



A FAIR GO FOR SPEAKING UP: DESIGN PRINCIPLES FOR AUSTRALIA'S FEDERAL WHISTLEBLOWER PROTECTION AUTHORITY

Transparency International Australia

Transparency International Australia is the national chapter of Transparency International, a global coalition against corruption operating in over 100 countries. Each chapter is independent and unique, and together we aspire to a unified vision: a world free of corruption.

Through research, policy reform, and collaboration with diverse stakeholders, we shine a light on corruption risks and champion practical solutions to build a fairer, more transparent Australia.

We focus on evidence-based advocacy to strengthen integrity and accountability, with a key emphasis on whistleblower protections.

Our whistleblowing work is guided by our national whistleblower advisory group—consisting of former whistleblowers who advise, advocate and educate on proposed whistleblower protection reforms.

Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. Whistleblower protections are an essential part of the wider human rights framework in this country, underpinned by Australia’s international obligations. Whistleblowers play an important role in upholding Australia’s transparent, accountable democracy and ensuring governments and corporations respect and uphold human rights. In 2023, we launched the Whistleblower Project, Australia’s first dedicated legal service to protect and empower whistleblowers who want to speak up about wrongdoing. The Human Rights Law Centre is also a member of the Whistleblowing International Network.

School of Government and International Relations, Griffith Business School

Griffith University’s School of Government and International Relations is an Australian leader in teaching and research in politics and public policy. The School’s research has been recognised as ‘well above world standard’ for more than a decade by the Australian government—a record matched at only three other universities in the country—including leadership of three Australian Research Council projects into public interest whistleblowing, some of the largest in the world. Our research played a key role in the development of the first International Standard on Whistleblowing Management Systems (ISO 37002).

The authors acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters, and culture. We pay respect to elders and acknowledge the Traditional Owners who have cared for Country since time immemorial. Sovereignty over this land was never ceded—it always was, and always will be, Aboriginal and Torres Strait Islander land.

June 2025



Senator David Pocock at the launch of the Draft Design Principles for a Whistleblower Protection Authority, February 2024

CONTENTS

Summary	4
A Time for Reform	6
History and Context	8
The Principles	10
1. Prioritising Protection	10
2. Support	11
3. Prevention	12
4. Mediation & administrative redress	14
5. Remedies focus	15
6. Legal actions	18
7. Rewards, compensation & financial support	20
8. Comprehensive, seamless jurisdiction	21
9. Adequate powers & resources	23
10. Independence	24
Frequently Asked Questions	25
References	26

SUMMARY

A Whistleblower Protection Authority would be a new, dedicated statutory agency which will support, protect and empower Australia's whistleblowers. The Whistleblower Protection Authority would:

- enforce improved legal protections for people from inside agencies or organisations who raise concerns about wrongdoing under federal laws;
- provide support, information and assistance to prospective, current and former whistleblowers;
- facilitate receipt and referral of whistleblowing disclosures;
- investigate and address complaints of unfair treatment; and
- play an important role in monitoring, advocacy and outreach in support of integrity, accountability and the fair treatment of those who speak up.

Right now, a Whistleblower Protection Authority is the missing piece of Australia's national integrity landscape. It was first recommended by a unanimous Senate Select Committee on Public Interest Whistleblowing in 1994, and proposed as part of the landmark National Integrity Commission Bill and Australian Federal Integrity Commission Bill introduced by Independent MPs Cathy McGowan and Dr Helen Haines in 2018 and 2020, respectively. It was most recently endorsed by the bipartisan Parliamentary Joint Committee on Corporations and Financial Services in November 2024.

These design principles were developed by Transparency International Australia, the Human Rights Law Centre and Griffith University, firstly published in *Making Australian Whistleblowing Laws Work: Draft Design Principles for a Whistleblower Protection Authority*. Feedback on the document was gathered through in-person roundtables and bilateral consultations from a diverse range of stakeholders across Australia.

The shared insights and expertise of representatives from civil society, academia, and the corporate and regulatory sectors—as well as international experience—ensures an informed framework for an authority that can support whistleblowers, organisations managing whistleblowing reports, and regulators across the private, public, and not-for-profit sectors.

Together with other overdue law reform, this robust and practical approach will achieve a stronger, fairer framework for protecting public interest whistleblowing in Australia.

There are 10 key design principles for a Whistleblower Protection Authority (WPA):

1. Prioritising Protection

The WPA should have an overarching purpose to ensure public interest whistleblowers are left no worse off for raising concerns about wrongdoing—internally in their agencies or organisations, to regulatory bodies, or if necessary, to the public.

2. Support

Australia's whistleblowers currently lack the necessary support to navigate the difficult road in speaking up. The WPA should provide independent guidance, case worker-style support and schemes for whistleblowers to access legal and non-legal support services.

3. Prevention

The WPA should prevent adverse outcomes for whistleblowers by coordinating a 'no wrong doors' approach to receipt of disclosures, and assisting organisations and investigative agencies with advice, guidance and training that will help reduce and prevent detrimental outcomes.

4. Mediation & Administrative Redress

The WPA should be able to conduct 'early intervention' conciliation and mediation to protect whistleblowers' careers and help organisations and whistleblowers resolve conflicts over possible detrimental treatment, before costly questions of termination, litigation and publicity arise.

5. Remedies Focus

The WPA's central responsibility is to ensure remedies for whistleblowers who do suffer unjust adverse impacts from speaking up under federal whistleblower protection laws. Where necessary, it will provide independent investigations and recommendations about alleged detrimental treatment, but not ordinarily investigate primary allegations of wrongdoing.

