Law Council
OF AUSTRALIA

Public sector whistleblowing reforms: Stage 2

Attorney-General's Department

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The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

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The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

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Executive summary

1. The Law Council of Australia welcomes the opportunity to respond to the Attorney-General's Department in relation to the Consultation Paper released as part of the on second stage of public sector whistleblowing reform.[1]

2. The Law Council generally supports amendments to the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) that would implement the remaining recommendations made by Mr Philip Moss AM in 2016 (the **Moss Review**),[2] the Parliamentary Joint Committee on Corporations and Financial Services (**PJCCFS**) in 2017,[3] and the Parliamentary Joint Committee on Intelligence and Security (**PJCIS**) in 2020 for the improvement of federal whistleblower laws.[4]

3. The Law Council acknowledges that there is a public interest in ensuring appropriate protections are afforded to whistleblowers in the public sector. The Law Council strongly supports significant reform to simplify and clarify whistleblowing laws in Australia and provide improved access to necessary support and guidance for whistleblowers. On this basis, the Law Council recommends that the Australian Government should:

   - implement Recommendation 3.1 of the PJCCFS Whistleblower Protections Report in relation to increasing consistency of whistleblower protections across sectors;
   - amend the PID Act—and other Commonwealth whistleblower protection schemes—to address current gaps and inconsistencies which prevent private sector workers seeking to disclose public sector wrongdoing from accessing relevant protections and remedies;
   - extend the application of the PID Act to persons employed or engaged under the *Members of Parliament (Staff) Act 1984* (Cth) (**MOPS Act**);
   - implement a 'no wrong doors' approach for the making of public interest disclosures under the PID Act;
   - implement recommendation 2 of the Moss Review and expand the investigative agencies to which public interest disclosures may be made;
   - implement recommendation 24 of the Moss Review to permit disclosures of security classified information (other than intelligence information) to a lawyer for the purpose of seeking legal advice about a public interest disclosure, without requiring the lawyer to hold a security clearance;
   - in the event that recommendation 24 of the Moss Review is not implemented—
     - amend the PID Act to include a provision that obliges the Australian Government to publish and to maintain a list of lawyers with security clearance; or

[1] Attorney-General's Department (Cth), *Public sector whistleblowing reforms: Stage 2 – reducing complexity and improving the effectiveness and accessibility of protections for whistleblowers* (Consultation Paper, November 2023) (**Consultation Paper**).
[2] Philip Moss, *Review* of the *Public Interest Disclosure Act 2013* (Report, 15 July 2016) (**Moss Review**).
[3] Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Whistleblower Protections* (Report, September 2017) (**PJCCFS Report**).
[4] Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press* (August 2020).

- in the alternative, promulgate a Public Interest Disclosure Rule that requires the publication and maintenance of a list of security-cleared lawyers;

- provide the Inspector-General of Intelligence and Security (**IGIS**) with powers to authorise a person to seek discrete legal advice on certain matters concerning 'intelligence information';
- amend section 67 of the PID Act to limit the offence provision to the misuse or wrongful disclosure by legal practitioners of:
  - 'security classified' information within the definition in section 90.5 of the *Criminal Code*;[5] or
  - information that may cause significant harm to national security.
- implement recommendation 25 of the Moss Review to permit disclosures for the purpose of seeking professional advice about using the PID Act;
- amend the PID Act to insert the following sub-paragraph to paragraph (c) of item 2 in the table in subsection 26(1):

  (vi) more than 90 days have passed since the disclosure investigation relating to the internal disclosure being conducted under Part 3 commenced and:

  1. an extension of the 90-day investigation period has been granted under section 52; and,

