

30 June 2025

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Sirs,

RE: Inquiry into Whistleblower Protection Authority Bill 2025 (No. 2)

Who we are

A national membership association, Governance Institute of Australia (Governance Institute) advocates for governance and risk management professionals, providing community and support to over 7,500 members.

As an Institute of Higher Education, the Governance Academy provides practical training and expert insights, equipping professionals with the tools to excel in their roles and drive better decision-making in their organisations.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted, and private companies, as well as the public sector and not-for-profit organisations. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC, the ATO and the Attorney General's Department. We are a founding member of the ASX Corporate Governance Council. We are also a member of the ASIC Business Advisory Committee, the ASX Business Committee and the ACNC Sector Users Group.

Introduction

Governance Institute has been a long-term advocate for improved whistleblower protections and a sector agnostic whistleblower protection authority. We have endorsed the Transparency International, Griffith University and Human Rights Law Centre Draft Design Principles for a Whistleblower Protection Authority as well as the [Federal Roadmap report](#). The design principles emphasise the need for independence, comprehensive and seamless jurisdiction as well as adequate powers and resources to deal with legal actions, mediation and administrative redress. The design principles also highlight the need for improved access to remedies, prevention of whistleblower mistreatment and enhanced support for whistleblowers through timely enforcement activities and education.

Governance Institute supports the intent and objectives of the proposed Bill that institutionalises a national Whistleblower Protection Authority (WPA) and Commissioner. The implementation of the WPA is a critical step towards much needed improvements to the whistleblower protection regime. The current system has placed an unfair and disproportionate burden on whistleblowers left to contend with a complex patchwork of state and federal legislation that is leading to suboptimal outcomes.

Whistleblowers should not have to sacrifice their workplace prospects and livelihoods in calling out unethical behaviours and misconduct. The WPA is an important step in protecting the legal, financial and human rights interests of whistleblowers and will go a long way in correcting the disincentives for disclosure of unethical behaviour and misconduct.

Whistleblower protections are complex to understand and administer

Whistleblowing plays a critical role in identifying, mitigating and stopping misconduct in workplace settings. This supports confidence and integrity in our public institutions and the private sector. It is important to an organisations' overall policy framework that it complies with regulations associated with the prevention and detection of unethical behaviours and misconduct. Currently however, Australian whistleblower protection laws are a complex patchwork of federal and state legislation, including the Commonwealth *Public Interest Disclosures Act*, *Fair Work (Registered Organisations) Act*, the *Corporations Act*, the *Aged Care Act*, Taxation Administration legislation as well as various State-level legislation.

The area is complex to understand, complex to administer and confusing for anyone contemplating speaking up about unlawful, unethical or irresponsible behaviours. This patchwork of provisions creates an unrealistic level of sophistication on the part of whistleblowers to be able to analyse and understand which legislation and which regulator covers misconduct. A whistleblower should not require a nuanced knowledge of the complex tapestry of legal and regulatory frameworks to know to which regulator or law enforcement agency they should make their disclosure to qualify for protection. The WPA should act as a one-stop-shop of information and resources to assist whistleblowers or those contemplating whistleblowing with understanding their rights and protections.

A sector agnostic whistleblower protection mechanism is required

Governance Institute continues to advocate for a sector agnostic, comprehensive whistleblower protection mechanism. This includes a consistent whistleblower protection regime for both the private and public sectors, so that duplicative or different rules may be eliminated to the greatest extent possible as this continues to disincentivise whistleblowers and confuse employers about whether and how protections apply.

Practical efforts to harmonise protections would eliminate the current gaps in whistleblower protection coverage. For example, protections for private sector employees including consultants who 'blow the whistle' on public sector wrongdoing, or public sector employees concerned about the behaviour of private sector employees, including consultants, is required so that no-one is in doubt over which protections apply to them. This will also make it easier, and more cost-efficient for government, individual agencies, and businesses to develop consistent protections, rather than the current piecemeal situation involving different regulators, which each lack sufficient capacity and resources.

