $1 650 000 – or three times the benefit obtained and detriment avoided.

337 *Rewarding Australian Whistleblowers report* (n 315) 11.

338 Ibid, 10.

The recent HRLC report concludes with a series of questions to guide further consideration of financial incentives for whistleblowing by policymakers. It forecasts that the private sector at the federal level is likely to lead the way, observing that in 2024 the Parliamentary Economics References Committee recommended that the Australian Securities and Investments Commission (equivalent in many respects to the United States of America's SEC) implement a financial incentive scheme for whistleblowers.[339] This prediction is likely accurate.[340]

It is not recommended at this time that a financial incentive scheme be implemented for public sector whistleblowing in South Australia. That said, given the proven benefits of financial incentives to whistleblowing in some international contexts, it is important that South Australia actively monitors progress in other Australian jurisdictions and remains part of the national conversation.

> "the strong evidence that now exists for the integrity benefits conferred by financial incentives provides a basis for further discussion"
>
> **– Submission to the Whistleblower Project received from Professor Vivienne Brand of the College of Business Government and Law at Flinders University**

Recommendation 58

That the next review of the operation of South Australia's whistleblower laws specifically address international and domestic developments with a view to reevaluating the desirability and feasibility of financially incentivising public sector whistleblowing in this jurisdiction.

339 Ibid, 10, 37.

340 Indeed, Ms Lockhart reports that those interviewed as part of her research generally agreed that an incremental approach to introducing financial incentives is best. She described this as involving "starting with a reward programme of limited scope, preferably targeting the most egregious and high-value financial crimes, which could be gradually broadened as data is gathered and the programme's impact assessed": *The Inside Track report*' (n 316) 51.

Chapter 8: Beyond the law: the criticality of organisational climate

"...we have to have some sort of legislation...but actually what fuels us, as a society, is cultural change...what I'm seeing is really positive leadership with the agencies that I engage with, who are really interested in talking about this"

– OPI Director Vanessa Burrows speaking at ICAC's 2026 Whistleblower Project Public Forum

Ensuring that the legislative framework underpinning South Australia's whistleblower protection regime is adequate and effective is pivotal, but, without organisational climates that encourage and facilitate reporting, the aims of that legislative framework will not be achieved. It is vital that workplace culture encourages workers to speak up when they spot a colleague bending – or breaking – the rules; creates expectations of compliance with policies and procedures aimed at ensuring disclosures are appropriately handled and the risk of retaliation is minimised; and fosters a sense that those who speak up positively contribute to organisational improvement.

The positioning of this chapter at the conclusion of this report should in no way be seen as diminishing the centrality of workplace culture; rather, it reflects the fact that workplace culture is inextricably linked to each of the topics addressed in the foregoing chapters. The HRLC and TIA joint submission to the Whistleblower Project observed that research demonstrates a strong correlation between positive workplace culture and willingness to speak up. Submissions to the Whistleblower Project addressing the topic overwhelmingly echoed this sentiment.

'Whistling while they work: a good-practice guide for managing internal reporting of wrongdoing in public sector organisations' (**Whistling While They Work**), produced as part of a broader research project cited elsewhere in this report, suggests that if leaders do not emulate ethical behaviours or "walk the talk" then effort put into developing whistleblower policies and procedures will be wasted.[341] It highlights some of the behaviours that can have an adverse impact on workplace culture, including leaders publicly supporting but privately resisting whistleblowing; a "shoot the messenger" response when unpleasant issues are raised; and an inclination to cover-up rather than address concerning conduct.[342]

341 Peter Roberts, A J Brown and Jane Olsen, *Whistling while they work: a good-practice guide for managing internal reporting of wrongdoing in public sector organisations* (Report, 2011) 18-19.

342 Ibid 19.

> "Someone's not going to come forward and report something that they see when they're at their most stressed if they don't feel comfortable within the workplace at other times and they don't feel that their senior leaders listen to them..."
>
> **– NSW Deputy Ombudsman Tom Millett speaking at ICAC's 2026 Whistleblower Project Public Forum**

Some submissions to the Whistleblower Project, and some responses to ICAC's 2024 Public Integrity Survey, suggest that these behaviours persist in some quarters of the public sector. For example, one respondent to ICAC's 2024 Public Integrity Survey assessed that in their workplace "...all reporting is greatly discouraged. This is despite strong claims that reporting is encouraged." Other assessments, including from Ms Burrows who has broad visibility over the South Australian public sector, are more positive. It is unsurprising, given the size and diversity of the South Australian public sector, that some organisations may be doing better than others. All leaders, and public officers for that matter, have a responsibility to nurture a workplace culture in which speaking up is encouraged and victimisation – including in subtle forms such as ostracism and gossip – is not tolerated.

> "...if we want to talk about culture...we need to start young...what is the responsibility of an individual when you see wrongdoing in the playground, in the classroom?"
>
> **– Research Director at the CPI Professor Gabrielle Appleby reflecting on the role of civics education in shifting perceptions of whistleblowing at ICAC's 2026 Whistleblower Project Public Forum**

Some submissions advocated for a positive whistleblower campaign, or the offering of non-monetary rewards as ways to positively shift the narrative without any risk of tension with public sector values. This may include recognising whistleblowers in organisational communications or at ceremonies. That said, Professor Appleby, suggested at the public forum that it may be an important cultural shift to conceive of whistleblowing as "part of your daily grind" and that civics education from an early age may have a role to play in supporting this cultural shift. Professor Appleby suggested that regarding whistleblowing as "exceptional" may result in the whistleblower being treated as an "other". This may be an important point to be weighed in the balance when assessing the extent to which, and manner in which, whistleblowing should be celebrated. Perhaps there is scope to both celebrate and normalise whistleblowing – public officers are frequently acknowledged for contributions that form part of their core role in other contexts.

Evaluation case study: Tone at the top of SA Police

Research on policing culture has long identified barriers to disclosure, including peer solidarity, reluctance to report colleagues, distrust of management, and concerns about reputation or career consequences. The hierarchical structure of law enforcement agencies, combined with the operational realities of policing — including discretionary decision-making, exposure to high-risk situations, and close professional reliance between officers, may create additional pressures around internal reporting. Against this background, the evaluation of SA Police presents a mixed, but generally encouraging, picture of SA Police's organisational climate and conditions for effective whistleblowing.