  2. the discloser believes on reasonable grounds that the investigative action taken has been inadequate.
- implement Recommendation 9 of the Moss Review and amend the PID Act to include situations when an Authorised Officer failed to allocate an internal PID, or a supervisor failed to report information they received about disclosable conduct to an Authorised Officer, as grounds for external disclosure;
- require Commonwealth agencies (and their contractors and sub-contractors) to have a whistleblower policy;
- provide public sector whistleblowers with protection against liability for 'preparatory acts' in acquiring or accessing information which is the subject of their disclosure if:
  - the conduct is no greater than is reasonably necessary to making a disclosure; and
  - the preparatory acts do not constitute a criminal offence; and
  - in the case of Australian Public Service whistleblowers, the APS Code of Conduct has not been breached;
- reverse the evidentiary burden where civil remedies are sought in relation to reprisal or threatened reprisal; and
- establish a Whistleblower Protection Authority (**WPA**) broadly in line with recommendation 12.1 of the PJCCFS Whistleblower Protections Report.

[5] The **Criminal Code** is contained in the schedule to the *Criminal Code Act 1995* (Cth).

Initial comment

4. Effective whistleblower protection is critical in promoting integrity, accountability and trust in our public and private institutions. However, the effectiveness of Australia's whistleblowing system—both in encouraging and facilitating the making of public interest disclosures and in providing effective protection to those who make disclosures—continues to be hampered by the complexity and imperviousness of Australia's current legislative approaches.

5. In *Applicant ACD13/2019 v Stefanic*, Griffiths J described the PID Act in the following terms:

> *The legislation might more accurately be described as technical, obtuse and intractable…*
>
> *It is acknowledged that reconciling* [the PID Act's objectives as set out in section 6] … *is not an easy exercise and is one for the Parliament. But the outcome is a statute which is largely impenetrable, not only for a lawyer, but even more so for an ordinary member of the public or a person employed in the Commonwealth bureaucracy*.[6]

6. The PID Act is also part of a complex web of overlapping and often inconsistent federal and state/territory legislation that has developed disharmoniously. As outlined in the Consultation Paper, the PID Act whistleblowing framework for the Commonwealth public sector exists alongside other frameworks at the federal level to provide whistleblower protections for other non-government sectors, including:

   - Part 9.4AAA of the *Corporations Act 2001* (Cth);
   - Part IVD of the *Taxation Administration Act 1953* (Cth);
   - Part 4A of the *Fair Work (Registered Organisations) Act 2009* (Cth), and
   - Part 4.1 of the *Aged Care Act 1997* (Cth).

7. Each state and territory also has public-sector whistleblower laws in place.[7]

8. In the Media Release corresponding with the release of the Stage 2 consultation, the Attorney-General, the Hon Mark Dreyfus KC MP, stated that the intent of the reforms is to 'address the underlying complexity of the [PID Act] scheme and what steps can be taken to provide effective and accessible protections to public sector whistleblowers'.[8]

9. The Consultation Paper also recognises the aim of greater alignment across whistleblower protection schemes as part of the Stage 2 consultation:

> *The second stage of reforms to the PID Act will include consideration of recent proposals to improve the private sector whistleblowing scheme in the Corporations Act, to ensure alignment between the schemes, where appropriate. Consultation on the public sector whistleblowing framework*

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[6] [2019] FCA 548, [17]-[18].
[7] See, eg, *Public Interest Disclosure Act 2012* (ACT), *Public Interest Disclosure Act 2022* (NSW), *Independent Commissioner against Corruption Act 2017* (NT), *Public Interest Disclosure Act 2010* (Qld), *Public Interest Disclosure Act 2018* (SA), *Public Interest Disclosures Act 2002* (Tas), *Public Interest Disclosures Act 2012* (Vic) and *Public Interest Disclosure Act 2003* (WA).
[8] The Hon Mark Dreyfus KC MP, Attorney-General (Cth), 'Next stage of public sector whistleblowing reform' (16 November 2023).

also provides an opportunity to identify lessons for whistleblowing frameworks more broadly and inform future consultations or reviews for other federal whistleblowing frameworks.[9]

