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Emma Townsend
Commissioner
ICAC
GPO Box 1106
ADELAIDE SA 5001

Email : WhistleblowerProject@icac.sa.gov.au

Dear Ms Townsend

Thank you for your email of 1 October 2025 inviting TAFE SA to provide feedback on the ICAC Whistleblower Project Discussion Paper.

TAFE SA provides the following feedback for consideration:

Issue 1: Threshold for obtaining protections

TAFE SA supports some changes to protection thresholds.

In relation to who should be able to make disclosures, it is unclear why former public officers should be allowed to make disclosures when such disclosures should potentially have been made at the time they were public officers - noting this may be an indication of where the current framework could be improved. While TAFE SA appreciates there would be benefit in allowing former public officers to make disclosures and some employees may only feel safe to make disclosure after leaving the public sector because of reprisals but this should be balanced against potential misuse from those seeking to 'settle scores' post-employment. However, it seems appropriate that others that are operating in a public sector environment (e.g. volunteers etc) are captured by the framework (as opposed to including in the whistleblower framework 'any natural person' as this may result in the framework to be used for purposes other than what is intended (e.g. political reasons), unless there are meaningful penalties).

In relation to what disclosures should be about and the reasonable suspicion requirement, TAFE SA supports disclosures that can materially impact the integrity of the public sector as opposed to an exhaustive list, especially as performance / misconduct matters (including victimisation) are likely already being managed within agencies. Further, as pointed out in the discussion paper, as there are both subjective and objective elements to an assessment by a discloser, TAFE SA supports immunity,

TAFE SA Adelaide City Campus
Office of the Chief Executive, TAFE SA

T +61 (8) 8207 8101
Street Address: 120 Currie Street, Adelaide SA 5000
Postal Address: GPO Box 1872, Adelaide SA 5001
CRICOS Provider No 00092B
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if the discloser makes an honest assessment prior to making a disclosure, irrespective of the disclosers state of mind, and what subsequently unfolds.

In relation to who should be able to receive disclosures, TAFE SA supports the current framework and definition of 'relevant authority'. Having said that, obligations for managers to whom a disclosure is made about one of their direct reports may require further awareness programs, support and / or the ability to discuss / handover to, for example, an already existing independent statutory office or to the agencies PID Officer(s) to ensure the matter is dealt with appropriately.

Issue 2: Early certainty about status

TAFE SA agrees that having whistleblower status, potentially before a report is made, would support disclosures. TAFE SA proposes that this is explored in the context of this status applying as a default position for any reports / disclosures as well as whether to be formally conferred by a new or existing authority.

Issue 3: An independent statutory authority to support whistleblowers

TAFE SA appreciates that an (funded) independent statutory authority to support whistleblowers would assist in potential whistleblowers coming forward and confidentiality being maintained. TAFE SA also acknowledges that the 'investigation' of the report made by a whistleblower would also need to be considered as part of any review of the framework (see other comments).

Issue 4: Confidentiality obligations

TAFE SA agrees that irrespective of whether every attempt is made to maintain the confidentiality of a whistleblower, investigating a whistleblowers report (including by an independent person / team / agency) can lead to others becoming aware that an investigation is taking place and potentially being able to identify who / where (e.g. which team) a whistleblower is / works. There should be a trade-off between protecting whistleblowers and enabling effective investigations. Being clearer in the framework that confidentiality remains an obligation of anyone from whom related information is sought would assist. Please refer 9. below regarding TAFE SA's experience regarding maintaining confidentiality.

Issue 5: Immunities & remedies

TAFE SA supports some changes to immunities and remedies.

In relation to immunities, TAFE SA supports extending immunity to witnesses (as it can be difficult to otherwise get a statement) and/or alternatively, the framework could consider the 'investigation' of a disclosure having the right to seek a statement from witnesses. Further, preparatory acts could be immunised in certain circumstances (e.g. if the preparatory acts were directly associated with the report made). It is also

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noted that there appears to be an inherent conflict where disclosures are made during disciplinary proceedings resulting in immunity.

In relation to remedies, TAFE SA agrees that the definition of 'detriment' could be more expansive / holistic (i.e. consistent with typical behaviour of those that may be implicated by a whistleblower). However, in certain situations (e.g. where there are performance issues being addressed simultaneously), reversing the onus of proof may lead to a significant impost on agencies without cause. Further, as there is already a positive duty on agencies to provide a safe working environment, the purpose of having this specified in whistleblower legislation as well may result in a lack of clarity or confusion.

Issue 6: Oversight

TAFE SA does not consider it necessary to have a new agency oversight the whistleblower framework (noting other comments) other than to support agencies in understanding obligations, particularly if matters, as is current practice, are referred back to agencies (including to assist in managing confidentiality).

Issue 7: Accessibility & clarity

TAFE SA agrees that a return to the language of 'whistleblowing' would increase visibility and accessibility. This language/term is used internationally and therefore would likely be easier to find by a discloser to understand their position.

The overlap between legislation in South Australia could equally be improved. There seems to be confusion as to when the whistleblower legislation applies as opposed to other Acts (e.g. Independent Commission Against Corruption Act 2012). This may result in public officers or other potential whistleblowers making reports anonymously (i.e. taking confidentiality into their own hands). Clarity in the legislation about when / who to make a report (i.e. no overlapping in legislation where possible other than pointing a potential whistleblower in the appropriate direction), and then what protection, if any, is available would likely improve accessibility and clarity.

As to whether greater harmony is warranted between whistleblower protection laws in other Australian jurisdictions and South Australia's laws, TAFE SA considers the risk of corruption etc in South Australian vs other States as an important consideration.

Issue 8: Incentives

TAFE SA has no comment in relation to incentives but agrees that any incentives would need to be integrated into a comprehensive framework and that the impact on the ethos of the public sector is an important consideration. The public sector ethos is built on integrity and accountability, and incentives should potentially only be tied to non-monetary recognition. Offering financial rewards for whistleblower evidence may compromise the probity of that evidence as individuals could be incentivised to exaggerate claims or selectively present information.

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Issue 9: Organisational climate

In TAFE SA's experience, having a person / team independent of operations to make enquiries / reports to (which also has responsibility for acting on such) seems to have a positive influence on the willingness of staff to discuss / raise potential or actual matters of concern. This also assists with maintaining related confidentiality.

Thank you for writing to me and I trust this information is of assistance.

Should there be any queries, please contact [REDACTED]

Yours sincerely



Adam Kilvert
INTERIM CHIEF EXECUTIVE

9 October 2025