A central feature of effective reporting systems is visible leadership commitment to encouraging speaking up. Within SA Police, that commitment is manifested in several ways. SA Police maintains an extensive framework of General Orders, policies, procedures, and guidelines that emphasise integrity, accountability, and conduct obligations. Stronger and more explicit integration of the SA PID Act, including cross-referencing to the SA PID Act in these documents, would strengthen this framework (similar findings are presented in a DHS evaluation case study in Chapter 6). Nevertheless, the existing system conveys that reporting is regarded as a professional responsibility.

Reporting obligations alone are not sufficient; a positive reporting culture is reinforced by the "tone at the top" as it is described in Whistling While They Work. SA Police's integrity framework is not treated as an exercise in compliance. Interviews conducted throughout the evaluation suggest that organisational efforts extend beyond this. Evaluation interviews indicate that messaging concerning integrity, accountability, and reporting obligations is communicated across multiple levels of the organisation, from academy training through to day-to-day operational supervision. Leadership commitment is further reflected in SA Police's willingness to subject its practices, policies, and procedures to this evaluation, and to engage constructively with areas identified for improvement throughout the process.

The evaluation also identified the growing role of the DIB in supporting organisational reporting pathways. Interviews with staff from the DIB indicate that, since its establishment in 2018, it has become an increasingly important avenue for raising workplace concerns, particularly in relation to bullying, harassment, and discrimination. Although the DIB does not currently have a responsible officer attached to it, its alternative dispute resolution processes provide a pathway other than formal investigation through mediation and facilitated resolution aimed at resolving workplace issues constructively and preserving professional relationships. In doing so, it contributes to psychological safety within SA Police by encouraging earlier disclosure of concerns, and providing additional reporting pathways. It also contributes to preventative efforts through training and education programs delivered across SA Police.

These reflections on organisational climate are subject to an important qualification. It was beyond the scope of the Whistleblower Project to conduct a wide-ranging cultural review of reporting within either DHS or SA Police. Interviews were not conducted with employees below management level. This is recognised as a limitation of the evaluations. Findings should be considered in this context.

Evaluation case study: Tone at the top of DHS

A strong pro-reporting culture and a zero tolerance for unethical behaviour is echoed throughout DHS' practices, policies and procedures. DHS' Public Interest Disclosure procedure outlines its commitment to ensuring that staff are informed about their rights and the process for making and receiving public interest disclosures, and its commitment to ensuring that disclosers are protected.

The intranet is used as a primary means of communication at DHS. Staff can find information regarding making public interest disclosures, and links to key policies and procedures, on the intranet. All staff, students and volunteers have access to the intranet and, depending on their role, contractors and consultants may as well. One staff member stated that the most effective way to communicate with DHS staff is to use a combination of strategies and to keep communications succinct and engaging. As such, DHS has created marketing campaigns and signature blocks in an endeavour to promote speak up culture.

A number of positive comments were made about current leadership within DHS, emphasising the importance of a leader that is visible and approachable. Interviewees commented that the Executive, including the Chief Executive, encourages reporting. This is manifested in efforts to provide multiple accessible reporting pathways across the DHS workforce and regular communications between the Executive and staff. It is also manifested in mandated and recommended training for staff. Each DHS employee has their own training plan specific to their role (this includes staff, volunteers and students). Staff are required to complete the OCPSE SA Public Sector Code of Ethics training (which was updated earlier this year) and DHS specific induction training. Staff are recommended to complete a Fraud and Corruption Awareness training module. Induction training communicates DHS' commitment to wellbeing and safety and provides information about how and where to report. Educating staff about the importance of reporting and how to go about it helps to create an environment in which speaking up is encouraged and expected.

These reflections are subject to the same important qualification referred to in the SA Police evaluation case study immediately above.

Recommendation	59

That consideration be given to ways in which whistleblowing (generally or in individual cases) might be appropriately recognised (publicly or within organisations), to reinforce shifting community perceptions. That civics education in South Australian schools address whistleblowing.

Recommendation	60

That public sector agencies and councils consider whether there are opportunities to further promote a culture in which public interest disclosures are encouraged within their organisation, including through messaging from leadership and promotional campaigns.

Recommendation	61

That public sector agencies and councils consider the adequacy of internal training modules – in particular, whether they communicate organisational commitment to a speak up culture and whether they provide sufficient information about public interest disclosures.

Concluding remarks

"...reform is urgently required to strengthen protections..."

– Managing Director of Utopia Care Pty Ltd, a South Australian disability support provider, Tony Smith in a submission to the Whistleblower Project

It is apparent from the foregoing that more can, and should, be done to ensure that South Australia is doing right by those who call out the wrong.

This report recommends broadening the scope of South Australia's whistleblower protection regime, in a measured way, to ensure that those who are most likely to be privy to valuable information about concerning public sector conduct, and most vulnerable to retaliation, are encouraged to speak up and are specially protected when they do. It makes a range of recommendations which, if accepted, would significantly reduce the likelihood that a discloser will be denied legislative protections for technical or counterintuitive reasons. It explores ways reassurance might be provided to disclosers about the availability of legislative protections and reporter anonymity might be preserved that are novel for South Australia, and it contributes to an ongoing debate here and elsewhere about the feasibility of financial rewards. Importantly, it also recommends measures that would strengthen oversight of the regime considerably.

The areas in which recommendations made in this report are perhaps most able to effect positive change for the South Australian community are access to remedies and enforcement of penalties for victimisation; legislative clarity and education; and advice and support for whistleblowers. Improving access to civil remedies and strengthening enforcement of criminal penalties for victimisation ensures justice is done in individual cases and sends a strong message to others. Reducing legislative complexity and increasing both awareness and training would reap considerable benefits for those who make, and receive, public interest disclosures.

Further, an enduring theme throughout the course of the Whistleblower Project has been the need for increased access to expert information and guidance; legal advice and representation; and wellbeing support for whistleblowers. Significantly increasing access to support for those navigating what can be a stressful, isolating and complex journey would go a long way towards ensuring that we are doing right by those who call out the wrong. An independent, and adequately resourced, whistleblower support authority could fill a significant gap in South Australia's whistleblower protection regime.