10. The Law Council has long advocated for measures that would promote open government, simplify the legislation and enhance whistleblower protections. The Law Council favours whistleblowing laws that are uniform in structure and operation, applying across all contexts and sectors. The Law Council considers that there may be value in the consolidation of federal whistleblower laws into a single act that governs public-interest disclosures in both the public and private sector to ensure that uniformity is established and maintained.[10]

11. Harmonisation was also contemplated by the PJCCFS in its 2017 *Whistleblower Protections* Report.[11] In relation to consistency of whistleblower protections across sectors, the PJCCFS recommended that:

- *Commonwealth public sector whistleblowing legislation remain in a single updated Act, redrafted in parallel with the private sector Act;*
- *Commonwealth private sector whistleblowing legislation (including tax) be brought together into a single Act;*
- *The Government examine options (including the approach taken in the Privacy Act 1988) for ensuring ongoing alignment between the public and private sector whistleblowing protections, potentially including both in a single Act; and*
- *The Commonwealth, states and territories harmonise whistleblowing legislation across Australia.*[12]

12. Alongside the Stage 2 consideration of the PID Act framework, the Australian Government should consider giving effect to this recommendation and the development of a simplified and harmonised legislative framework at the Commonwealth level (at a minimum).

13. It is important to note here that, in addition to an improved legislative framework, an effective whistleblower protection system requires whistleblowers to be better supported through what is often a precarious and complicated process. As discussed further below, this includes improved access to legal support and access to guidance and support from a Whistleblower Protection Authority.

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[9] Consultation Paper, 7.
[10] See, eg, Law Council of Australia, Submission to the Treasury, *Review of Tax and Corporate Whistleblower Protections in Australia* and the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Whistleblower Protections in the corporate, public and not-for-profit sectors* (9 February 2017); Law Council of Australia, Submission to the Treasury, *Treasury Laws Amendment (Whistleblowers) Bill 2017 - Exposure Draft* (6 November 2017) 6; Law Council of Australia, Submission No 25 to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Public Interest Disclosure Amendment (Review) Bill 2022 (Cth)* (14 February 2023) (**Stage 1 Bill Submission**).
[11] PJCCFS Report, rec 3.1.
[12] Ibid.

Recommendation

- **The Australian Government should implement Recommendation 3.1 of the Parliamentary Joint Committee on Corporations and Financial Services' Whistleblower Protections Report.**

Issue 1: Making a disclosure within government

Who should be protected for public sector whistleblowing under the PID Act?

14. Whistleblower protection should be afforded as widely as is practicable, including to all those involved in undertaking work or functions for or on behalf of the Commonwealth. On this basis, existing gaps should be addressed to provide protection for:

    - private sector workers disclosing public sector wrongdoing; and
    - persons employed or engaged under the MOPS Act.

Private sector workers disclosing public sector wrongdoing

15. Currently, an individual in the private sector seeking to disclose public sector wrongdoing will not meet the definition of 'public official' and therefore will not be able to access protection potentially provided by the PID Act, except where they are an officer or employee of service providers under a 'Commonwealth contract' (including sub-contractors).[13] Additionally, these individuals may only make a disclosure in relation to conduct 'in connection with entering into, or giving effect to, the contract'.[14]

16. It is critical to the object of promoting the integrity and accountability of the Commonwealth public sector, that wrongdoing by public sector officials is capable of disclosure—within proper systems and subject to appropriate limitations—no matter who identifies the wrongdoing. As such, private and not-for-profit sector workers should be afforded protections under the PID Act where they are disclosing public sector wrongdoing, whether or not the wrongdoing is related to a Commonwealth contract.

17. Broader legislative schemes, such as Part 9.4AAA of the Corporations Act, provide some protections to private sector workers in these circumstances. However, these projections are subject to significant limitations.