6. Legal Actions

When circumstances demand, the WPA should be empowered to bring whistleblower protection enforcement proceedings, in its own right or on behalf of whistleblowers. It should also be able to intervene in legal cases, and must be consulted before any federal agency takes legal action (such as prosecution) against a public interest whistleblower.

7. Rewards, Compensation & Financial Support

The WPA should administer financial redress and recognition schemes to ensure whistleblowers are properly compensated for the costs associated with speaking up.

8. Comprehensive, Seamless Jurisdiction

The WPA should have broad jurisdiction to enforce all federal whistleblower protection laws, including the nine current pieces of Commonwealth legislation, to ensure whistleblowers do not 'fall through cracks' in protection.

9. Adequate Powers & Resources

The WPA should be appropriately funded and invested with the necessary powers and functions to fulfil its mandate.

10. Independence

The WPA should be an independent authority working with other independent federal integrity and regulatory bodies, with equivalent appropriate statutory protections—informed by an advisory council drawing on public and private sector representatives and former whistleblowers.



A TIME FOR REFORM

Australia’s whistleblower protection laws are crucial for protecting public integrity, and ensuring all decision-makers and institutions uphold the highest standards of good governance and ethical behaviour.

The biggest missing link in our national integrity systems is a dedicated, independent agency to enforce these vital protections and make these reporting and disclosure systems work. These design principles are a detailed proposal for how a Whistleblower Protection Authority would best address this gap.

No regulatory system is ever entirely self-enforcing. Australia has nine different whistleblower protection laws at a federal level—covering public sector, private sector and sector-specific protections—while every state and territory has their own public sector protections.

After more than 30 years of experience, we know that without strong and capable central enforcement, these protections are left simply as ‘paper tigers’, and routinely remain unavailable or inaccessible in cases where they are most needed. There has been just one small award of compensation under any of Australia’s dedicated whistleblower protection laws over the past three decades.

The *Design Principles for Australia’s Federal Whistleblower Protection Authority* are a result of collaboration across sectors to identify what is needed to ensure Australia’s federal whistleblowing laws work in practice.

They were developed with extensive consultation. Draft principles were developed in late 2023 by Transparency International Australia, the Human Rights Law Centre, and Griffith University with input from distinguished experts with direct experience of whistleblowing issues, including former senior public servants, whistleblowing hotline providers, expert practitioners from private law firms, Transparency International Australia corporate members, and members of Transparency International Australia’s

national whistleblowing advisory group, who have direct personal experience of blowing the whistle.

Throughout 2024, a diverse range of stakeholders provided input on the draft principles through in-person roundtables and bilateral consultations from across Australia. The generous insights and shared expertise of representatives from civil society, academia, legal professional bodies and the corporate and regulatory sectors have greatly enhanced the principles, especially in three areas:

- *Potential conflicts of functions* – the need to plan and manage the breadth of functions that might be housed in the WPA, including appropriate internal information barriers and protections.
- *Regulatory burden* – the need to ensure regulated entities who are already investing in whistleblower protection are supported, rather than burdened by the addition of a further specialist regulatory body to the integrity landscape.
- *Institutional location* – the need for clear criteria on whether a totally new body is needed, or how a WPA could be co-located with an existing agency.

A whistleblower protection authority is not the only reform needed. In November 2022, members of every political party in the Australian Parliament helped launch *Protecting Australia’s Whistleblowers: The Federal Roadmap*, setting out the 12 areas of reform needed to bring Australia’s national whistleblowing regimes up to a workable standard. Establishment of a whistleblower protection authority is just the first of those 12 key reform issues (see Figure 1).

However, there is a strong consensus among diverse stakeholders and experts that it is time for a dedicated federal body to protect whistleblowers across public sector, private sector and non-profit sector organisations in Australia.

PROTECTING AUSTRALIA’S WHISTLEBLOWERS – CHECKLIST (UPDATED)

This table provides a breakdown of what proposed or completed federal reforms would achieve in relation to this roadmap, since first published in November 2022. As at June 2023, the items marked as on track to be achieved (partly, substantially or wholly) reflect the reforms contained in the *Public Interest Disclosure Amendment (Review) Act 2022* (Cth).

	SECTOR(S)	
	PUBLIC	PRIVATE AND NOT-FOR-PROFIT
EFFECTIVE ADMINISTRATION AND ENFORCEMENT		
1. Establish a whistleblower protection authority	<div></div>	<div></div>
2. Ensure a ‘no wrong doors’ approach	<div></div>	<div></div>
3. Increase powers and resources for training and oversight	<div></div>	<div></div>
4. Enact a single law covering all non-public sector whistleblowers		<div></div>
BEST PRACTICE PROTECTIONS		
5. Clarify immunities from prosecution	<div></div>	<div></div>
6. Simplify proof requirements for remedies and compensation	<div></div>	<div></div>
7. Enforce a positive duty to support and protect whistleblowers	<div></div>	<div></div>
8. Ensure easier, consistent access to remedies	<div></div>	<div></div>
9. Enhance information-sharing and ability to access support	<div></div>	<div></div>
10. Expand the definition of detriment	<div></div>	
WORKABLE THRESHOLDS AND LIMITATIONS		
11. Properly protect public and third party whistleblowing	<div></div>	<div></div>
12. Exclude solely individual employment grievances	<div></div>	<div></div>

STATUS

- Partially
- Substantially/wholly

Source: Griffith University, Human Rights Law Centre and Transparency International Australia, *Protecting Australia’s Whistleblowers: The Federal Roadmap* (November 2022; updated January 2023)

HISTORY AND CONTEXT

A federal whistleblowing authority was first recommended in 1994 by the unanimous, bipartisan Senate Select Committee on Public Interest Whistleblowing, chaired by Liberal Senator Jocelyn Newman. The Committee proposed a Public Interest Disclosures Agency to ‘receive public interest disclosures and arrange for their investigation by an appropriate authority, to ensure the protection of people making such disclosures,’ and other functions.

