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Submission: *Inquiry into the Whistleblower
Protection Authority Bill 2025 (No. 2)*

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Human Rights Law Centre.

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Human Rights Law Centre

We take fearless human rights action for a fairer future for everyone. We work in partnership with people and communities to advance human rights. We use strategic legal action and advocacy to defend hard-won human rights progress.

In 2023, the Human Rights Law Centre launched the Whistleblower Project, Australia's first dedicated legal service to protect and empower whistleblowers who want to speak up about wrongdoing. We provide legal advice and representation to whistleblowers, as well as continuing our longstanding tradition of advocating for stronger legal protections and an end to the prosecution of whistleblowers. The Human Rights Law Centre is a member of Whistleblowing International Network.

The Human Rights Law Centre acknowledges the Traditional Owners of the lands across Australia, including the lands of the Wurundjeri, Boon Wurrung, Gadigal, Ngunnawal, Cammeraygal, Darug, Wadawurrung, Turrbal and Jagera people where we work from. We pay our respect to Elders past and present. This land always was, and always will be Aboriginal and Torres Strait Islander land. Sovereignty has never been ceded.

We acknowledge the role of the colonial legal system in establishing, entrenching, and continuing the oppression and injustice experienced by First Nations peoples and that we have a responsibility to work in solidarity with Aboriginal and Torres Strait Islander people to undo this. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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Introduction

The Human Rights Law Centre thanks the Senate Legal and Constitutional Affairs Legislation Committee (the **Committee**) for the opportunity to make a submission to the inquiry into the Whistleblower Protection Authority Bill 2025 (No. 2) (**the Bill**).

The Bill represents a landmark opportunity to implement the missing piece in Australia's integrity landscape.

Whistleblowers make Australia a better place. In recent decades alone, whistleblowers have proven critical in exposing wrongdoing including human rights abuses, environmental wrongdoing, corporate misconduct, fraud and government wrongdoing.

In 2025, polling by the Australia Institute and the Human Rights Law Centre shows that **4 in 5 Australians support the introduction of a Whistleblower Protection Authority**.

The idea for an independent agency to support whistleblowers was first considered and supported by a bipartisan Senate committee in 1994. Now, three decades on, we continue to see individual whistleblowers shouldering the burden in the fight for an accountable and transparent Australia. Whistleblowers are not just information sources at the disposal of regulators and law enforcement; Parliaments have long recognised the human dimension of whistleblowing and the social, financial and psychological impacts that whistleblowers face. To date, the cost that Australian whistleblowers have paid has been too high.

In August 2023, we published the *Cost of Courage: Fixing Australia's Whistleblower Protections (Appendix 1)*, which compiled every whistleblower protection case to proceed to judgment across Australia, and found that there had not been a single successful decision for a whistleblower under the primary federal public or private sector laws. The report set out key reforms that, if enacted, could see Australia's whistleblower laws deliver in their purpose to protect and empower whistleblowers. A Whistleblower Protection Authority is a crucial piece of that puzzle.

In 2023, the Human Rights Law Centre launched the Whistleblower Project, Australia's first specialist legal service dedicated to protecting and empowering whistleblowers to speak up about wrongdoing across the public and private sectors in Australia. Our service was designed to fill a gap in the legal services landscape, where too many whistleblowers have fallen through the gap without support and advice to navigate whistleblowing laws.

Since launching in August 2023, we have been contacted by over 400 individuals seeking support and guidance to speak up. We have provided advice to approximately 150 clients at varying stages, including before, during and after blowing the whistle, and offered ongoing representation to about 40 whistleblowers. We have assisted clients in every jurisdiction in Australia, but for every whistleblower we assist, there are many more that we do not have the capacity to help.

Across our empirical research and our client work, we have seen firsthand the negative impacts that piecemeal and complex whistleblowing laws are having on transparency and accountability in Australia. As a consequence of the lack of structural support for whistleblowers across federal laws, our clients and many others like them face significant challenges in making safe and lawful disclosures.

At each stage of reform to whistleblower protections in Australia in recent years, the Human Rights Law Centre has raised the fundamental need for a federal body to support whistleblowers to safely and lawfully navigate the complex

legal landscape. This submission builds on our advocacy to date, and draws on the number of parliamentary inquiries and departmental reviews into whistleblowing that have recognised the fundamental issue; that whistleblowers in Australia are suffering from a lack of guidance and support. We also note the recent publication *A Fair Go For Speaking Up: Design Principles For Australia's Federal Whistleblower Protection Authority (Design Principles)*, which we authored in partnership with of Transparency International Australia and Griffith University, and provides further detail on the need for a Whistleblower Protection Authority in Australia.

We make the following recommendations:

Recommendation 1: The Committee should recommend that the Australian Government establish an independent, standalone, and properly resourced Whistleblower Protection Authority – as proposed by this Bill – with jurisdiction to oversee and enforce both public sector and private sector protections; and

Recommendation 2: The Committee should recommend that the Australian Government urgently proceed with comprehensive reform to public and private sector whistleblower protections under federal law, integrated with the establishment of a Whistleblower Protection Authority.