> “While I would like to think I would report something if I saw it - you never know until you see it, and I’m sure I would lean toward not reporting it unless there was substantial reform to whistleblower laws”
>
> **– A respondent to ICAC’s 2024 Public Integrity Survey**

Of course, across all of this sits workplace culture. Far quicker than implementing legislative change, or even changes to internal policies and procedures, are the steps public officers and leaders can take to shift the culture in South Australian workplaces. An organisational climate that encourages and facilitates reporting of wrongdoing and serious incompetence allows for early detection and damage minimisation. It is in the interests of public officers, organisations, and the broader community that South Australia has a fair and functional whistleblower protection regime.

Appendices

Appendix A: Overview of South Australia's current whistleblower laws as they relate to public administration information

The *Public Interest Disclosure Act 2018* (SA) provides protections for persons who make an "appropriate disclosure" of public administration information and sets out the procedures that must be followed when dealing with such disclosures.

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

The disclosure is made by a "**public officer**" as defined in the *ICAC Act*.

+

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

- Corruption is defined in the *ICAC Act*.
- Misconduct and maladministration are defined in the *Ombudsman Act*.

+

The disclosure is made to a relevant authority listed in s 5(5) which includes:

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

What protections are available to a person who has made an appropriate disclosure?

Immunity

Immunity from liability as a result of the disclosure.

+

Protection of identity

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

+

Protection from victimisation

Informant must not be victimised because they have made a disclosure.

What must the relevant authority do with the disclosure?

(1) Assess disclosure and take action; notify informant and OPI

Who?	What?	When?
• Person who receives the disclosure.	• Assess the information and take action in accordance with that assessment and the guidelines (unless there is reason not to take further action - see s 7(2)). • Take reasonable steps to notify the informant of the assessment and the action being taken (if the informant's identity is known). • Notify OPI of assessment outcome in accordance with the guidelines.	• As soon as reasonably practicable • If this has not occurred within 30 days after making the disclosure, the person may disclose the information to a journalist or MP

(s 7(1) & Guideline 1)

(2) Notify informant and OPI of the outcome of the action taken

Who?	What?	When?
• The person who takes the action decided in (1); or • If that action was referring the disclosure, the person to whom it was referred.	• Take reasonable steps to notify informant of the outcome of the action taken (if the informant's identity is known). • Provide OPI with information about outcome of action in accordance with the guidelines.	• As soon as reasonably practicable. • If this has not occurred within 90 days after making the disclosure, or other period specified, the person may disclose the information to a journalist or MP.

(s 7(3) & Guideline 2)

Appendix B: Comparison of public sector whistleblower laws in Australian jurisdictions (who can make protected disclosures)

Jurisdiction	Legislation	Provision
CTH	*Public Interest Disclosure Act 2013*	A person who is, or has been, a public official: s 26(1)(a). The term "public official" is defined in s 8 to have the meaning given to it by Subdivision A of Division 3 of Part 4. An authorised officer of an agency may also, in certain circumstances, determine that the Act has effect as if an individual had been a public official when the person obtained the information: s 70(1).
NSW	*Public Interest Disclosures Act 2022*	For voluntary public interest disclosures, a public official who is not a member of Parliament: s 25. The term "public official" is defined in s 14. The head of an agency may also deem a disclosure to be a voluntary public interest disclosure even if it would not otherwise be: s 29(1). Provision is also made for witness public interest disclosures and mandatory public interest disclosures.
VIC	*Public Interest Disclosures Act 2012*	A natural person: s 9(1).
QLD	*Public Interest Disclosure Act 2010*	A public officer: s 13(1). The term "public officer" is defined in s 7.
WA	*Public Interest Disclosure Act 2003*	Any person: s 5(1).
NT	*Independent Commissioner Against Corruption Act 2017*	Any person: s 92(1).
ACT	*Public Interest Disclosure Act 2012*	Any person: s 14.
TAS	*Public Interest Disclosures Act 2002*	A public officer: s 6(1). The term "public officer" is defined in s 4(2). A contractor: s 6(2). A person to whom a disclosure may be made may, if the person considers that it would be in the public interest to do so, treat any other person who is not a public officer or a contractor as a contractor for the purposes of the legislation: s 7A.

Appendix C: Comparison of public sector whistleblower laws in Australian jurisdictions (categories of conduct about which protected disclosures may be made)

Jurisdiction	Legislation	Provision
CTH	*Public Interest Disclosure Act 2013*	**29 Meaning of *disclosable conduct*** 1. ***Disclosable conduct*** is conduct of a kind mentioned in the following table that is conduct: a) engaged in by an agency; or b) engaged in by a public official, in connection with his or her position as a public official; or c) engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract.

Disclosable conduct

Item	Kinds of disclosable conduct
(1)	Conduct that contravenes a law of the Commonwealth, a State or a Territory.
(2)	Conduct, in a foreign country, that contravenes a law that: (a) is in force in the foreign country; and (b) is applicable to the agency, public official or contracted service provider; and (c) corresponds to a law in force in the Australian Capital Territory.
(3)	Conduct that: (a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or (b) involves, or is engaged in for the purpose of, corruption of any other kind.
(4)	Conduct that constitutes maladministration, including conduct that: (a) is based, in whole or in part, on improper motives; or (b) is unreasonable, unjust or oppressive; or (c) is negligent.
(5)	Conduct that is an abuse of public trust.
(6)	Conduct that is: (a) fabrication, falsification, plagiarism, or deception, in relation to: proposing scientific research; or (ii) carrying out scientific research; or (iii) reporting the results of scientific research; or (b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice.
(7)	Conduct that results in the wastage of: (a) relevant money (within the meaning of the *Public Governance, Performance and Accountability Act* 2013); or (b) relevant property (within the meaning of that Act); or (c) money of a prescribed authority; or (d) property of a prescribed authority.