Over the years, governments have tried various weaker institutional arrangements to support its growing number of whistleblower protection regimes. However, in 2017, the landmark review of federal whistleblower protections by the bipartisan Parliamentary Joint Committee on Corporations and Financial Services recommended a return to the original idea: ‘a one-stop shop Whistleblower Protection Authority... to cover both the public and private sectors.’

The Parliamentary Joint Committee recently repeated this call in November 2024, in its report *Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*.

These calls are in line with international best practice, as an increasing number of countries move to establish a dedicated ‘whistleblowing authority’ to make their regimes work. Examples are provided throughout the Principles below. Transparency International’s global *Best Practice Guide for Whistleblowing Legislation* (2018) describes the need for an authority with clear functions to:

- 1. Receive, investigate and address complaints of unfair treatments
- 2. Address improper investigations of whistleblower disclosures
- 3. Provide advice and support
- 4. Monitor and review whistleblowing frameworks
- 5. Publish data and undertake monitoring
- 6. Raise public awareness

A strong and effective whistleblower protection regime is crucial to the Australian Government’s reform agendas for greater public accountability and a fairer Australia. The Australian Labor Party made a fresh election commitment to a whistleblower protection authority as far back as 2019:

... a one-stop-shop to support and protect whistleblowers [with] dedicated staff to advise whistleblowers on their rights, assist them through the disclosure process and help them access compensation if they face reprisals.



Above: Former Attorney-General Mark Dreyfus KC spoke on the need for whistleblowing reform at Transparency International Australia’s Corruption Perceptions Index launch, February 2025.



The current Labor National Platform commits the party to:

improve whistleblower protections for the public sector and improve consistency with the private sector by considering an independent Whistleblower Protection Authority to protect whistleblowers, to advise and investigate in relation to whistleblower matters, and to review legislation that affects whistleblowers.

Between 2022 and 2025, the Attorney-General’s Department conducted wide consultation into the overdue reform of the *Public Interest Disclosure Act 2013* (Cth) including the need for a whistleblower protection authority.

Since 2024, the Commonwealth Treasury has also commenced a statutory review of whistleblower protections in the *Corporations Act 2001* (Cth) and the *Taxation Administration Act 1953* (Cth) which again must consider the need for greater oversight and practical support.

Above: Senator Jacquie Lambie at the launch of the Whistleblower Protection Authority Bill, February 2025.

The possible legislative form of a whistleblower protection authority was pioneered in 2018 by Independent MP Cathy McGowan AO, who included a strong whistleblower protection commissioner in her first National Integrity Commission Bill, drafted with advice from Transparency International Australia.

The same proposal was introduced by the Australian Greens, where it passed the Senate in 2019, as well as Dr Helen Haines MP in her “gold standard” Australian Federal Integrity Commission Bill 2020.

In February 2025, Andrew Wilke MP, Dr Haines, and Senators David Pocock and Jacqui Lambie introduced an even stronger Whistleblower Protection Authority Bill, drawing on the Draft Design Principles.

These examples show that, more than three decades since a parliamentary committee first recommended a whistleblower protection authority, **the time has come to fill this missing piece of Australia’s transparency and integrity landscape.** It is time for Australia to again lead the way with effective institutions to support federal whistleblowers and oversee its whistleblowing laws.



1. PRIORITISING PROTECTION

The Whistleblower Protection Authority (WPA) should have an overarching purpose to ensure public interest whistleblowers are left no worse off for raising concerns about wrongdoing—internally in their agencies or organisations, to regulatory bodies, or if necessary, to the public.

Above: Human Rights Law Centre Seconded Lawyers Jade Tyrell and Massooma Saberi at a rally for whistleblowers.

The aim of the WPA is to ensure that, where possible, a whistleblower is no worse off for speaking up about wrongdoing.

The WPA should be a Commonwealth statutory agency to support all federal whistleblowing schemes throughout the lifecycle of a whistleblower disclosure, including to:

- provide **support, information and assistance** to current, former and prospective whistleblowers;
- give **guidance to organisations** required to comply with federal whistleblowing laws;
- support** all federal integrity and regulatory agencies, and relevant state-based authorities, with **receiving, assessing, referring and responding** to whistleblowing disclosures;
- investigate alleged **detrimental treatment** of whistleblowers and ensure remedies when upheld;

e. **enforce** public interest whistleblower protections in federal laws; and

f. take an active role in **policy development** on whistleblowing issues, informed by the experiences of whistleblowers and regulatory agencies.

In pursuing this pro-protection mandate, it is envisaged the WPA would prioritise early-intervention in high-risk matters. This means prioritising support and assistance to whistleblowers where:

- o the disclosure involves wrongdoing that could pose a substantial risk to public safety, the financial system or the environment; or
- o where the whistleblower is at a high risk of suffering detriment, either because of the nature of the wrongdoing or the organisation, government body, or individuals involved and the sensitivity of the information.

ROBODEBT'S FAILURES

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 government 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 had their concerns escalated. The Robodebt Royal Commission identified that early whistleblowing provided an opportunity for concerns with the scheme to be taken seriously and addressed—but that 'those opportunities were not taken up.'

One such whistleblower was Services Australia's Jeannie-Marie Blake, who raised concerns from the initial Robodebt pilot about its legality

and ethical basis. Blake gave evidence to the Royal Commission that she repeatedly raised concerns, only to be 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.'

In a subsequent interview with *The Mandarin*, Blake called for the establishment of a Whistleblower Protection Authority: '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.'