This Bill presents a significant and long overdue moment for the Parliament to reform the integrity landscape in line with the Australian community's expectations. We welcome this opportunity for reform, and urge the Committee to listen to and act on the calls from Australians to better protect whistleblowers who speak up in the public interest.

1: The idea for a whistleblowing authority

Federal context

In the federal policy context, the concept for a whistleblower protection authority was first raised in the 1994 Senate Select Committee's Report on public interest whistleblowing.¹ The multi-partisan committee, chaired by Senator Jocelyn Newman, was asked to consider, among other things, 'whether a new agency should be created to receive and investigate disclosures and to investigate any discrimination suffered by whistleblowers as a result of those disclosures'.² Recognising the need for visible independence to gain the trust and confidence of whistleblowers, the committee supported in its report a standalone agency (the Public Interest Disclosures Agency) that would be a central point of assistance for whistleblowers as well as oversee the investigation of their disclosures by other organisations and regulators.³

Other key functions proposed in the Committee's report remain salient features of an effective whistleblower protection agency, including:

- the clearinghouse function for complaints;
- facilitation of referrals to the appropriate investigation authority;
- oversight over investigations of complaints of harassment, ill-treatment and victimisation of whistleblowers;
- provision of counselling and psychological support for whistleblowers;
- an independent board to direct the agency, with membership balance between Parliamentary, public service and community representatives;
- evaluation and monitoring of international developments in whistleblowing protection; and
- implementation of a national education program.⁴

At the time, the report was recognised as the 'beginning of a new attitude to the general subject of whistleblowing'.⁵ However, plans to pass legislation focusing on whistleblowing did not proceed after the election of a new government in 1996.

In 2008/09, the House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an inquiry into federal public sector whistleblower protection, chaired by Mark Dreyfus QC MP. The Committee's report, published in February 2009,⁶ recognised the role of support services as a recurring theme raised outside simply changing legislation. While it acknowledged the recommendation for an independent whistleblower

¹ Senate Select Committee, *In the public interest – including the committee's consideration of the Whistleblowers Protection Bill 1993* (Report, August 1994).

² Ibid, Terms of Reference (2)(c), [v].

³ Ibid, 106-8.

⁴ Ibid, 109.

⁵ The Honorable Michael Lavarch MP, then Commonwealth Attorney-General, in response to the Report.

⁶ Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector, Report of the Inquiry into whistleblowing protection within the Australian Government public sector* (Report, February 2009).

protection agency,⁷ it ultimately recommended that an existing agency should be given additional powers and obligations to act as a central oversight agency for the new whistleblower regime.⁸ The report considered the Commonwealth Ombudsman to be the best option, but notably, its envisaged additional powers fell short of the comprehensive functions of the independent agency recommended by the 1994 report. The Ombudsman's recommended additional functions included:

- the referral of disclosures to the appropriate agency to investigate;
- provision of assistance to agencies in implementing new public interest disclosure legislation;
- provision of education and awareness to employees within the sector; and
- establishment of an anonymous and confidential advice line for employees.⁹

In 2013, substantive reform to enact a single federal public sector whistleblowing law finally occurred, with the commencement of the *Public Interest Disclosure Act 2013* (Cth). An independent review into the *Act* was conducted in 2016, in accordance with s 82A of the *Act*, which mandated a review into its operation two years after its commencement. Philip Moss AM handed down the report *Review of the Public Interest Disclosure Act 2013* in October 2016. The report recognised that one of the consistent themes in the submissions it received was that whistleblowers felt unsupported when making disclosures and seeking protections.¹⁰ However, beyond suggesting that agencies and disclosure recipients should have a positive obligation to support the wellbeing of whistleblowers, the report did not make any further tangible recommendations to fill the gap in support.¹¹

In 2017, the bipartisan Parliamentary Joint Committee on Corporations and Financial Services (**PJCCFS**) handed down its report *Whistleblower protections in the corporate, public and not-for-profit sectors*,¹² the most comprehensive federal level review on the current state of whistleblower protections. The Report recognised whistleblower protection as a fundamental facet of our democracy, providing vital checks and balances on the provision of services economy-wide.

One of the Committee's key recommendations was the establishment of a Whistleblower Protection Authority. The authority would be a 'a one-stop shop Whistleblower Protection Authority... to cover both the public and private sectors,'¹³ with a broad remit and oversight functions.¹⁴ The Committee considered that a Whistleblower Protection Authority should have the functions to:

- provide a clearinghouse for whistleblower disclosures;
- provide advice and assistance to whistleblowers; and

⁷ Ibid 111.

⁸ Ibid 133-4.

⁹ Ibid 137.

¹⁰ Philip Moss, *Review of the Public Interest Disclosure Act 2013* (Report, October 2016) 53 (**Moss Review**).

¹¹ Ibid 53.

¹² PJCCFS, *Whistleblower protections in the corporate, public and not-for-profit sectors* (Report, September 2017) ("PJCCFS 2017 Report").