The functions of the Whistleblower Protection Authority

Governance Institute supports the establishment of an WPA as a new, standalone independent statutory authority that is responsible for providing information, advice, assistance, guidance and

support to whistleblowers and potential whistleblowers. The WPA should be a sector agnostic authority for whistleblower protections, which would provide the necessary clarity and confidence for potential whistleblowers across all sectors to report unlawful and unethical behaviour. The WPA should act to triage receipts of disclosures, provide information or requests for further support to whistleblowers (or those contemplating whistleblowing) and other appropriate support tools and levers throughout the lifecycle of the disclosure.

The WPA should be empowered to receive and facilitate the investigation of whistleblower disclosures, and provide the essential services needed in assisting, advising, guiding and supporting whistleblowers and potential whistleblowers in making a disclosure of wrongdoing. The WPA should also have the power to investigate the mistreatment of whistleblowers and undertake any necessary enforcement activities. The WPA should endeavour to provide practical educational material and raise awareness with the aim of making it easier to understand and enforce an individual's rights to protection for whistleblowing misconduct and unethical behaviours. The WPA should monitor and provide advice regarding the prevention of detrimental acts and omissions with respect to eligible whistleblowers.

The WPA should be mandated to lodge an annual report to the Minister and be tabled for Parliament to provide transparency on relevant activities undertaken throughout the year, including the number of investigations undertaken, the outcome of those investigations, and where possible make recommendations for regulatory harmonisation and simplification as and where it deems useful, or necessary or in the public interest.

The Whistleblower Commissioner

Critically, the functions, powers, rights, immunities and obligations of the Commissioner should aim to support and simplify the access of protections that a whistleblower (or potential whistleblower) would seek on their own terms. The Commissioner should act to assist whistleblower applicants in understanding the protections afforded to them following disclosure or potential for disclosure.

The Commissioner should be open to receiving disclosures of wrongdoing from any person and where appropriate refer disclosures of serious misconduct to appropriate enforcement agencies for further action as and when required. Private and public sector entities should be required to report on a baseline of information within a reasonable timeframe regarding the activities associated with the governance and management of whistleblower disclosures. Critically, the Commissioner should exercise powers to monitor the way in which entities respond and deal with whistleblowing disclosures as a means of improving outcomes.

The Commissioner should have powers to investigate a whistleblower protection issue, including powers to refer and coordinate the matter to a relevant agency for further investigation. The Commissioner should have authority to oversee and manage the investigation in a timely manner and lay recommendations about any allegation, or matter that triggers a whistleblower investigation issue. This includes enforceable undertakings where investigations find a person contravened a civil provision.

Other considerations

The Attorney-General's Department has not clarified a timeline for the review of the *Public Interest Disclosure (PID) Act* that is currently under review. Stakeholders require a timeframe to be provided about the second, more substantive phase of amendments to follow consultation which closed in December 2023.

The five-year statutory review into Whistleblower protection amendments covering private sector whistleblowers and tax-related whistleblowing in the *Corporations Act* is due for review by Treasury.

The review is anticipated to reveal significant gaps and inconsistencies for whistleblowers across the private sector. The scope of amendments made within the *Corporations Act* in 2019, leaves whistleblowers who work for certain charitable entities, partnerships and sole traders exposed. Private sector whistleblowers may also be covered by protections in other legislation such as the *Aged Care Act*, *NDIS Act* or *Corporations (Aboriginal and Torres Strait Islander) Act*. A whistleblower could feasibly be covered by three or four regimes at once driving inconsistency and confusion. Furthermore, as ASIC and APRA are the primary regulatory agencies responsible for administering and enforcing the *Corporations Act*, they are the only regulatory bodies to whom protected disclosures can be made. However, it remains uncertain whether these agencies have the continued capacity to effectively manage disclosures.

We have also previously made representation to the Parliamentary Joint Committee on Corporations and Financial Services on the multi-partisan report to its inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry. Our submission to that inquiry, including a list of recommendations to improve the whistleblower protections regime can be found in our submission [here](#).

In summary

Governance Institute supports the intent and purpose of the Whistleblower Protection Authority and the associated powers, functions and role of the Commissioner to allow for the appropriate management, triage, solutions-driven and awareness raising activities in support of much needed reforms to the existing whistleblower protection scheme.

If you have any questions, please contact me or Daniel Popovski, Senior Policy Manager at daniel.popovski@governanceinstitute.com.au.

Yours faithfully,

(Sgd) Katrina Horrobin

Interim CEO