18. For example, many private sector workers engaging in work for or on behalf of the Commonwealth—including lawyers, accountants and other consultants—are often engaged as individuals or in partnerships. As discussed in detail in the joint submission of Griffith University's Centre for Governance & Public Policy, Human Rights Law Centre and Transparency International Australia to the PJCCFS's Inquiry *Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*, there are 'significant gaps and inconsistencies' in the applicability of whistleblower protection under Part 9.4AAA to

[13] See the *Public Interest Disclosure Act 2013* (Cth) ss 30 and 69(1) (**PID Act**).
[14] Ibid s 30(1).

'employees of consulting firms or other contractors, wherever these contractors are partnerships or individuals'.[15]

19. These gaps and inconsistencies mean that such workers may not be able to access protections under either the PID Act or the Corporations Act.

20. Additionally, as is noted in the Consultation Paper, private sector workers may be restricted in reporting wrongdoing internally to a colleague within the same firm where the colleague is not able to receive an internal disclosure under the PID Act.[16] Reporting within the person's own organisation is likely to be the first point of call for many potential whistleblowers and it is important that such whistleblowers receive the same protections and remedies as a person directly employed by the Commonwealth.[17]

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth)—and other Commonwealth whistleblower protection schemes—to address current gaps and inconsistencies which prevent private sector workers seeking to disclose public sector wrongdoing from accessing relevant protections and remedies.**

Persons employed or engaged under the MOPS Act

21. The Law Council considers that ministerial and parliamentary staff employed under the MOPS Act should be able to receive the protections and remedies provided by the PID Act.[18] These workers are very well placed to identify wrongdoing within the public sector, and should be able to access the range of protections and remedies available to others in the sector.

22. The *Public Interest Disclosure Amendment (Review) Act 2023* (Cth) which gave effect to Stage 1 of the Review of Public sector whistleblowing reforms, clarified that the definition of 'public officials' in the PID Act does not include those employed under the MOPS Act and therefore that such potential whistleblowers are not able to access its protections and remedies.[19] The Explanatory Memorandum to that legislation explained that such persons are largely adequately protected by the *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**), which shields employees under the MOPS Act from being identified, incurring liabilities or experiencing reprisals when making disclosures concerning 'corrupt conduct'.[20]

23. The exclusion of parliamentary staff from the PID Act is, therefore, predicated—in part—on the assumption that the NACC Act covers all relevant disclosures that merit protection. The scope of the NACC Act does not exactly mirror that of the PID Act. 'Corrupt conduct', as defined under the NACC Act, encompasses a narrower range of misfeasance than 'disclosable conduct' does under the PID Act. For example, the

[15] Centre for Governance & Public Policy (Griffith University), Human Rights Law Centre and Transparency International Australia, Submission No 34 to Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry* (4 September 2023) 7-11 (**Stakeholder Joint Submission**).
[16] Consultation Paper, 10. See also, Stakeholder Joint Submission,11.
[17] Stakeholder Joint Submission, 11.
[18] Stage 1 Bill Submission, 22-23.
[19] *Public Interest Disclosure Amendment (Review) Act 2023* (Cth) s 88 (which amended s 69(4) of the PID Act).
[20] Replacement Explanatory Memorandum, Public Interest Disclosure Amendment (Review) Bill 2022 (Cth) [7.32]-[7.37]. See also, *National Anti-Corruption Commission Act 2022* (Cth) ss 24, 29 to 30, 227 to 228.

following ‘disclosable conduct’, as defined in the PID Act, does not appear to be captured under subsection 8(1) (meaning of ‘corrupt conduct’) of the NACC Act:

- maladministration that is unreasonable, unjust or oppressive;
- maladministration that is negligent;
- deception in relation to the reporting of the results of scientific research;
- wastage of public funds and public property;
- actions that unreasonably endanger, or increases the risk of dangers to, health and safety; and,
- conduct that unreasonably endangers, or increases the risk of dangers to, the environment.[21]

24. The Law Council is aware that the Australian Government is ‘considering protections for MOPS Act staff and others who report alleged breaches of codes of conduct for parliamentarians and their staff’ to the proposed Independent Parliamentary Standards Commission (**IPSC**).[22] However, it is not clear that the protections and remedies afforded alongside the establishment of the proposed IPSC would fill the current gaps caused by the exclusion of MOPS staff from the operation of the PID Act.