¹³ Ibid. [Recommendation 12.1].

¹⁴ Ibid, [Recommendation 12.1].

- support and protect whistleblowers by investigating non-criminal reprisal and taking legal action to enforce protections and remedy detrimental outcomes on behalf of whistleblowers.¹⁵

In the Government's response to the report, it noted the recommendation but did not state whether it agreed or disagreed with it, stating that it would reassess the case for a whistleblower protection authority after the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018 had been implemented and reviewed.¹⁶ The statutory review of that reform, to whistleblower protections in the *Corporations Act 2001* (Cth) and *Taxation Administration Act 1953* (Cth), is presently underway.

Support for a Whistleblower Protection authority was underscored by the PJCCFS = in its November 2024 report *Ethics and Professional Accountability: structural changes in the audit, assurance and consultancy industry*.¹⁷ The Committee recommended: "that the Australian Government consider options for greater practical support of whistleblowers such as a Whistleblower Protection Authority (covering both the public and private sectors), including access to civil remedies and financial compensation particularly in instances where disclosures result in the imposition of a penalty on the relevant entity or organisation."¹⁸ The Government has not yet responded to the November 2024 report.

State context

It is worth noting that, while the federal Government is yet to address the significant gap in support for whistleblowers, some states and territories have sought to propose and implement solutions.

Victoria proposed a pilot Disclosure Support Scheme in 2018. Under the proposed scheme, whistleblowers would be able to either access subsidised legal assistance or seek partial or full reimbursement for the costs of seeking legal assistance themselves, allowing whistleblowers to engage their usual lawyer if they wanted to.¹⁹ The scheme would only cover reasonable legal expenses and be capped at \$24,000.²⁰ Additionally, whistleblowers would be able to access welfare and career transition services, such as psychologists, recruitment and human resources firms, and reskilling costs, up to a maximum of \$2,000.²¹ It is not clear why the pilot proposal did not proceed.

In Queensland, a comprehensive review of the *Public Interest Disclosure Act 2010* (Qld) was conducted by the Honourable Alan Wilson KC in 2023. The Wilson Review saliently recognised a gap in support for whistleblowers that should be addressed by a whistleblower support and advice unit.²² It recommended that the Queensland Ombudsman would be an appropriate body to house this unit, provided that its investigatory and support functions are kept distinct and separate. The report recommended that the unit be modelled off of the Electoral and

¹⁵ Ibid, [12.79].

¹⁶ *Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services report into whistleblower protections in the corporate, public and not-for-profit sectors* (Reponse, April 2019) 17.

¹⁷ PJCCFS, *Ethics and Professional Accountability: structural changes in the audit, assurance and consultancy industry* (Report, November 2024) ("PJCCFS 2024 Report").

¹⁸ Ibid, [Recommendation 38].

¹⁹ Ibid.

²⁰ Ibid 5.

²¹ Ibid.

²² Alan Wilson KC, *Review of the Public Interest Disclosure Act 2010* (Report, June 2023) 148 (**Wilson Review**)

Administrative Review Commission's recommendation for the creation of a Whistleblowers Counselling Unit within the Criminal Justice Commission. It envisaged that the unit would fulfil the following functions:

- provision of counselling and assistance to potential whistleblowers;
- provision of information to prospective whistleblowers regarding the disclosure pathways and requirements, the protections they are entitled to, and potential consequences they may face; and
- evaluation of the seriousness and merits of alleged misconduct, to assist the whistleblower determine whether they wanted to make a report.²³

Importantly, the unit would be staffed by people who had experience in ethics and counselling and their work would be kept confidential from the rest of the organisation.²⁴ These proposals have not been actioned yet. The Wilson Review also recommended a pilot funding scheme for a community legal centre to provide legal support to Queensland public sector whistleblowers.

In recent years, following the enactment of the *Public Interest Disclosures Act 2022* (NSW), the NSW Ombudsman set up a Whistleblower Support Team, offering confidential support to whistleblowers and providing general information about the disclosure process.²⁵ The service can be accessed before, during, and after making a disclosure. Whistleblowers can approach the team anonymously and confidentially and the Team operates independently from the Ombudsman's investigatory and complaint functions.

The idea of an independent whistleblower protection agency has been around for decades in the Australian integrity landscape. While the idea has taken many forms and its proposed functions have been varied, what is consistent is the understanding that there is a gap that needs to be filled. Whistleblowers, regulatory agencies, and bodies tasked with reviewing whistleblower legislation have consistently noted the lack of support for whistleblowers, along with the mental, financial, and professional ramifications that come with speaking up about wrongdoing.

2: International context

2. 1. The emergence of whistleblower protection agencies globally

Over the past few decades, whistleblower protection agencies have emerged in several jurisdictions across the world, reflecting a growing understanding of the challenges arising from blowing the whistle. In this section, we provide some examples of whistleblower protection agencies, being models Australia can learn from and build on.

United States

²³ Ibid 144.

²⁴ Ibid.

