

# Human Rights Law Centre

Committee Secretary  
Parliamentary Joint Committee on Intelligence and Security  
Parliament House

## **By Email**

5 March 2026

Dear Committee Secretary,

### **Review of the Royal Commissions Legislation Amendment (Protections for Providing Information) Bill 2026**

1. The Human Rights Law Centre Whistleblower Project is Australia's only specialist legal service for whistleblowers. Since formally launching in 2023, the Project has triaged over 600 whistleblowers, provided legal advice to more than 200 whistleblowers, represented over 50 whistleblowers and participated as a friend of the court in the High Court, Federal Court and South Australian Court of Appeal.
2. As part of this work, the Project has developed a detailed understanding of the intersection of disclosures to regulatory authorities and oversight bodies, whistleblower protections and secrecy and non-disclosure obligations. In particular, the Project has assisted clients participate in a number of royal commissions and equivalent statutory inquiries, at a federal and state level. Accordingly, the Project has particular expertise in relation to the subject matter of this inquiry; uniquely among those participating in the inquiry, that expertise is from the perspective of people seeking to provide information to the inquiry (ie whistleblowers), as their legal advisors.
3. We welcome the Royal Commissions Legislation Amendment (Protections for Providing Information) Bill 2026 (**the Bill**). Protections under federal law for participants seeking to provide information to royal commissions are deficient; the Bill will improve the position, which is good for the efficacy of royal commissions. Given one aspect of its subject matter, these reforms are of particular importance for the present Royal Commission on Antisemitism and Social Cohesion (**the Royal Commission**).
4. However, we have five concerns with the Bill in its present form. We outline them in turn. We would encourage the Committee to recommend these be addressed; in part

Melbourne Office  
Human Rights Law Centre  
Level 17, 461 Bourke Street  
Melbourne VIC 3000

Sydney Office  
Human Rights Law Centre  
Level 5, 175 Liverpool Street  
Sydney NSW 2000

admin@hrlc.org.au  
(03) 8636 4450  
(03) 8636 4455  
www.hrlc.org.au

through immediate amendment to the Bill, in part through a commitment from the Albanese Government to address these matters in wider reform in the months ahead.

### **Scope of Application**

5. The most significant shortcoming of the Bill is that, in providing legal protection for the provision of information to a royal commission, it only applies to intelligence information or operationally sensitive information. Material that is not of that nature, but which may nonetheless be of relevance to a royal commission, and is otherwise covered by secrecy obligations, could not be voluntarily shared with the commission, without the discloser (whistleblower) risking criminal liability.
6. While the amendment to the *Criminal Code 1995* (Cth) additionally proposed by the Bill is welcome, it will not resolve this problem. This is because the defence it adds to the *Criminal Code* only applies to the general secrecy offence regime under federal law. In addition to that regime, there are hundreds – over 800, at last count – of secrecy offences and criminalised non-disclosure obligations across the federal statute book. Notwithstanding the benefit of the addition of the defence, it is also a defence – rather than an exemption.
7. This leads to the unusual situation where sensitive intelligence information can be shared with a royal commission, but other government information cannot, without the discloser exposing themselves to possible liability. That may be a problem for the present Royal Commission; while its focus is partially on national security issues, which this Bill largely seeks to address, it has a much broader remit. It may be an even more significant problem for future royal commissions, which do not have a national security focus.
8. Take a hypothetical example. An employee at the Department of Education is aware of information of relevance to Royal Commission's inquiry into 'security arrangements for the Jewish community', in relation to, say, childcare. There are secrecy offences in federal laws relating to childcare. They may be applicable to the relevant information. Say the Department of Education employee voluntarily provides the information to the Royal Commission. They may be in breach of those specific secrecy offences. Moreover, they may be prima facie liable under the *Criminal Code*; required to rely on the new proposed defence, and the burden of proof in establishing that defence would fall on them. It is not clear why an intelligent agent should have the benefit of this new regime, but the Department of Education employee should not, when both are seeking to do the same thing, in the public interest – provide relevant information to the Royal Commission to assist its inquiries.
9. Addressing this shortcoming would not require a radical amendment to s 6PD. The provision could simply be revised to provide that, where the relevant information is intelligence information or operationally sensitive information, it requires being communicated in accordance with a relevant arrangement; where the information is other government information, it can simply be communicated to the Royal Commission, in accordance to guidance published by the Commission.

10. The Royal Commission into Defence and Veteran Suicide identified some of these issues as barriers to individuals coming forward with information. This Bill, while otherwise laudable, only partially addresses those concerns. Wider reform is desirable, and readily achievable.