** The Human Rights Law Centre's Whistleblower Projects acts for Ms Blake.*

2. SUPPORT

Australia's whistleblowers currently lack the necessary support to navigate the difficult road in speaking up. The WPA should provide independent guidance, casework-style support and schemes for whistleblowers to access legal and non-legal support services.

As well as information and advice to prospective whistleblowers, the WPA's support functions for those who do make eligible disclosures should include:

- a. **in-house casework-style service** as an ongoing contact point for guidance and support, including assistance with making disclosures, guidance on navigating pathways and processes, and practical support.
- b. **administering funding and referrals** to support services delivered to individual whistleblowers externally, and independently, including specialist legal assistance, career support, psychological support and other personal support services.



3. PREVENTION

The WPA should prevent adverse outcomes for whistleblowers by coordinating a 'no wrong doors' approach to receipt of disclosures, and assisting organisations and investigative agencies with advice, guidance and training that will help reduce and prevent detrimental outcomes.

Currently, whistleblowers are suffering more severe personal implications and detrimental action for speaking out, because they often do not have the appropriate support and advice to guide them through the process—and because many agencies and organisations, and even regulatory bodies, struggle or fail to provide their own whistleblower support.

A preventative approach should underpin the functions of the WPA, helping reduce and avoid adverse outcomes for public interest whistleblowers and their organisations by:

- a. supporting and leading a **'no wrong doors'** intake and referral approach, so that any whistleblower who discloses information to a regulator or body that they think can take action, will be protected under the law;
- b. confidentially referring, and helping other organisations and integrity agencies refer whistleblowers to **the right places** for their disclosures to be investigated and resolved, and for them to receive support – including the use of secure information channels for ongoing communication with confidential or anonymous whistleblowers;
- c. **monitoring** how referred cases are being handled, to help ensure effective support and protection is provided by agencies and organisations (and to assist with support); and
- d. **providing general information, guidance and training** on best practice whistleblower support and protection by agencies and organisations, along with relevant continuing professional development for legal practitioners and tribunal members.

WHISTLEBLOWER SUPPORTS IN NSW, QUEENSLAND, VICTORIA

Under the *Public Interest Disclosures Act 2022* (NSW), the New South Wales Ombudsman has established a dedicated whistleblower support function within its systems oversight branch. The function provides confidential, impartial support to whistleblowers before and after they speak up, helping whistleblowers navigate the public interest disclosure (PID) process. The function operates independently from the Ombudsman's other functions in the PID scheme, which includes handling complaints and advising agencies on how to manage disclosures.

In Queensland, by contrast, there have been growing calls for greater legal and practical support for people who speak up. A recent review of the *Public Interest Disclosure Act 2010* (Qld) by former Supreme Court judge, the Hon Alan Wilson KC, noted the insufficiency of support and guidance for whistleblowers. The review recommended a dedicated whistleblower support function to be established within an existing oversight agency, to provide counselling and assistance

to potential whistleblowers, and to advise on disclosure pathways and protections. It also recommended a pilot scheme for whistleblowers to access funded legal advice and support.

In Victoria, the State Government previously proposed a pilot Discloser Support Scheme to support whistleblowers making disclosures under Victorian whistleblowing law. The proposed scheme included financial assistance to eligible disclosers for career transition and welfare costs, including advice, assistance and coaching from recruitment or HR firms, re-skilling, counselling and psychological support. It also included subsidised legal assistance and full or partial reimbursement of reasonable legal costs incurred in making a protected disclosure complaint for eligible persons. The scheme proposed capped amounts for reasonable expenses incurred in seeking advice and support. Witness Liaison Units have also been established within anti-corruption authorities to provide practical support.



Andrew Wilkie MP at the launch of the *Draft Principles for a Whistleblower Protection Authority*, February 2024.

As part of ongoing monitoring, the WPA should be empowered to collect de-identified data regarding the handling of whistleblower disclosures by organisations, and be under an obligation to report on whistleblowing trends and the effectiveness of whistleblower support regimes as part of its accountability to the public and to Parliament.

The WPA should ease rather than increase the **regulatory burden** on agencies and organisations, wherever they already have good internal whistleblowing support systems. As well as taking over (not duplicating) key whistleblowing-related functions of existing regulators, the WPA would provide best-practice guidance and support to organisations on complying with regulatory obligations, and adopt a risk-based approach so that its monitoring, oversight and interventions are focused on sectors and organisations that lack quality whistleblowing processes.

IRELAND: OPDC

Recently, there has been momentum in establishing whistleblowing authorities in Europe, following passage of the European Union Whistleblowing Directive—including bodies in Ireland, Finland, Slovakia, the Netherlands and Spain. In other countries, such as Italy, national anti-corruption bodies also carry special responsibilities to protect whistleblowers.

The Irish Office of the Protected Disclosures Commissioner (OPDC) operates as a referral body by forwarding reports received of work-

related wrongdoing to the appropriate body for assessment and follow up. This clearing-house function enables whistleblowers to have their report of wrongdoing directed to the correct prescribed entity, which increases efficiency and reduces the administrative burden on entities dealing with misdirected disclosures. This is particularly important for Australia, where existing laws often provide narrow lawful disclosure pathways—so making a disclosure to the wrong recipient can mean a whistleblower is not entitled to any protection.

UNITED STATES: OSHA

The US Occupational Safety and Health Administration (OSHA) Whistleblower Protection Program receives complaints from individuals who allege they have been retaliated against by their employer for exercising their rights under the *Occupational Safety and Health Act 1970*. OSHA investigates whether retaliation has

occurred and can attempt to help the employer and employee reach a settlement. OSHA also has the power to issue an order requiring the employer to put the employee back to work, pay lost wages, and provide other kinds of relief. In certain circumstances, the Secretary of Labor can sue on behalf of the individual to claim relief.