²⁵ 'Whistleblower Support', *NSW Ombudsman* (webpage) <https://www.ombo.nsw.gov.au/complaints/whistleblower-support>.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) has a Whistleblower Protection Program that has been operational since 1971. The Program receives and investigates complaints of retaliation against whistleblowers in the private sector. If the Program finds that the complaints of retaliation are substantiated, OSHA can make orders against the employer to remedy the retaliation, such as reinstating the employee and paying lost wages.

The United States Office of Special Counsel (OSC) has provided services to federal public sector whistleblowers since 1989. The OSC not only receives disclosures and refers them to be investigated by the appropriate agency, but whistleblowers are also able to comment on the agency's findings, which are provided to the OSC. Where whistleblowers experience retaliation, they can report it to the OSC. If substantiated, the OSC can then seek corrective action from the organisation to place the complainant back into the position they would have been in if they had not made a whistleblowing disclosure. This may also include reimbursing the complainant for any legal costs they have accrued. The OSC also facilitates alternative dispute resolution processes to help the complainant and their employer resolve the dispute in a non-litigious manner.

The United States Securities and Exchange Commission (SEC) established an Office of the Whistleblower in 2010, tasked with administering whistleblowing laws that relate to federal securities laws. The SEC receives tips from whistleblowers and can bring enforcement actions against employers who retaliate against whistleblowers. The SEC also administers an award program, which allows whistleblowers to receive an award for disclosures that lead to an enforcement action against a company. These awards are generally 10-30 percent of the money recovered from enforcement actions arising from the disclosure.

Several other sector-specific regulators in the United States have also established dedicated whistleblower offices.

European Union

More recently, several EU countries have established independent whistleblower protection agencies. For many states, this was a response to the *EU Whistleblowing Directive*. Issued in 2019, Article 20 of the Directive stated that: 'Member States shall ensure that persons referred to in Article 4 have access, as appropriate, to support measures', including legal aid, comprehensive and independent information, and effective assistance from the authorities.²⁶ The Directive further suggested that these measures could be provided by an information centre or a 'clearly identified independent administrative authority.'²⁷ We provide a few examples of the whistleblower protection agencies in the EU below.

²⁶ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, article 20.

²⁷ Ibid.

In both Finland and Ireland, the Office of the Chancellor of Justice²⁸ and the Office of the Protected Disclosures Commissioner,²⁹ respectively, provide a clearinghouse function. Their primary function is to direct disclosures to the appropriate agency to receive and investigate, rather than to provide support services to whistleblowers.

Established in 2019, the Whistleblower Protection Office in the Slovak Republic performs more extensive functions. The Office advises whistleblowers throughout the disclosure process, assisting them with filing complaints, providing legal advice, and providing support. The Office also monitors how employers treat whistleblowers and has the power to prevent and suspend any retaliatory conduct against whistleblowers. Where the whistleblower wishes to remain anonymous, the Office is also able to handle reports on their behalf.³⁰

The Netherlands established the House of the Whistleblowers (*Huis voor Klokkenluiders*) in 2016. The House has both advisory and investigative functions, which are performed in separate, distinct departments. The House's advisory functions include providing support to whistleblowers and advising them as to correct disclosure pathways.

2. 2. Human rights principles

Freedom of expression

Strong whistleblower protections help strengthen the right to freedom of expression, as contained in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is a signatory. This right includes the ability to seek, receive and impart information, subject to other laws that may necessarily be in place.³¹ Currently, Australia's integrity landscape is not conducive to safely facilitating whistleblowers from exercising this right. The establishment of a Whistleblower Protection Authority will help ensure that where whistleblowers are following the correct pathways to lawfully speak up about wrongdoing, they are not being unduly punished.

Access to justice

A Whistleblower Protection Authority can fill a crucial gap in the ability for whistleblowers to access justice. Often, whistleblowers are financially unable to access the legal assistance they require to navigate complex disclosure pathways and to foot the cost of pursuing remedies in court. An agency that can bring whistleblower protection enforcement proceedings on the whistleblower's behalf and administer a legal support scheme will assist greatly in filling this access to justice gap. Additionally, the psychological and professional support can be expensive to access, but often necessary for whistleblowers. Casework-style support will assist in bridging this gap, allowing whistleblowers to access the support they need to work through what is often a very distressful time in their lives.

²⁸ 'The Whistleblower Act entered into force – centralised reporting through the Office of the Chancellor of Justice,' *Chancellor of Justice* (webpage) <https://oikeuskansleri.fi/en/-/the-whistleblower-act-entered-into-force-centralised-reporting-through-the-office-of-the-chancellor-of-justice>.

²⁹ 'What we do', *Protected Disclosures Commissioner* (webpage) <https://opdc.ie/en/organisation-information/20538-what-we-do/>.

³⁰ 'About Us', *Whistleblower Protection Office* (webpage) <https://www.oznamovatelia.sk/en/o-nas/>.

³¹ On the intersection between whistleblower protections and human rights laws generally, see Kieran Pender, 'Protecting Press Freedom Through Human Rights Charters in Australia' (2023) 47(1) *Melbourne University Law Review* 192.