### **Intelligence Information Arrangement and Operationally Sensitive Information Arrangement**

11. It is self-evidently important that information of a sensitive nature covered by the Bill is dealt with appropriately. As indicated in its submission, the Royal Commission has already entered into arrangements to give effect to the scheme with the relevant agency heads. That is positive, as it is essential for the efficacy of the scheme established by the Bill. However, by requiring the entering of an arrangement to be a prerequisite to the wider operation of the scheme, for example as a consequence of s 6PD(1)(c), this limits the effectiveness of the Bill in circumstances where such arrangements cannot be reached. That, in effect, gives relevant agencies a veto over the operation of the scheme. In the present case, that is not a problem. But it could be a problem for future royal commissions. A more principled legislative solution may provide an alternative mechanism in circumstances where a commission has sought, but been unable, to agree an arrangement with relevant agencies.

### **Difficulties in Accessing Relevant Legal Representation**

12. Section 6PE provides protection for communications with a lawyer for the purposes of legal advice and representation in relation to participation with a royal commission. However, where the information has a security classification, the lawyer must have an appropriate security clearance.
13. This poses practical difficulties. It is not easy to identify lawyers with a security clearance. Indeed, recently Australia's intelligence authorities, and the Albanese Government, have publicly discouraged security clearance holders from publicising that fact. Last year, Minister Tony Burke advised: 'What ASIO is going to start doing with those top secret clearances is just make it a condition [to not post about it online].' Nor is there a central repository of lawyers with relevant security clearances.
14. How, then, is an individual wishing to provide information to the Royal Commission, and wanting legal advice on doing so, given the risks involved, to avail themselves of appropriate legal representation? It may be that they can seek guidance from their employer (or former employer) as to a suitable lawyer; however, that is an obvious barrier to people coming forward with information, where they may consider their employer would not be pleased about the sharing of the information.
15. This problem has already arisen in the context of the *Public Interest Disclosure Act 2013* (Cth), where an equivalent requirement exists. An independent review of that regime, the Moss Review, identified the problem. In our submission to a recent exposure draft of reform to the law, we said:

*This raises a practical issues around accessibility of support, where the holding of a security clearance is not typically public knowledge, and for third parties (such as lawyers), security clearances can only be obtained with the sponsorship of an agency ...*

*... if s 31(c) is retained, the Department should determine a scheme for public servants to be able to access information about which private practice lawyers hold security clearances, and to what level. The Department should also consider mechanisms for permitting lawyers who practice in whistleblowing law to seek to obtain security clearances, noting that presently clearances are only available to external lawyers where sponsored by an agency, and this typically only occurs for external lawyers who are providing legal services to government.*

16. As a short term solution, the Royal Commission might be able to assist relevant individuals to access security-cleared legal advice. However, it raises wider concerns about the ability to access independent legal representation, including where lawyers can only access a security clearance through the sponsorship of a government agency.

### **No Liability**

17. Section 6PD(2) provides that a person giving information under the regime ‘is not liable to any penalty, under a secrecy provision’. This excludes criminal liability, which is otherwise a significant barrier to whistleblowers coming forward.
18. However, it does not entirely remove disincentive to bringing information to a royal commission. While there are criminal offences provisions preventing detriment to royal commission witnesses, these all relate to formal participation – ie as a witness, or by way of compulsory production – not voluntary participation, such as providing documents to the royal commission without compulsion.
19. Say an intelligence officer voluntarily provides the Royal Commission with information or material relevant to its inquiries. They are protected from criminal liability. But there is seemingly nothing precluding their supervisor, upon finding out, from disciplining them in relation to their employment. It might be that doing so is unlawful in an administrative law sense, but – short of judicial review to the decision to discipline them – the officer who has faced the retaliation would have no remedy. Unlike section 10 of the *Public Interest Disclosure Act*, which protects a whistleblower from ‘any civil, criminal or administrative liability (including disciplinary action)’, the protection in s 6PD is only in relation to liability or penalty ‘under a secrecy provision.’

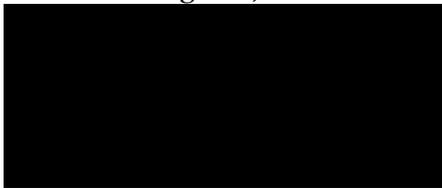
### **No Civil Remedies**

20. That issue is heightened because of the lack of civil remedies for participants to royal commissions who suffer detriment. A review by the Attorney-General’s Department in 2022 acknowledged this gap, and recommended further consideration be given to civil remedy provisions for royal commission participants. While that consideration may

take longer than the urgent timeframe required by this Bill, it is incumbent that it not be forgotten.

21. Presently, a participant to a royal commission, whether formal or informal, has no remedies available to them in the event they suffer detriment because of their participation in the royal commission. Such detriment may be contempt of the commission, it may be a criminal offence. But short of police investigation and prosecution (on which the Department indicated it could find no data in its recent review), the participant has no ability to seek compensation.
22. Subject to the above concerns, the Bill is an important addition to federal law, and should be enacted.
23. I would be pleased to provide further assistance to the Committee.

Kind regards,



Associate Legal Director (Whistleblower Project)  
Human Rights Law Centre