4. MEDIATION & ADMINISTRATIVE REDRESS

The WPA should be able to conduct ‘early intervention’ conciliation and mediation to protect whistleblowers’ careers and help organisations and whistleblowers resolve conflicts over possible detrimental treatment, before costly questions of termination, litigation and publicity arise.

If detrimental treatment is alleged, including failures by agencies or organisations to support and protect whistleblowers as they should, the most effective way to prevent further harm and right any wrongs can be through conciliation or mediation—just like in other areas of regulation. The WPA’s mediation service should be available where a whistleblower or organisation requests, both parties consent, and **informal or administrative remedies** to the issue are in the public interest.

Given the public interest in fairness and transparency, the WPA would retain power to initiate a formal investigation into detrimental treatment or reprisal allegations, if informal resolution does not occur, is unsuccessful, or is not appropriate for the case (see Principles 5 and 6 below). In practice, this provides a powerful incentive for organisations to remedy adverse impacts in the first instance.

However, the mediation service would be stand-alone and confidential, with appropriate internal firewalls between support services, mediation and investigations. This should be supported by a legislated bar against information provided in confidence as part of mediation being able to be used in separate investigations or enforcement action.

The WPA’s functions would **not ordinarily include investigating the wrongdoing** alleged by the whistleblower—which is almost always the responsibility of agencies, organisations and other investigative bodies. Accordingly, the primary allegations of wrongdoing would remain unaffected and not be a subject for conciliation or mediation, with the WPA’s role and services focused on preventing and remedying detrimental outcomes experienced by the whistleblower.

In support of its monitoring and reporting functions, the WPA would track all resolution outcomes for reporting, in at least aggregate or deidentified form, even when conciliation and mediation is successful and it is appropriate for it to remain confidential.

UNITED STATES: US OFFICE OF SPECIAL COUNSEL

Since 1989, the Office of Special Counsel (OSC) has been a whistleblower protection authority for American federal public sector whistleblowers—requiring agencies to investigate whistleblower disclosures, receiving and investigating complaints of reprisal, intervening in significant whistleblower protection litigation, and most importantly, conciliating disputes between whistleblowers and agencies.

It has managed all these functions with clear organisational separations, and mechanisms for avoiding any conflicts of interest. The Office of Special Counsel was established under the *Whistleblower Protection Act 1989* as an independent agency within the executive branch of government. The head of the OSC—the “Special Counsel”—is appointed by the President with advice and consent from the Senate, serving a five-year term.

5. REMEDIES FOCUS

The WPA's central responsibility is to ensure remedies for whistleblowers who do suffer unjust adverse impacts from speaking up under federal whistleblower protection laws. Where necessary, it will provide independent investigations and recommendations about alleged detrimental treatment, but not normally investigate primary allegations of wrongdoing.

The WPA should have a duty to respond to all *prima facie* cases of detrimental treatment of whistleblowers. This is vital to achieving legislative objectives that all persons should be able to safely speak up about wrongdoing in, by or related to their organisation, and delivering on the goal that whistleblowers should be left 'no worse off'.

Figure 2 highlights that, among the many current gaps in federal whistleblowing oversight functions, some of the most glaring involve the lack of protection remedies, independent investigation of unfair treatment, and alternative dispute resolution, along with legal support. Based on international precedents, this analysis confirms that existing investigative and regulatory agencies, such as the Commonwealth Ombudsman and corporate regulators, are currently simply insufficient to fulfil these core responsibilities.

In response to complaints, referrals, monitoring, unresolved mediations or on its own initiative, the WPA should have power to:

- a. **investigate, report on and make recommendations** about appropriate remedies for detrimental acts or omissions, including both direct or knowing reprisals and damage from failures in support;

- b. **intervene to prevent** further detrimental acts or omissions, including advice or directions to agencies and organisations, and by seeking injunctions to ensure compliance by agencies and organisations with their disclosure-handling obligations; and
- c. **take enforcement action** in support of the legal rights of whistleblowers to appropriate remedies under whistleblower protection laws, where in the public interest to do so (see Principle 6).

The WPA should be obliged to complete investigations in a timely manner, and share progress of investigations into detrimental treatment with the whistleblower, as well as organisations or agencies concerned.

As already noted, the WPA's functions would **not ordinarily include investigating the wrongdoing** alleged by the whistleblower, since this is almost always the responsibility of agencies, organisations and other investigative bodies. The WPA would only investigate any primary allegations of wrongdoing to the extent necessary to ensure it was dealing

with an eligible disclosure, to assess the case by another agency or to refer the case for action to another agency, or to satisfy itself that there had been a reasonable response and resolution of the disclosure.

The combination of advice, mediation, investigation and enforcement functions in the WPA would not differ markedly from those already undertaken by other regulatory bodies. The Fair Work Ombudsman undertakes investigations, pursues strategic enforcement action, provides casework-style support for employees raising concerns about breaches of employment law, and manages a legal advice scheme with external law firms. The Australian Human Rights Commission undertakes research, policy and advocacy, and investigates non-compliance with anti-discrimination law, while also overseeing a mediation function. The WPA should be constituted so as to ensure the effective management of any potential conflicts between its functions.



Senator Paul Scarr at the launch of the Draft Design Principles for a Whistleblower Protection Authority, February 2024.

THE NETHERLANDS: HOUSE OF THE WHISTLEBLOWER

In the Netherlands, the *Huis voor Klokkenuiders* (House of the Whistleblowers) was established in 2016 to oversee and enforce Dutch whistleblower protections. This autonomous administrative authority provides advice to whistleblowers and employers and can investigate reprisal against whistleblowers. The advisory and investigative powers are hosted in different departments of the House, which is designed to reduce the risk of conflicts of interest between investigative and advisory powers.