Convention Against Corruption

The need for robust whistleblower protections in domestic legal systems has long been recognised in international legal instruments. Australia is a party to the *United Nations Convention Against Corruption (UNCAC)*,³² which requires state parties to take measures to provide protection against unjustified treatment of whistleblowers.³³ Recent resolutions of the Committee to *UNCAC* called for the full and effective implementation of obligations under the convention, including full implementation of Article 33 of *UNCAC* relating to the protection of reporting persons in domestic legal systems.³⁴

The recognition of the role of whistleblowers in combatting corruption and wrongdoing in international instruments should present an impetus for the Australian government to catch up with other economies around the world in establishing independent support mechanisms to protect whistleblowers.

3: The problem to be addressed

3. 1. The cost of a complex, overlapping regime

There are currently nine federal laws containing substantive whistleblower protections:

- *Public Interest Disclosure Act 2013*
- *Corporations Act 2001*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *Fair Work (Registered Organisations) Act 2009*
- *Taxation Administration Act 1953*
- *National Disability Insurance Scheme Act 2013*
- *National Anti-Corruption Commission Act 2022*
- *Parliamentary Workplace Support Service Act 2023*
- *Aged Care Act 2024*

Across these nine laws, there are numerous regulators with partial oversight of the federal whistleblowing regime, including the Commonwealth Ombudsman, the National Anti-Corruption Commission (**NACC**), the Australian Securities and Investments Commission (**ASIC**), the Australian Taxation Office (**ATO**), the NDIS Quality and Safeguards Commission, the National Disability Insurance Agency, and the Aged Care Quality and Safeguards Commission, among others. Each of these regulators have statutory obligations in relation to the receipt and

³² *United Nations Convention Against Corruption*, opened for signature 9 December 2002, 2349 UNTS 41 (entered into force 14 December 2005).

³³ Sometimes referred to as “reporting persons” in *UNCAC* materials.

³⁴ United Nations Office on Drugs and Crime, *Conference of the State Parties to the United Nations Convention Against Corruption, Protection of reporting persons*, UN DOC CAC/COSP/2023/L.12/Rev.1 (15 December 2023) 3.

investigation of whistleblower disclosures, yet not one of these regulators have a dedicated whistleblower support function.

In recent years, we have seen the continued fragmentation of federal whistleblower laws; a move that is bad for whistleblowers who may have to navigate multiple contradictory disclosure regimes, bad for businesses and government bodies that are often subject to overlapping compliance and reporting obligations, and bad for regulators which face limitations to their investigatory and enforcement oversight.

In our submissions to the Department of Health and Aged Care consultation on the *Aged Care Bill 2024*,³⁵ and the Treasury consultation on the regulation of accounting, auditing and consulting firms in Australia in 2024,³⁶ we stressed the need for harmonisation of protections, and particularly the impact of overlapping regimes on downstream costs of an overcomplicated regime.

This fragmentation is partially due to the fact that departmental oversight of federal whistleblower protections is currently shared between numerous departments including Treasury, the Attorney-General's Department and various sector-specific departments. Where multi-departmental oversight may be unavoidable, the lack of a coordinated and harmonised approach is having detrimental impacts on whistleblowers, government agencies and the corporate sector. An independent and centralised Whistleblower Protection Agency would play a critical role in coordinating the approach to whistleblower protection across the federal government by:

- (a) Providing oversight and coordination in investigations across different regulators, thereby reducing overlap;
- (b) Functioning as a clearinghouse for disclosures, reducing the administrative burden on regulators and organisations in receiving, triaging, and referring disclosures;
- (c) Providing guidance and training on best practice whistleblower support and protection for agencies and organisations;
- (d) Supporting regulatory and integrity agencies with receiving, assessing, referring, and responding to whistleblowing disclosures; and
- (e) Monitoring progress and outcomes arising from the investigation of disclosures.

3. 2. The human dimension – recurring themes in our work

In recent years, high-profile cases of prosecutions against whistleblowers have had a chilling effect on other prospective whistleblowers. In our work, clients constantly bring up the fear of being prosecuted for making disclosures, often noting that they have come to us because it is “better to be safe than sorry” and that they are “prepared to go to jail to blow the whistle.”

³⁵ Human Rights Law Centre, Griffith University and Transparency International Australia, *Strengthening Protections for Aged Care Whistleblowers: Protecting Australia's Whistleblowers in Aged Care and Beyond* (Submission 23 to the Senate Standing Committee on Community Affairs, November 2024).

³⁶ Human Rights Law Centre, *Submission to the Treasury on the Regulation of Accounting, Auditing and Consulting Firms in Australia: the need for comprehensive protections* (June 2024).

Whistleblowers should not face the risk of criminal penalty in speaking up in the public interest. To have functioning whistleblower pathways and protections established in legislation is necessary, but appropriate support and guidance is critical in ensuring whistleblower laws function as intended.