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to extend its application to persons employed or engaged under the *Members of Parliament (Staff) Act 1984* (Cth).**

‘No wrong doors’ approach

25. The Law Council generally supports the so-called ‘no wrong doors’ approach, whereby:

- a discloser has access to the protections and remedies under the PID Act when an internal disclosure is initially made to the wrong agency (although one that can receive disclosures); and
- the initial agency receiving the disclosure should then refer it to the appropriate agency to handle.[23]

26. Such approaches are in place in various forms in a number of states and territories including, as noted in the Consultation Paper, in Victoria and Queensland.[24]

27. As noted above, navigating the systems and procedures specified in the PID Act can be complex, particularly without legal or other assistance. Added difficulties when seeking to disclose wrongdoing can lead potential whistleblowers to:

- be shifted between potential agencies (including their own agency even when this is ill-advised);
- decide not to continue with the disclosure; or

[21] See PID Act s 29(1) (items 4(b) and (c), 6(a)(iii), 7, 8 and 9 of the table).
[22] Consultation Paper, 10.
[23] Ibid 11.
[24] Ibid. See also, *Public Interest Disclosures Act 2012* (Vic) s 18; Hon Alan Wilson KC, *Review of the Public Interest Disclosure Act 2010* (Report, 19 June 2023) 84-87.

- have their matter fall between cracks.[25]

Such circumstances do not support the objective of encouraging and facilitating the making of public interest disclosures or the objective of ensuring that disclosures are properly investigated and dealt with.

28. In relation to the approach in Queensland, the Hon Alan Wilson KC in the June 2023 Report of the Review of the *Public Interest Disclosure Act 2010* (Qld), described the 'no wrong doors' approach as follows:

> *This permissive methodology is colloquially referred to as the 'no wrong doors' approach because it provides a discloser with multiple, legitimate reporting pathways. A discloser is not compelled to make their PID to their own agency and may report it to an external body … or to a member of Parliament. The rationale is that a discloser should not be penalised for failing to navigate the processes in the Act correctly, in tacit recognition that some may not have sufficient information to determine which public sector entity is best placed to deal with the disclosure*.[26]

29. Implementing the no wrong doors approach at the Commonwealth level also requires the expansion of the number of integrity, oversight and investigative agencies that can receive internal disclosures. As noted in the Consultation Paper, The PID Act currently recognises only two investigative agencies that can receive internal disclosures: the Commonwealth Ombudsman and the IGIS.[27]

30. In supporting the 'no wrong doors approach' the Law Council also considers that the Australian Government should implement Recommendation 2 of the Moss Review that a number of additional officeholders 'be prescribed as investigative agencies to simplify the PID Act's interaction with other investigative and complaint schemes and to strengthen the investigative capacity under the PID Act'.[28] In making this recommendation, Mr Moss noted:

> *The Review considers that inclusion of these officeholders as investigative agencies supports a 'no wrong doors' approach for disclosers to come forward, especially for those who may lack detailed understanding of the legislation and jurisdictions. This approach would extend the PID Act protections to a discloser who reported wrongdoing to one of these investigative agencies in the Commonwealth public sector. This approach will also encourage disclosers who lack confidence in an agency's internal investigation processes, or who may fear reprisal, to bring their concerns about wrongdoing to a relevant independent investigative body without altering the existing remit of these agencies beyond their current scope.*[29]

31. The Law Council notes that a clearinghouse function established within a WPA could promote a 'no wrong doors' approach.[30] If practicable, the WPA should be able to