The House of the Whistleblower offers support to whistleblowers in both the public and private sectors. The *Whistleblower Protection Act*, enacted in 2023 to replace the previous *Whistleblower Authority Act*, expanded the scope of persons covered by whistleblowing laws to include any person reporting wrongdoing in a work-related context, including shareholders, job applicants, directors, and anyone working under the direction of contractors, subcontractors and suppliers. The amendments expanded the House's jurisdiction, such that anyone speaking up about wrongdoing in a work context is protected and can access support from the House.

FIGURE 2: FILLING THE GAPS

Current Roles in Whistleblowing Oversight under Federal Law

Key:

✓ Role largely provided for

✗ Substantial gap

✗ Complete gap

ROLES NEEDED	DESCRIPTION			PUBLIC SECTOR	PRIVATE/NOT FOR PROFIT SECTORS
Advisory	1	Awareness	General awareness-raising of importance of whistleblowing	✓	✗
	2	Training	Information, skill development, capacity-building, organisational standards	✓	✗
Support and protection	3	Psychosocial support	Access to personal/career coaching & mental health services	✗	✗
	4	Prevention	Early management intervention in higher risk matters	✗	✗
	5	Legal support	Access to free legal advice for whistleblowers	✗	✗
	6	Conciliation	Alternative dispute resolution or admin remedies for unfair treatment	✗	✗
Investigation	7	Wrongdoing	Investigation of alleged primary disclosure (wrongdoing)	✓	✓
	8	Detriment	Investigation of alleged detrimental/unfair treatment	✗	✗
	9	Reviews	Independent review of internal investigations	✗	✗
Adjudication	10	Corrective action	Ensuring primary wrongdoing is dealt with & sanctioned	✓	✓
	11	Protection remedies	Ensuring redress & compensation for unfair treatment	✗	✗
Institutional	12	Policy evaluation	Ongoing review of effectiveness of the regime	✗	✗
	13	Auditing	Systemic & individual reviews of organisation compliance	✗	✗
	14	Monitoring	Ongoing review of the implementation of the system	✗	✗
	15	Coordination	Strategic & operational coordination of roles across the system	✗	✗

6. LEGAL ACTIONS

When circumstances demand, the WPA should be empowered to bring whistleblower protection enforcement proceedings, in its own right or on behalf of whistleblowers. It should also be able to intervene in legal cases, and must be consulted before any federal agency takes legal action (such as prosecution) against a public interest whistleblower.

The discretion to bring civil (including employment) proceedings for remedies, including on behalf of individual whistleblowers (with their consent), is essential to the public interest. As in other areas of regulation, the enforcement of remedies will often not occur simply by itself, and in many, if not most, cases where deserving whistleblowers suffer unjustly for blowing the whistle, they simply do not have the legal and financial resources—nor should it be their responsibility—to pursue the remedies which agencies and organisations are obliged to provide under law.

The WPA should also have power to intervene in criminal or civil cases raising public interest whistleblower protection issues, including referral of apparent criminal reprisals to appropriate prosecuting authorities. To help prevent government agencies from pursuing misguided, unjust or disproportionate actions against whistleblowers, the WPA should be required to be consulted by any federal public agency proposing to take legal action against a whistleblower, as to whether that action is lawful, reasonable and in the public interest. In the event that action proceeds, the WPA would be obliged to make its view public, and would be entitled to provide and have its opinion considered directly by the court.

AUSTRALIAN REGULATORS

Australian Securities and Investment Commission (ASIC)

Under the Corporations Act 2001 (Cth), ASIC has the standing to bring civil enforcement actions for breaches to whistleblower protections under Part 9.4AAA of the Act, including for breaches to confidentiality or victimisation. The court is also empowered to make compensation orders, to compensate those who have suffered a loss due to the contravention, such as whistleblowers. However these provisions are rarely used, given ASIC’s broad remit, other enforcement priorities and limited resources.

Fair Work Ombudsman

The Fair Work Ombudsman has the standing to bring enforcement actions, including issuing civil penalties and pursuing legal action on behalf of employees for breaches to the Fair Work Act 2009 (Cth). The Fair Work Ombudsman will take enforcement actions particularly where there is some strategic benefit. However, its focus is understandably on vulnerable workers and the enforcement of basic workplace rights such as pay and conditions, rather than the complexities of remedies for workers who speak up about other, public interest matters.

7. REWARDS, COMPENSATION & FINANCIAL SUPPORT

The WPA should administer financial redress and recognition schemes to ensure whistleblowers are properly compensated for the costs associated with speaking up.

As provided above (Principles 5 and 6), the WPA should have power to **seek financial remedies** on behalf of whistleblowers, both administratively or if necessary, in the courts, and to **seek legal costs protection** for whistleblowers in appropriate cases, including on a full indemnity basis, in order to make it viable for them to seek compensation.

The WPA should also administer **redress and reward schemes** for public interest whistleblowers, funded by a proportion of penalties, financial savings or other income derived by the Commonwealth as a result of whistleblower disclosures.



As recommended by the Parliamentary Joint Committee on Corporations and Financial Services (2017), these schemes would ensure that resources are available to support whistleblowers in their roles as witnesses for federal integrity and regulatory agencies, and demonstrate the value placed by government and the public in whistleblowers' importance for accountability and law enforcement in Australia.

UNITED STATES: REWARDS SCHEMES

The United States has successfully pioneered whistleblower reward programs, helping American taxpayers recover billions in penalties, fines and settlements thanks for whistleblower-provided information about corporate wrongdoing. The US Securities and Exchange Commission's Office of the Whistleblower administers the corporate watchdog's whistleblower reward program. If information

brought to the SEC by a whistleblower is used in successful enforcement proceedings, the whistleblower is eligible to receive a percentage of the penalty. Since the scheme was established soon after the global financial crisis, almost A\$10 billion has been recovered by the regulator, with several billion dollars paid out to whistleblowers. In 2023, the program received more than 18,000 tips.