At the Whistleblower Project, we speak to individuals every day who give information to any one of the many regulators who receive whistleblower disclosures. This is an important component of a functioning regulatory lifecycle; when regulators receive information from sources and act on that information by investigating and taking enforcement action to prevent or deter wrongdoing, all Australians benefit. However, the lack of support functions for whistleblowers who engage with regulators as part of this regulatory lifecycle means that too often, whistleblowers are left in the dark when it comes to understanding how to safely and lawfully disclose information.

The 1994 Senate Select Committee Report recognised the human dimension of whistleblowing as a fundamental consideration in designing a whistleblower protection regime that would be fit for purpose, drawing on the evidence both formal and anecdotal from whistleblowers and their experience in speaking up.³⁷

We encourage this Committee to draw on evidence that whistleblowers with personal experience have submitted to this inquiry. We also include our firsthand experience advising client in the following sections, to amplify the stories of the many whistleblowers we work with on a daily basis.

a) Procedural burnout

The Wilson Review on the Queensland *Public Interest Disclosure Act* drew extensively on the personal experiences of whistleblowers who made submissions to the review. The Report acknowledged not just the risk of detriment caused by retaliation against a whistleblower, but also the more insidious damage caused by ‘procedural harm’; the psychological impacts of stress, uncertainty, loneliness and isolation that can grow when whistleblowers find themselves caught up in drawn-out investigations, and subject to strict confidentiality obligations with no systemic supports to turn to.³⁸

Even in circumstances where a whistleblower is adequately protected according to legislative requirements by an organisation or investigation agency, whistleblowers often experience anxiety and burnout from the process. We have found in our work that having ongoing legal assistance during the process, including advice on how to properly and lawfully engage with regulators, has provided considerable benefit to many of our clients.

b) Lack of communication from investigators and regulatory agencies

In addition to the stressors which may arise from a whistleblower’s workplace, whistleblowers also face distress caused by their involvement with investigators and regulatory agencies. As investigations can take extended periods of time, whistleblowers are often left without communication or updates from the investigatory or regulatory agency for months at a time, causing uncertainty and distress. The Wilson Review acknowledged this issue, quoting a submission from The Centre for Privacy, Transparency and Accountability which stated that:

³⁷ Senate Select Committee, *In the Public Interest*, [91].

³⁸ Wilson Report (n 22), 135.

‘Current practice is to give no information to disclosers or provide sporadic reports hoping that the discloser will forget about the matter.’³⁹

These stressors related to the investigation can also be exacerbated by the issuance of directives from the investigating agency, which can range from directing the whistleblower not to participate in internal investigations by their employer, to asking them to retain evidence of the wrongdoing from their former employer, even when it is causing escalating reprisals against them (or may even be unlawful, particularly following the recent judgment in *Boyle v Commonwealth Director of Public Prosecutions*).⁴⁰

c) Retaliatory legal actions against whistleblowers

While whistleblowers can face retaliatory action in regards to their employment, we are also increasingly seeing our clients being the subject to retaliatory legal action. Examples of this include:

- Concerns notices for defamation; and
- Threats of legal action for unrelated claims, such as the solicitation of clients or misuse of the employer’s confidential information;

Given the expense of defending such claims, whistleblowers are often faced with difficult choices. While some choose to give in to the demands of the other side, others put themselves under financial pressure in order to defend these claims, exacerbating the financial consequences of making a disclosure.

d) Barriers to accessing or enforcing protections

While our legislative regimes create protections for whistleblowers and promise remedies where they have experienced reprisal, there are inherent barriers in accessing and enforcing those protections. In order to seek civil remedies for reprisal claims (such as compensation or injunctive relief), whistleblowers have to litigate, which requires resources, time, and money. Unless there is the potential for a high payout and whistleblowers already have the means to pursue a remedy, reprisal cases will rarely be litigated and whistleblowers will rarely get to enforce their rights in court.

In the Human Rights Law Centre’s *Cost of Courage Report*, published in 2023, we found that only 70 whistleblowing cases have proceeded to judgment in the lifetime of Australia’s whistleblowing laws. Out of these, barely one in five saw the whistleblower succeed in bringing a case against the other side. Only one saw a whistleblower actually awarded damages for an act of reprisal – the damages awarded totalled \$5,000.

3. 3. The prevalence of reprisal against whistleblowers

Reprisal is broadly defined as detrimental action taken against a whistleblower because they have made a disclosure and can encompass actions such as termination of employment, isolation or exclusion when interacting with colleagues, role reduction, and disciplinary proceedings against the whistleblower. The 2016 review of the *Public*

³⁹ Ibid 132.

⁴⁰ [2024] SASCA 73.

Interest Disclosure Act 2013 (Cth) found that 75% of whistleblowers who had responded to their survey had experienced reprisal as a result of their disclosure.⁴¹ Our own data analysis of our clients in our first year of operation found similar results, with 70% of our clients who had made disclosures prior to coming to us having suffered reprisal. We also found that:

- A third of those who had suffered reprisal were terminated in their employment;
- A quarter suffered bullying or harassment; and
- Almost a fifth had allegations and investigations commenced against them.