Jurisdiction	Legislation	Provision
CTH	*Public Interest Disclosure Act 2013*	**Disclosable conduct**

Item	Kinds of disclosable conduct
(8)	Conduct that: (a) unreasonably results in a danger to the health or safety of one or more persons; or (b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.
(9)	Conduct that: (a) results in a danger to the environment; or (b) results in, or increases, a risk of danger to the environment.
(10)	Conduct of a kind prescribed by the PID rules.

2 Without limiting subsection (1), the following are also ***disclosable conduct:***

(a) conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;
(b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.

(2A) Despite subsections (1) and (2), personal work related conduct is not ***disclosable conduct*** unless:

(a) the conduct would constitute taking a reprisal against another person, or an offence under section 19 (reprisals in relation to disclosures—offences); or
(b) the conduct:
(i) is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
(ii) has other significant implications for an agency (or agencies).

Note 1: For ***personal work-related conduct***, see section 29A.
Note 2: For what constitutes ***taking a reprisal***, see section 13.

(2B) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a public interest disclosure only because:

(a) the disclosure includes other information; and
(b) the other information tends to show (or may tend to show) personal work related conduct.

(3) For the purposes of this section, it is immaterial:

(a) whether conduct occurred before or after the commencement of this section; or
(b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or
(c) if a public official has engaged in conduct—whether the public official has ceased to be a public official after the conduct occurred; or
(d) if a contracted service provider has engaged in conduct—whether the contracted service provider has ceased to be a contracted service provider after the conduct occurred.

The term "personal work-related conduct" is defined in s 29A. Sections 31, 32 and 33 carve out certain categories of conduct from the meaning of disclosable conduct.

See s 71 for the meaning of "agency".

<table>
<tr><th>Jurisdiction</th><th>Legislation</th><th>Provision</th></tr>
<tr><td>NSW</td><td>Public Interest Disclosures Act 2022</td><td>
26 Content of voluntary public interest disclosures
(1) A disclosure complies with this section if the maker of the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing.
(2) A disclosure does not comply with this section if the information disclosed relates only to a disagreement with a government policy, including—
(a) a government decision concerning amounts, purposes or priorities of public expenditure, or
(b) a policy of the governing body of a local government authority.
(3) A disclosure does not comply with this section if the information disclosed—
(a) concerns only a grievance about a matter relating to the employment or former employment of an individual, and
(b) either—
(i) does not have significant implications beyond matters personally affecting or tending to personally affect the individual, or
(ii) relates to a disagreement with the taking or proposed taking of reasonable management action.
(4) However, subsection (3) does not apply if the grievance arises from—
(a) a decision made by an agency in dealing with a previous voluntary public interest disclosure, or
(b) alleged detrimental action relating to a previous voluntary public interest disclosure.
(5) For the purposes of deciding whether a disclosure complies with this section, an express or implied indication by the person making the disclosure as to what the person believes in relation to the disclosure is, in the absence of evidence to the contrary, evidence the person holds the belief honestly.
13 Meaning of “serious wrongdoing”
In this Act, serious wrongdoing means 1 or more of the following—
(a) corrupt conduct,
(b) a government information contravention,
(c) a local government pecuniary interest contravention,
(d) serious maladministration,
(e) a privacy contravention,
(f) a serious and substantial waste of public money.
Note.
The categories of serious wrongdoing mentioned in paragraphs (a)–(e) are further defined in the Dictionary in Schedule 2.
</td></tr>
</table>

Jurisdiction	Legislation	Provision
VIC	*Public Interest Disclosures Act 2012*	**9 Public interest disclosure** (1) Subject to subsection (3) and Division 3, a public interest disclosure is a disclosure by a natural person of— (a) information that shows or tends to show— (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or (b) information that the person reasonably believes shows or tends to show— (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45. (2) A public interest disclosure may be about conduct that has occurred before the commencement of this section. (3) A disclosure regarding the conduct of, or actions taken by, any of the following is not a public interest disclosure— (a) the Office of the Special Investigations Monitor; (b) the Special Investigations Monitor; (c) a court; (d) an investigating panel; (e) a member of an investigating panel. The terms “public officer” and “public body” are defined in s 6. The term “improper conduct” is defined in s 4 as follows: (1) For the purposes of this Act, ***improper conduct*** means— (a) corrupt conduct; or (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes— (i) a criminal offence; or (ii) serious professional misconduct; or (iii) dishonest performance of public functions; or (iv) (an intentional or reckless breach of public trust; or (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or (vi) a substantial mismanagement of public resources; or (vii) a substantial risk to the health or safety of one or more persons; or (viii) a substantial risk to the environment; or (c) conduct of any person that— (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining— (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or (C) a financial benefit or real or personal property; or (D) any other direct or indirect monetary or proprietary gain— that the person or associate would not have otherwise obtained; or (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).

<table>
<tr><th>Jurisdiction</th><th>Legislation</th><th>Provision</th></tr>
<tr><td>VIC</td><td>Public Interest Disclosures Act 2012</td><td>(2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of this Act.
...
The term ‘detrimental action’ is defined in s 3 as follows:
detrimental action includes—
(a) action causing injury, loss or damage;
(b) intimidation or harassment;
(c) discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action;
It is not necessary to identify person or body to whom public interest disclosure relates: s 10.
Complaints, notifications and disclosures under other Acts may be public interest disclosures: s 11.</td></tr>
<tr><td>QLD</td><td>Public Interest Disclosure Act 2010</td><td>13 Disclosure by a public officer
(1) This section applies if a person who is a public officer has information about—
(a) the conduct of another person that could, if proved, be—
(i) corrupt conduct; or
(ii) maladministration that adversely affects a person’s interests in a substantial and specific way; or
(b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
(c) a substantial and specific danger to public health or safety; or
(d) a substantial and specific danger to the environment.
...
The term “corrupt conduct” has the same meaning as in s 15 of the Crime and Corruption Act 2001: Schedule 4.
The term “maladministration” is defined is Schedule 4 to mean:
administrative action that—
(a) was taken contrary to law; or
(b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
(c) was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
(d) was taken—
(i) for an improper purpose; or
(ii) on irrelevant grounds; or
(iii) having regard to irrelevant considerations; or
(e) was an action for which reasons should have been given, but were not given; or
(f) was based wholly or partly on a mistake of law or fact; or
(g) was wrong.</td></tr>
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Jurisdiction	Legislation	Provision
WA	*Public Interest Disclosure Act 2003*	**5 Appropriate disclosure of public interest information, making** (1) Any person may make an appropriate disclosure of public interest information to a proper authority. ... The term "public interest information" is defined in s 3(1) to mean information that tends to show that, in relation to its performance of a public function (either before or after the commencement of the Act), a public authority, a public officer, or a public sector contractor is, has been, or proposes to be, involved in: improper conduct; an act or omission that constitutes an offence under a written law; a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources; an act done or omission that involves a substantial and specific risk of injury to public health or prejudice to public safety or harm to the environment; or a matter of administration that can be investigated under section 14 of the *Parliamentary Commissioner Act* 1971. The terms "public authority", "public officer" and "public sector contractor" are also defined in s 3(1). The term "improper conduct" is not defined.