Above: A multi-partisan group of politicians speak at the launch of the predecessor to this report, *Protecting Australia's Whistleblowers: The Federal Roadmap*, November 2023.

8. COMPREHENSIVE, SEAMLESS JURISDICTION

The WPA should have broad jurisdiction to enforce all federal whistleblower protection laws, including the nine current pieces of Commonwealth legislation, to ensure whistleblowers do not 'fall through cracks' in protection.

Australia's current federal whistleblower protection laws include:

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

Whistleblowers are also often entitled to general protections under the *Fair Work Act 2009*.

Reforming this often fragmented, duplicatory and inconsistent system of laws is a priority in itself (see Figure 1 earlier). However, a key way to increase the efficiency and effectiveness of whistleblower protections is to give jurisdiction for their **enforcement to a common agency** with the expertise and resources to do so, irrespective of where the protections sit, under any and all Commonwealth laws (public sector, corporate, not-for-profit, union and sector-specific).

This approach is crucial for ensuring whistleblowers do not 'fall through the cracks' in protection that the current system creates. It will help ensure that whether they are a public servant, contractor, consultant, corporate or NGO employee, or any other person working in a federally-regulated industry or sector who speaks up about wrongdoing in or by their own or a related organisation, a whistleblower can seek advice and protection, and stand a fighting chance of being able to realise their legal rights to support.

The WPA would be even more effective if or when these multiple laws are rationalised to provide a simplified scope of private and not-for-profit sector whistleblower protections through a single Whistleblower Protection Act, alongside a reformed Public Interest Disclosure Act, to cover all private entities regulated by federal law.

A federal whistleblower protection authority would not enforce state and territory laws—which are limited to the public sector—but would set a new standard for strengthening state and territory institutional arrangements, cooperate with state and territory bodies to foster nationally consistent support and guidance, or even provide support to state and territory whistleblowers under intergovernmental agreements.

9. ADEQUATE POWERS & RESOURCES

The WPA should be appropriately funded and invested with the necessary powers and functions to fulfil its mandate.

The WPA would require powers to:

- compel evidence and information from organisations and government agencies subject to federal whistleblowing laws;
- issue guidance and recommendations to organisations and agencies;
- monitor progress on outcomes arising from disclosures;
- maintain confidential communications with whistleblowers and organisations;
- conduct reviews of the effectiveness of organisational policies, regulations and legislation; and
- report publicly on specific cases or general issues.

The WPA should also have all powers and resources necessary **to establish schemes** to:

- provide referrals and relevant funding for whistleblowers to access legal and other support; and
- provide redress and rewards to whistleblowers, as set out in Principles 2 and 7.



The WPA should be appropriately funded to undertake its functions, with its budget overseen by a joint, multi-party parliamentary committee (see also Principle 10). The makeup of staff must ensure appropriate levels of training and experience to perform the functions of the WPA, ranging from supporting whistleblowers through to investigative functions and exercising coercive powers. This must include experienced officers or secondees from other federal integrity and regulatory agencies, and professionals with personal experience of having blown the whistle.

SLOVAKIA: WHISTLEBLOWER PROTECTION OFFICE

Established in 2019, the Slovakian Whistleblower Protection Office has a broad range of powers as an independent statutory authority. The Office has the authority to prevent or suspend retaliation against a whistleblower and is authorised to handle whistleblowing reports on

behalf of a whistleblower who wishes to remain anonymous. The Office consists of several departments, separating its functions. It also plays an advisory and consultancy function, publishes guidelines and raises awareness of whistleblowing to employers and employees.

Above: Reserve Bank foreign bribery whistleblowers Brian Hood & James Shelton. Credit: Jason South/The Age

10. INDEPENDENCE

The WPA should be an independent authority working with other independent federal integrity and regulatory bodies, with equivalent appropriate statutory protections—informed by an advisory council drawing on public and private sector representatives and former whistleblowers.

The WPA should be headed by an independent, suitably qualified, specialised statutory officer (Whistleblower Protection Commissioner) supported by:

- security of tenure** equivalent to a judicial officer, and
- a **stand-alone budget** and dedicated body of staff.

The WPA should be accompanied by oversight arrangements consistent with Part 10, Division 1 of the *National Anti-Corruption Commission Act 2022* (Cth). However, the WPA will only be effective if its legislation also requires it to work closely with the many integrity and regulatory bodies who deal with, and rely on, whistleblowers as part of their own investigative and enforcement functions.

A statutory **Advisory Council should also be established**, consisting of representatives from other federal regulatory agencies, civil society groups, employer groups, union groups, legal experts, public service experts and former whistleblowers, to provide advice and support to the WPA in the pursuit of its functions.

It is preferable that the WPA be established as its own independent statutory body, especially given its wide jurisdiction—it will be unusual among federal agencies for having jurisdiction in both the public and private sectors. International counterparts have also largely been established as separate agencies, to safeguard their independence.

If the WPA was co-located within an existing federal body, the Australian Human Rights Commission, Fair Work Ombudsman, National Anti-Corruption Commission or Commonwealth Ombudsman would be the most logical homes. However, this would require appropriate safeguards to ensure its whistleblowing functions are given due priority, not subsumed into existing operations and processes, and not compromised by the entity's existing functions. In particular, some jurisdictions have seen whistleblower protection compromised by other integrity agencies' primary duty to investigate the substantive wrongdoing disclosed.

AUSTRALIA: SPORT INTEGRITY AUSTRALIA

Part 4 of the *Sport Integrity Australia Act 2020* (Cth) establishes the Sport Integrity Australia Advisory Council. The Advisory Council advises the CEO and the Minister for Sport in relation to the functions of Sport Integrity Australia.