While all whistleblowing laws protect whistleblowers against reprisal, the reality is that whistleblowers, more often than not, face mistreatment for having spoken up about wrongdoing. The prevalence of reprisal, coupled with the high expense of pursuing remedies in court and the unlikelihood of a successful court case demonstrate that our whistleblowing laws are not adequately protecting whistleblowers.

4: Priorities for an effective Whistleblower Protection Authority

4.1. Independence

The whistleblower protection authority should be an independent body, separate and distinct from any existing integrity agency. The PJCCFS's 2017 Report recognised several benefits to an independent Whistleblower Protection Authority in relation to its powers to investigate reprisal of whistleblowers, including the undesirability of pre-established bodies like the Commonwealth Ombudsman to conduct investigations of alleged reprisal activity independently of their investigations into misconduct, providing a consistent approach across public and private sectors, and allowing other regulators to focus their investigations on the whistleblower reports.⁴² Additionally, as whistleblowing subject matter can be varied and whistleblowers can anyone from employees and contractors to advocates and NDIS participants, an independent body would ensure that all whistleblowers are adequately serviced.

From our discussions with former whistleblowers and key stakeholders in the sector, it is also our position that independence is crucial to maintain the trust and confidence of whistleblowers. Independence of the body should also be strengthened by providing its Commissioner with security of tenure and the body with adequate resources and staffing to fulfil its functions.

⁴¹ Moss Review (n 10) 34.

⁴² PJCCFC 2017 Report [12.75].

4.2. The need for comprehensive jurisdiction

Whistleblowers make disclosures about a broad range of organisations and types of wrongdoing, making it crucial that the Whistleblower Protection Authority has a comprehensive jurisdiction. To illustrate the breadth of who whistleblowers are, what organisations they are making disclosures about, and what types of wrongdoing they are disclosing, we provide some of our client data from the Whistleblower Project's first year of operation (August 2023 to July 2024).

Our clients came to us from all across the public and private sectors. While 22% of our clients worked in Government, the rest of our clients worked in industries ranging from Information Media and Telecommunications, to Manufacturing and Trade, to Environmental Services. After Government, the sectors with the highest number of clients were Healthcare (14%), Education (12%), and Arts and Recreation (8%). The positions that our clients occupied in these organisations were also varied. While some were employees, others were volunteers and contractors.

In addition, our clients also came to us about a diverse range of wrongdoing, making disclosures about everything from corruption, to the endangerment of people and the environment, to fraud in all its forms. The most common disclosures people made were about the endangerment and mistreatment of people (34%), followed by organisational and managerial misconduct (23%) and the endangerment of the environment (12%).

This diversity in sector and disclosure subject matter demonstrates the necessity of an Authority that has broad jurisdiction. Already, many of our regulatory agencies have a narrow enforcement area, causing disclosures and the whistleblowers who make them to fall between the cracks.

4.3. Preventative action powers

The Authority should be able to take 'early intervention' measures to help protect the interests of whistleblowers, so that the potential financial, professional, and emotional cost of whistleblowing can be mitigated or even avoided. Where whistleblowers have alleged reprisal, the Authority should be able to facilitate conciliations and mediations with the consent of both parties, with a view to resolve conflicts before questions of termination, litigation and publicity arise. This can benefit both parties, with the avoidance of legal costs, lower risk of reputational damage, and where possible, the maintenance of relationships.

5: Case studies

We offer below three case studies of recent client work which demonstrate the need for a Whistleblower Protection Authority.

A clearing-house for all types of whistleblower disclosures

The Whistleblower Project assisted a whistleblower to make disclosures to the media about wrongdoing they witnessed while working on survey data for the Voice to Parliament Referendum.

The whistleblower's employer was contracted by the Australian Electoral Commission (AEC) to understand the views of Indigenous communities regarding the processes around the Referendum. The whistleblower's manager directed them to falsify survey responses and recorded information as coming from Aboriginal and Torres Strait Islander respondents living in regional areas and Adelaide, when the respondents were from inner Sydney. This likely constituted data fraud.

We assisted the whistleblower to make an internal disclosure to the company. We subsequently assisted the whistleblower to make an external disclosure to ASIC. ASIC confirmed they would not investigate but under the *Corporations Act*, the whistleblower had to wait 90 days until they were able to make a protected disclosure to the media.

Guardian Australia ultimately published a series of articles on this wrongdoing, resulting in a full investigation of the matter by the AEC, the industry peak body, and the company as well as the suspension of the company's government contracts.⁴³

The whistleblower knew that ASIC would take no action for this disclosure, as not within the scope of ASIC's core regulatory mandate and enforcement priorities. However, because the company fell under the *Corporation Act*'s whistleblowing regime, the whistleblower was required to make a disclosure to ASIC before taking further action. This unduly burdens ASIC, but at present it – and the banking regulator – are the only external regulatory bodies under the *Corporations Act*.