Jurisdiction	Legislation	Provision
NT	*Independent Commissioner Against Corruption Act 2017*	The term "protected person" is defined to mean (generally) a person who takes or has taken protected action and (for retaliation) to include a person whom the person engaging in retaliation believes or suspects is taking or has taken protected action: s 4. **92 Meaning of *protected action*** (1) A person takes ***protected action*** if: (a) the person, being an individual, makes a protected communication; or (b) the person (whether or not an individual) takes another action in the course of, or for the purpose of: (i) complying with this Act; or (ii) cooperating with a person or body performing functions under this Act. (2) Despite subsection (1), an action is not protected action to the extent the action involves the provision or communication of information the person taking the action knows or believes is misleading information. **93 Meaning of *protected communication*** (1) A ***protected communication*** is: (a) information in a report made by an individual to the ICAC in accordance with directions or guidelines under section 22; or (b) information mentioned in subsection (2) that is provided by an individual to any of the following: i. the ICAC; ii. the Ombudsman; iii. the Auditor-General or the Auditor-General's Office; iv. the Health Complaints Commissioner or a staff member of the Commissioner; v. the Children's Commissioner; vi. the Environment Protection Authority; vii. if the information relates to a person or an entity referred to in section 37(1) or 45(1) of the IEC Act – the Inspector or a member of Inspector staff; viii. if the information relates to a police officer – the Commissioner of Police; ix. if the information relates to an MLA other than the Speaker, including a minister – the Speaker; x. if the information relates to the Speaker – the Deputy Speaker; xi. if the information relates to the Chief Justice – the next senior Supreme Court Judge; xii. if the information relates to a Supreme Court Judge, other than the Chief Justice, or to the Chief Judge – the Chief Justice; xiii. if the information relates to a Local Court Judge other than the Chief Judge – the Chief Judge; xiv. if the information relates to a contravention of the *Electoral Act 2004* – the Electoral Commissioner; xv. if the information relates to an employee or officer of a public body – the entity with responsibility for the management and control of the public body or a nominated recipient in their capacity as a nominated recipient for the public body; xvi. if the information relates to a contravention of the *Public Sector Employment and Management Act 1993* – the Commissioner as defined in section 3(1) of that Act; or (c) an action declared under section 94 to be a protected communication.

Jurisdiction	Legislation	Provision
NT	*Independent Commissioner Against Corruption Act 2017*	(2) For subsection (1)(b), the information is information the individual believes on reasonable grounds: (a) would tend to show that improper conduct has occurred, is occurring or is at risk of occurring; or (b) would assist the ICAC to perform the ICAC's functions; or (c) would otherwise assist in the administration, or achieving the objects, of this Act. … **9 Meaning of *improper conduct*** (1) Each of the following is ***improper conduct***: (a) corrupt conduct; (b) misconduct; (c) unsatisfactory conduct; (d) anti-democratic conduct; (e) conduct constituting an offence against this Act; (f) conduct (***the secondary conduct***) engaged in by any person in relation to conduct mentioned in paragraphs (a) to (e) (the ***primary conduct***) as provided by subsection (2). (2) For subsection (1)(f), ***secondary conduct*** is conduct that would constitute an offence against one of the following sections of the Criminal Code on the assumption that the primary conduct is an offence, whether or not the primary conduct is in fact an offence: (a) section 43BF (attempt); (b) section 43BG (complicity and common purpose); (c) section 43BH (innocent agency); (d) section 43BI (incitement) (e) section 43BJ (conspiracy). (3) Secondary conduct is taken to be the same type of improper conduct as the primary conduct to which it relates. … The term "corrupt conduct" is defined in s 10. The term "misconduct" is defined in s 11. The term "unsatisfactory conduct" is defined in s 12. The term "anti-democratic conduct" is defined in s 15.

Jurisdiction	Legislation	Provision
ACT	*Public Interest Disclosure Act 2012*	**7 Meaning of *public interest disclosure*** In this Act: ***public interest disclosure*** means a disclosure of disclosable conduct that is taken to be a public interest disclosure under section 17A (3) or section 27 (4). ... **8 Meaning of *disclosable conduct*** (1) For this Act, ***disclosable conduct*** means an action or a policy, practice or procedure of a public sector entity, or public official for a public sector entity, that— (a) is maladministration; or (b) results in substantial and specific danger to public safety, or the environment. (2) However, ***disclosable conduct*** does not include an action or practice or procedure of a public sector entity, or a public official for a public sector entity, that— (a) relates to a personal work-related grievance of the person disclosing the conduct; or (b) Is to give effect to a policy of the Territory about amounts, purposes or priorities of public expenditure. **Examples—par (a)** 1 an interpersonal conflict between the person and another employee 2 a decision not to approve the person's leave application 3 a decision relating to the employment, transfer or promotion of the person 4 a decision relating to the terms and conditions of employment of the person 5 a decision to suspend or terminate the employment of the person, or to discipline the person Section 8(3) then defines the term 'maladministration' to mean conduct or a policy, practice or procedure that— (a) results in a substantial mismanagement of public resources or public funds; or (b) involves substantial mismanagement in the performance of official functions. Section 17A(3)(a) provides that a disclosure of disclosable conduct is taken to be a public interest disclosure where the integrity commissioner has assessed the disclosure and is satisfied on reasonable grounds that it is about disclosable conduct, disclosed in the public interest and not frivolous or vexatious. Section 27(4) deems a disclosure of disclosable conduct to a member of the Legislative Assembly or journalist to be a public interest disclosure.
TAS	*Public Interest Disclosures Act 2002*	**6 Disclosures about improper conduct or detrimental action** (1) A public officer who believes that another public officer or a public body – (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or (b) has taken, is taking or proposes to take detrimental action in contravention of section 19 – may disclose that improper conduct or detrimental action in accordance with this Part.