Under s 28 and 29, the Advisory Council is comprised of a Chair and at least 6 other members appointed by the Minister, with diverse expertise.

FREQUENTLY ASKED QUESTIONS

What external disclosure pathways would be supported by the WPA?

The WPA should support whistleblowers to navigate all federal whistleblowing laws. Many whistleblower laws protect whistleblowers in making a disclosure to the media or a parliamentarian, or in the case of the *Public Interest Disclosure Act 2013* (Cth) any person that is not a foreign public official, in certain circumstances. These disclosures are often referred to as ‘external disclosures’. The WPA should have the capacity to assist individuals to make disclosures at all stages and in any way that is protected by federal whistleblowing laws.

Could whistleblowers be anonymous to the WPA? How could they still receive services and feel adequately protected?

Most federal whistleblowing laws protect whistleblowers even if anonymous, and whistleblowers should not need to disclose their identity to receive support from the WPA. However, as a practical matter, there may be limits on the support that can be provided where a whistleblower is not comfortable disclosing their identity. The identity of those who contact the WPA should be confidential wherever possible, in alignment with existing whistleblower protections.

Does the WPA have a role to play in policy development?

The WPA should have the capacity and resources to play a role in policy development, by contributing to law reform processes, inquiries and any other government processes. The WPA’s role in policy development should be informed by the experiences of whistleblowers, including through the Advisory Council.

What responsibilities or role would the WPA play where a whistleblower’s disclosure is not investigated?

Bodies equivalent to the WPA internationally have the ability to oversee decisions by regulatory bodies not to investigate whistleblower disclosures, and determine whether that decision was unreasonable. The WPA could also guide whistleblowers on how to use existing escalation procedures in whistleblowing laws, where initial disclosures are not taken seriously.

How big would the WPA be?

The exact size of the WPA would depend on whether it is established as an independent authority or co-located with an existing body. It is envisaged the WPA would be a relatively small government body. While the WPA would need appropriate funding, and security of funding, to ensure its independence, it is envisaged that the WPA would have a positive economic impact by avoiding the downstream costs of whistleblower disclosures not being addressed, or whistleblower mistreatment avoided. It would also assist other investigative or regulatory bodies meet their duties to support and protect whistleblowers. The United States provides ample evidence for the economic benefit of appropriately supporting whistleblowers, where whistleblower reward schemes have returned billions of dollars to the American Treasury.

Would the WPA help national security whistleblowers?

Whistleblowers in Australia’s national intelligence community are protected by whistleblowing laws and should be entitled to access appropriate support. Presently, the Inspector-General of Intelligence and Security oversees national security-related whistleblowing. The WPA could be granted some functions to assist national security whistleblowers, in cooperation with the Inspector-General. The WPA would need appropriate expertise and information security measures to take on such a function.

REFERENCES

Government Accountability Project and International Bar Association, [Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation](#) (March 2021)

Griffith University, Human Rights Law Centre and Transparency International Australia, [Protecting Australia’s Whistleblowers: The Federal Roadmap](#) (November 2022; updated January 2023)

Jane Olsen & A J Brown, [‘Justice is Calling: Key Research Lessons for a Fit-for-Purpose Commonwealth Whistleblowing Regime’: Submission to the Attorney-General’s Department ‘Public sector whistleblowing stage two reforms’ Consultation](#), Griffith University (January 2024)

Human Rights Law Centre, [Cost of Courage: Fixing Australia’s Whistleblower Protections](#) (August 2023)

Human Rights Law Centre, Pathway to Protection, [Submission to the Attorney-General’s Department](#), ‘Public sector whistleblowing stage two reforms’ (January 2024)

Parliamentary Joint Committee on Corporations and Financial Services, *Report: Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry* (November 2024).

Parliamentary Joint Committee on Corporations and Financial Services, [Report: Whistleblower Protections](#) (September 2017)

Senate Select Committee on Public Interest Whistleblowing, [Report: In the Public Interest](#) (August 1994)

Transparency International Australia and Griffith University, [Australia’s National Integrity System: The Blueprint for Reform](#) (November 2020)

Transparency International, [A Best Practice Guide for Whistleblowing Legislation](#) (March 2018)

Transparency International Australia, Ensuring Australian Whistleblowing Laws Work, [Submission to the Attorney-General’s Department](#), ‘Public sector whistleblowing stage two reforms’ (December 2023)

Transparency International Australia, Human Rights Law Centre, Centre for Governance and Public Policy, [Making Australian Whistleblowing Laws Work: Draft Design Principles for a Whistleblower Protection Authority](#) (February 2024)

Transparency International, [Institutional Arrangements for Whistleblowing: Challenges and Best Practices](#) (April 2021)

ACKNOWLEDGEMENTS

This work was made possible thanks to generous support from McKinnon, Mannifera and the Victorian Legal Services Board's Grants Program.

Special thanks to Professor A J Brown AM, Kieran Pender, Madeleine Howle, Jane Olsen, Clancy Moore, Hansika Bhagani and the numerous distinguished whistleblowers who have contributed their expertise to these principles, especially Dennis Gentilin, James Shelton, Toni Hoffman AM, Sharon Kelsey, Frank O'Toole and Troy Stolz. Thanks also to all those who participated in roundtables or bilateral consultation, whose input immeasurably improved the draft version of these principles. Initial development of these principles was supported by a workshop kindly hosted by Clayton Utz. International research was undertaken pro bono by Clifford Chance.

Meetings with foreign counterpart whistleblowing authorities were kindly coordinated by the Government Accountability Project, Whistleblowing International Network and the CEELI Institute.