Our disclosure pathways do not allow reports of wrongdoing to be directed to the agencies who will take an interest and investigate those reports. This causes unnecessary delays, disclosures to more logical regulators without protections for the whistleblower and ultimately prevents reports of wrongdoing from being addressed in an efficient and timely manner. The establishment of a central clearing-house in the form of a Whistleblower Protection would be a significant improvement to the current fragmented regulatory landscape for whistleblowers.

No accountability for investigations and extensions

The Whistleblower Project assisted Glenda* to blow the whistle on a government department's failure to implement a program to protect endangered species as required by a construction permit. Glenda made a disclosure to the Commonwealth Ombudsman in March 2024. The Commonwealth Ombudsman referred the matter to the portfolio department of the agency accused of the wrongdoing; the portfolio department subsequently reallocated the disclosure to the agency itself. The agency sought two 90 day extensions without

⁴³ Christopher Knaus, 'Whistleblower claims he was told to fabricate data for AEC during Indigenous voice campaign', *Guardian Australia* (online, 20 August 2024) <<https://www.theguardian.com/australia-news/article/2024/aug/20/firm-hired-by-aec-accused-of-fabricating-data-during-indigenous-voice-campaign>>.

substantive reasons, which were granted by the Commonwealth Ombudsman meaning at best, Glenda would receive a response in February 2025 – nearly one year after making her disclosure. As the *Public Interest Disclosure Act 2013* (Cth) does not allow a whistleblower to make an external disclosure to the media until the relevant investigation has concluded, unless it is an emergency disclosure, Glenda was unable to escalate her disclosure with the benefit of the protections in the *PID Act* for almost a year. The investigating agency ultimately decided not to further investigate the disclosure as they found serious disclosable conduct was not present (despite the lack of a concluded investigation).

Throughout the year, Glenda had limited communication with the investigators and had to endure the stressors that the drawn out investigatory process had on her personal and professional life. Glenda endured these impacts with the expectation that the investigators would engage meaningfully with the disclosure, only to be left with an extremely unsatisfactory investigation. Having a Whistleblower Protection Authority to provide support to Glenda, and ensure adequate oversight and scrutiny of the departmental consideration of the disclosure, would have significantly improved the process.

*Glenda is not her real name and some facts have been changed to preserve confidentiality

Robodebt

The Robodebt saga was a vivid demonstration of the cost of ignoring those who speak-up. Lives were lost, untold human suffering endured and billions of dollars wasted on an unlawful and unethical scheme targeting some of society's most vulnerable.

Robodebt was a tragedy because it was called out for its unlawful and unethical nature from the beginning. It should have been stopped in its tracks, if those who spoke up were listened to – or to escalate their concerns. In the *Robodebt Royal Commission Final Report*, it was said:

The Scheme received early and ongoing criticism – in the media, from advocacy organisations, within academia and from DHS employees and whistle-blowers ... DHS was well aware of these criticisms. Each example of criticism, as well as its cumulative impact, presented DHS with further opportunities to investigate the concerns raised and react to them, particularly insofar as accuracy and illegality were raised. Those opportunities were not taken up by DHS.

One such whistleblower was Jeannie-Marie Blake, a client of the Whistleblower Project, who worked at Services Australia and raised concerns from the initial Robodebt pilot about its legality and ethical basis. Blake gave evidence to the Royal Commission that she regularly, repeatedly raised concerns. At one point, after continuing to raise concerns, she was told by her supervisor that her 'options were: to continue doing the work I was tasked with; to ask for a transfer to another team or department; or to find a job outside the public service.' Blake told the Royal Commission that 'administering the Robodebt scheme was the saddest part of my career.'

In a subsequent interview with The Mandarin, Blake said:

I feel like the APS needs to have an independent authority that could investigate and help protect staff speaking out in the interest of the public that they serve. I strongly believe that if we had an independent body protecting staff, then more staff would be comfortable to speak out on issues that matter. Currently,

you are left weighing up whether you can live with the consequences of going on the record or live with the consequences for the public if you don't speak out.

Conclusion and recommendations

31 years ago, a federal parliamentary committee recommended the establishment of what we would understand in modern terms to be a Whistleblower Protection Authority. It was a good idea at the time; it is an even better idea now. Before this committee, for the first time, is a Bill proposing to establish a Whistleblower Protection Authority. While the Bill has scope for improvement – and we particularly note and support Griffith University's submission in this respect – the Bill provides a significant and detailed framework for establishing this critical new body. We urge the Committee to recommend that the Government establish a Whistleblower Protection Authority, consistent with the Bill and our Design Principles. The establishment of such a body, together with comprehensive, best-practice law reform across federal whistleblowing laws, is urgent and overdue.

Recommendation 1: The Committee should recommend that the Australian Government establish an independent, standalone, and properly resourced Whistleblower Protection Authority – as proposed by this Bill – with jurisdiction to oversee and enforce both public sector and private sector protections; and

Recommendation 2: The Committee should recommend that the Australian Government urgently proceed with comprehensive reform to public and private sector whistleblower protections under federal law, integrated with the establishment of a Whistleblower Protection Authority.