Jurisdiction	Legislation	Provision
TAS	*Public Interest Disclosures Act 2002*	(2) A contractor who believes that the public body with which the contractor has entered into a contract – (a) has engaged, is engaging or proposes to engage in improper conduct in its capacity as a public body; or (emphasis added) (b) has taken, is taking or proposes to take detrimental action in contravention of section 19 – may disclose that improper conduct or detrimental action in accordance with this Part. Section 3 defines the terms "corrupt conduct", "detrimental action" and "improper conduct" as follows: ***corrupt conduct*** means – (a) conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions; or (b) conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or (c) conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or (d) conduct of a public officer, a former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or (e) a conspiracy or attempt to engage in conduct referred to in paragraph (a), (b), (c) or (d); ***detrimental action*** includes – (a) action causing injury, loss or damage; and (b) intimidation or harassment; and (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action; and (d) threats of detrimental action; ***improper conduct*** means – (a) conduct that constitutes an illegal or unlawful activity; or (b) corrupt conduct; or (c) conduct that constitutes maladministration; or (d) conduct that constitutes professional misconduct; or (e) conduct that constitutes a waste of public resources; or (f) conduct that constitutes a danger to public health or safety or to both public health and safety; (g) conduct that constitutes a danger to the environment; or (h) misconduct, including breaches of applicable codes of conduct; or (i) conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act – that is serious or significant as determined in accordance with guidelines issued by the Ombudsman; A person may make a disclosure even if the person cannot identify the person or body to whom or to which the disclosure relates: s 9. A person may not make a disclosure about conduct that has occurred more than 3 years before the commencement of the Act: s 10.

Appendix D: Comparison of public sector whistleblower laws in Australian jurisdictions (protection of identity)

Jurisdiction	Legislation	Provision
CTH	*Public Interest Disclosure Act 2013*	**20 Disclosure or use of identifying information** *Disclosure of identifying information* (1) A person (the ***first person***) commits an offence if: (a) another person (the ***second person***) has made a public interest disclosure; and (b) the first person discloses information (***identifying information***) that: (i) was obtained by any person in that person's capacity as a public official; and (ii) is likely to enable the identification of the second person as a person who has made a public interest disclosure; and (c) the disclosure is to a person other than the second person. Penalty: Imprisonment for 6 months or 30 penalty units, or both. *Use of identifying information* (2) A person commits an offence if the person uses identifying information. Penalty: Imprisonment for 6 months or 30 penalty units, or both. *Exceptions* (3) Subsections (1) and (2) do not apply if one or more of the following applies: (a) the disclosure or use of the identifying information is for the purposes of this Act; (b) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the Ombudsman by section 5A of the *Ombudsman Act 1976*; (c) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the IGIS by section 8A of the *Inspector General of Intelligence and Security Act 1986*; (d) the disclosure or use of the identifying information is for the purposes of: (i) a law of the Commonwealth; or (ii) a prescribed law of a State or a Territory; (e) the person likely to be identified by the identifying information has consented to the disclosure or use of the identifying information, or acted in a way that is inconsistent with keeping that person's identity confidential; (f) the identifying information has previously been lawfully published. Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*). (4) For the purposes of paragraph (3)(a), and without limitation, a person discloses or uses identifying information for the purposes of this Act if the person does so: (a) for the purpose of providing assistance in relation to a public interest disclosure; or (b) for the purpose of providing legal advice, or other professional assistance, relating to a public interest disclosure, in the circumstances mentioned in paragraph 67(2)(a); or (c) in the performance or exercise (or purported performance or exercise) of a function or power conferred by this Act, in the circumstances mentioned in subsection 78(1).

Jurisdiction	Legislation	Provision
CTH	*Public Interest Disclosure Act 2013*	**21 Identifying information not to be disclosed etc. to courts or tribunals** A person who is, or has been, a public official is not to be required: (a) to disclose to a court or tribunal identifying information that the person has obtained; or (b) to produce to a court or tribunal a document containing identifying information that the person has obtained; except where it is necessary to do so for the purposes of giving effect to this Act.
NSW	*Public Interest Disclosures Act 2022*	**64 Identifying information not to be disclosed** (1) Information tending to identify a person as the maker of a voluntary public interest disclosure (***identifying information***) is not to be disclosed by a public official or an agency. (2) However, subsection (1) does not prevent the disclosure of the identifying information if— (a) the person consents in writing to the disclosure of the identifying information, or (b) it is generally known the person is the maker of the voluntary public interest disclosure as a result of the person's voluntary self-identification as the maker, or (c) after consulting the person, the public official or agency reasonably considers it necessary to disclose the identifying information to protect a person from detriment, or (d) it is necessary the identifying information be disclosed to a person whose interests are affected by the disclosure, or (e) the identifying information has previously been lawfully published, or (f) the identifying information is disclosed to a medical practitioner or psychologist for the purposes of the practitioner or psychologist providing medical or psychiatric care, treatment or counselling to the individual disclosing the information, or (g) the identifying information is disclosed for the purposes of proceedings before a court or tribunal, or (h) the disclosure of the identifying information is necessary to deal with the disclosure effectively, or (i) it is otherwise in the public interest to disclose the identifying information. **Note—** Section 43 provides for an agency's public interest disclosure policy to include procedures to ensure the agency's compliance with this section. (3) To avoid doubt, a person does not voluntarily self-identify as the maker of a voluntary public interest disclosure merely by making the disclosure in confidence. (4) A provision of 1 of the following Acts prevails over this section to the extent of an inconsistency— (a) the *Independent Commission Against Corruption Act 1988*, (b) the *Ombudsman Act 1974*, (c) the *Law Enforcement Conduct Commission Act 2016*.

Jurisdiction	Legislation	Provision
NSW	*Public Interest Disclosures Act 2022*	(5) This section applies in addition to, and does not derogate from, a restriction or prohibition on the disclosure of information imposed by— (a) another Act or law, or (b) an order of a court or tribunal. **Note—** However, section 83 authorises an agency to provide information relating to a public interest disclosure to another agency if doing so is reasonably necessary for the exercise of either agency's functions under this Act. Section 83 prevails to the extent of an inconsistency with another Act or law. (6) In this section— ***counselling*** includes psychological counselling. ***medical practitioner*** has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*. psychologist has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.
VIC	*Public Interest Disclosures Act 2012*	**52 Content of assessable disclosure must not be disclosed** (1) This section applies to a person or body— (a) to whom an assessable disclosure has been made; or (b) who receives an assessable disclosure in the performance of duties or functions under this Act; or (c) to whom the IBAC, Integrity Oversight Victoria or the Integrity and Oversight Committee provides information about the content of an assessable disclosure to determine whether the disclosure is a public interest complaint; or (d) to whom an assessable disclosure, or information about the content of an assessable disclosure, is disclosed in any of the circumstances referred to in subsection (3)(a); or (e) to whom an assessable disclosure, or information about the content of an assessable disclosure, has been disclosed in contravention of subsection (2). (2) The person or body must not disclose the content, or information about the content, of an assessable disclosure. Penalty: In the case of a natural person, 120 penalty units or 12 months imprisonment or both. In the case of a body corporate, 600 penalty units.

Jurisdiction	Legislation	Provision
VIC	*Public Interest Disclosures Act 2012*	(3) Subsection (2) does not apply if— (a) the person or body discloses the content, or information about the content, of the assessable disclosure— (i) in accordance with section 54; or (ii) in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure; or (iii) to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the assessable disclosure including a disciplinary process or action; or (b) the IBAC, Integrity Oversight Victoria or the Integrity and Oversight Committee has determined that the assessable disclosure is not a public interest complaint and the person or body discloses the content, or information about the content, of the assessable disclosure after that determination; or (c) an investigating entity has— (i) published in a report to Parliament under this or any other Act, or otherwise made public, the content, or information about the content, of the assessable disclosure; and (ii) in doing so, acted consistently with the obligations relating to confidentiality that apply to the investigating entity under this Act— and the person or body discloses the content, or information about the content, of the assessable disclosure after that publication; or (d) the Integrity and Oversight Committee has published the information in a report to Parliament under this or any other Act and the person or body discloses the information after that publication. **53 Identity of person making assessable disclosure must not be disclosed** (1) A person or body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure. Penalty: In the case of a natural person, 120 penalty units or 12 months imprisonment or both. In the case of a body corporate, 600 penalty units. (2) Subsection (1) does not apply if— (a) the person who made the assessable disclosure has given written consent to an investigating entity to disclose— (i) any information likely to lead to the person's identification; or (ii) specific information likely to lead to the person's identification— and the information is disclosed by the investigating entity after and in accordance with that consent; or (ab) the person who made the assessable disclosure has given written consent to the Integrity and Oversight Committee or to an independent investigator engaged by the Committee under Part 4A to disclose— (i) any information likely to lead to the person's identification; or (ii) specific information likely to lead to the person's identification— and the information is disclosed by the Committee or the independent investigator after and in accordance with that consent; or (b) the person or body discloses the information in accordance with section 54; or (c) the IBAC, Integrity Oversight Victoria or the Integrity and Oversight Committee has determined that the assessable disclosure is not a public interest complaint and the person or body discloses the information after that determination; or (d) an investigating entity has— (i) published in a report to Parliament under this or any other Act, or otherwise made public, the information; and (ii) in doing so, acted consistently with the obligations relating to confidentiality that apply to the investigating entity under this Act— and the person or body discloses the information after that publication; or

Jurisdiction	Legislation	Provision
VIC	*Public Interest Disclosures Act 2012*	(e) the Integrity and Oversight Committee has published the information in a report to Parliament under this or any other Act and the person or body discloses the information after that publication. Section 54 sets out an extensive list of circumstances in which information may be disclosed.
QLD	*Public Interest Disclosure Act 2010*	**65 Preservation of confidentiality** (1) If a person gains confidential information because of the person's involvement in this Act's administration, the person must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than under subsection (3). Maximum penalty—84 penalty units. (2) A person gains information because of the person's involvement in this Act's administration if the person gains the information because of being involved, or an opportunity given by being involved, in the administration. *Example—* If a person gains information because the person is a public officer who receives a public interest disclosure for a proper authority, the person gains the information because of the person's involvement in this Act's administration. (3) A person may make a record of confidential information or disclose it to someone else— (a) for this Act; or (b) to discharge a function under another Act including, for example, to investigate something disclosed by a public interest disclosure; or (c) for a proceeding in a court or tribunal; or (d) if the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information; or (e) if— (i) the person can not reasonably obtain the consent of the person to whom the confidential information relates; and (ii) making the record or disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates and is reasonable in all the circumstances; or (f) if the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety or welfare of a person; or (g) if authorised under a regulation or another Act. (4) This section does not affect an obligation a person may have under the principles of natural justice to disclose information to a person whose rights would otherwise be detrimentally affected. (5) Subsection (4) applies to information disclosing, or likely to disclose, the identity of a person who makes a public interest disclosure only if it is— (a) essential to do so under the principles of natural justice; and (b) unlikely a reprisal will be taken against the person because of the disclosure. (6) To remove any doubt, it is declared that if there is an inconsistency between this section and section 10(1), this section prevails. (7) In this section— ***confidential information***— (a) includes— (i) information about the identity, occupation, residential or work address or whereabouts of a person— (A) who makes a public interest disclosure; or (B) against whom a public interest disclosure has been made; and (ii) information disclosed by a public interest disclosure; and (iii) information about an individual's personal affairs; and (iv) information that, if disclosed, may cause detriment to a person; and

Jurisdiction	Legislation	Provision
QLD	*Public Interest Disclosure Act 2010*	(b) does not include information publicly disclosed in a public interest disclosure made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law. ***law***, for a public interest disclosure made to a committee of the Legislative Assembly, includes a standing rule, order or motion of the Legislative Assembly.
WA	*Public Interest Disclosure Act 2003*	**16 Disclosure of identity of informant etc. restricted** (1) A person must not make a disclosure (an ***identifying disclosure)*** of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information under this Act unless — (a) the person who made the disclosure of public interest information consents to the disclosure of information that might identify or tend to identify him or her; or (b) it is necessary to do so having regard to the rules of natural justice; or (c) it is necessary to do so to enable the matter to be investigated effectively; or (d) the disclosure is made in accordance with an order of a court or any other person or body having authority to hear, receive and examine evidence; or (e) *[deleted]* (f) the identifying disclosure is made in accordance with section 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*. Penalty: $24 000 or imprisonment for 2 years. (2) A reasonable time before making a disclosure in the circumstances described in subsection (1)(b) or (c), the person making the identifying disclosure must take all reasonable steps to advise the person whose identity is to be disclosed — (a) that the disclosure is to be made; and (b) the reason for the disclosure being made. (3A) Subsection (2) does not apply in respect of a person who made an anonymous disclosure. (3) A person must not make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom a disclosure of public interest information has been made under this Act (***identifying information***) unless — (a) the person in respect of whom the disclosure of public interest information has been made consents to the disclosure of information that might identify or tend to identify him or her; or (b) it is necessary to do so to enable the matter to be investigated effectively; or (c) it is necessary to do so in the course of taking action under section 9(1)(a) to (c); or (d) there are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property; or (e) the disclosure is made in accordance with an order of a court or any other person or body having authority to hear, receive and examine evidence; or (f) *[deleted]* (g) the disclosure is made in accordance with section 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*. Penalty: $24 000 or imprisonment for 2 years.

Jurisdiction	Legislation	Provision
NT	*Independent Commissioner Against Corruption Act 2017*	**146A Identity of protected person to be kept confidential** (1) A person commits an offence if: (a) the person obtains information about the identity of a protected person; and (b) the person intentionally engages in conduct; and (c) the conduct results in the disclosure of the information and the person is reckless in relation to that result. Maximum penalty: 400 penalty units or imprisonment for 2 years. (2) Strict liability applies to subsection (1)(a). (3) It is a defence to a prosecution for an offence against subsection (1) if: (a) the person discloses the information: (i) for the administration of this Act; or (ii) for a legal proceeding; or (iii) for obtaining professional legal advice from a legal practitioner; or (iv) for obtaining professional assistance from a health practitioner or an accredited counsellor; or (v) for obtaining spiritual assistance from a religious or spiritual advisor who is subject to ethical confidentiality obligations; or (b) the person is an independent entity, or an officer or employee of an independent entity, and the information is identifying information but: (i) the person has given consideration to the principles mentioned in section 91; and (ii) disclosure is reasonably necessary to perform the functions of the independent entity; or (c) the disclosure is authorised in writing by the ICAC or the Inspector; or (d) the person discloses the information believing on reasonable grounds that: (i) circumstances of sudden or extraordinary emergency exist; and (ii) disclosing the information is the only reasonable way to deal with the emergency; and (iii) the disclosure is made in response to the risk and that risk significantly outweighs any risk to a protected person in disclosing the information; or (e) the disclosure is only to the extent necessary to ensure the matters to which the information relates are properly investigated; or (f) the disclosure is in accordance with any applicable guidelines issued under section 96. *Note for subsection (3)* *In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).* (4) The obligation to maintain confidentiality imposed by this section applies despite anything in this Act or any other law of the Territory to the contrary.
ACT	*Public Interest Disclosure Act 2012*	**44 Offences—use or divulge protected information** (1) A person to whom this section applies commits an offence if— (a) the person uses information; and (b) the information is protected information about someone else; and (c) the person is reckless about whether the information is protected information about someone else. Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Jurisdiction	Legislation	Provision
ACT	*Public Interest Disclosure Act 2012*	(2) A person to whom this section applies commits an offence if— (a) the person does something that divulges information; and (b) the information is protected information about someone else; and (c) the person is reckless about whether— (i) the information is protected information about someone else; and (ii) doing the thing would result in the information being divulged to someone else. Maximum penalty: 50 penalty units, imprisonment for 6 months or both. (3) Subsections (1) and (2) do not apply if the information is used or divulged— (a) under this Act or another territory law; or (b) in relation to the exercise of a function, by a person to whom this section applies, under this Act or another territory law; or (c) in a court proceeding. (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent. **...** (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law in force in the ACT. (6) In this section: ***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions. ***divulge*** includes— (a) communicate; or (b) publish. ***person to whom this section applies means—*** (a) a person who is or has been— (i) the integrity commissioner; or (ii) the ombudsman; or (iii) a disclosure officer; or (iv) an investigating entity other than the integrity commissioner; or (b) anyone else who has exercised a function under this Act. ***produce*** includes allow access to. ***protected information*** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else. **...** ***use***, in relation to information, includes make a record of the information.

Jurisdiction	Legislation	Provision
TAS	*Public Interest Disclosures Act 2002*	**23. Offence to reveal confidential information** (1) A person who obtains or receives information in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under this Act must not disclose that information except for the purposes of – (a) the exercise of the functions under this Act of the President of the Legislative Council, the Speaker of the House of Assembly, the Ombudsman, the chairman of the Public Accounts Committee, the Integrity Commission or a public body; or (b) any report or recommendation to be made under this Act; or (c) any report referred to in Part 9; or (ca) the exercise of the functions of a Commission under the Commissions of Inquiry Act 1995; or (d) any proceedings in relation to an offence against section 54 or 87 or this section or in relation to section 27 of the Commissions of Inquiry Act 1995. Penalty: Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 6 months, or both. (2) The Ombudsman or a public body must not in a report or recommendation under this Act or a report referred to in Part 9 disclose particulars likely to lead to the identification of a person who made a protected disclosure. (3) The Ombudsman or a public body must not in a report referred to in Part 9 disclose particulars likely to lead to the identification of a person against whom a protected disclosure is made.

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