[25] A J Brown and K Pender, Griffith University, Human Rights Law Centre and Transparency International Australia, *Protecting Australia's Whistleblowers: The Federal Roadmap* (2022) 7.
[26] Hon Alan Wilson KC, *Review of the Public Interest Disclosure Act 2010* (Report, 19 June 2023) 84.
[27] Consultation Paper, 11.
[28] Moss Review, 26, recommendation 2. The proposed additional officeholders included: the Australian Public Service Commissioner, the Merit Protection Commissioner, the Integrity Commissioner, the Parliamentary Services Commissioner, the Parliamentary Services Merit Protection Commissioner, and the Inspector-General of Taxation.
[29] Ibid 26.
[30] See paras +++ above.

refer a matter to the appropriate agency or organisation for action (including without disclosing the identity of the whistleblower).

Recommendations

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to implement a 'no wrong doors' approach for the making of public interest disclosures.**
- **The Australian Government should implement recommendation 2 of the Moss Review and expand the investigative agencies to which public interest disclosures may be made.**

Issue 2: Pathways to make disclosures outside of government

Whistleblower access to legal advice

32. As noted in the Consultation Paper, a public official can make a 'legal practitioner disclosure' where:

    - they are making the disclosure in order to obtain legal advice or professional assistance in relation a disclosure they have made or are proposing to make; and
    - if they know (or ought to know) that the information has a security classification—the legal practitioner holds an appropriate security clearance; and
    - the information is not and does not include intelligence information.[31]

33. Where the information consists of, or includes, 'intelligence information', no disclosure can be made for the purposes of receiving legal advice or assistance, even to a security-cleared lawyer.

34. As noted at [5] above, Griffiths J in *Applicant ACD13/2019 v Stefanic* described the PID Act as 'largely impenetrable, not only for a lawyer, but even more so for an ordinary member of the public or a person employed in the Commonwealth bureaucracy'.[32] Given the complexity of the PID Act and Australia's whistleblower legislation framework, access to legal representation can be vital. Access to legal representation is consistent with the proper administration of justice, assists with the efficiency of matters and is integral to assisting people to defend their rights and navigate complex systems.

35. The Law Council provides the following recommendations directed at ensuring whistleblowers are better able to access legal advice from counsel of their choice and improving the regulation of lawyers who advise clients on public interest disclosure issues.

Removing or limiting the need to obtain advice from a security-cleared lawyer

36. Public officials who disclose information of a 'national security' or other 'protective security classification' to a lawyer who does not hold security clearance, ultimately,

[31] Consultation Paper, 12. See also *PID Act* s 26(1).
[32] [2019] FCA 548, [18].

expose themselves to a risk of incurring criminal sanctions.[33] Fairness requires that such persons should be able to readily access legal advice.

37. Recommendation 24 of the Moss Review suggested that the PID Act should be amended to permit individuals to disclose security-classified information (other than intelligence information) to *any* practising lawyer for the purposes of receiving legal advice about a public-interest disclosure.[34] In making this recommendation, Mr Moss cited the importance of lawyers as a source of advice for disclosers and noted (as demonstrated by responses to the Review's online survey) that most potential whistleblowers would not choose to make a disclosure, particularly an external disclosure, without legal advice.[35]

38. The Law Council strongly supports the implementation of Recommendation 24. The Law Council has a long history of advocacy opposing legislation which seeks to impose systems of security clearances for lawyers.[36] These systems risk very direct and serious prejudice to clients, lawyers and the rule of law.[37] As is noted in the Consultation Paper, 'it has been reported that individuals have experienced difficulty' in ensuring that their legal practitioner holds the appropriate security clearance.[38]

39. Legal practitioners are already subject to stringent ethical obligations and would potentially be subject to both criminal and disciplinary penalties were they to misuse information provided by whistleblowers.[39] Further, as noted in the Consultation Paper, '[e]xisting criminal offences that seek to prevent unauthorised disclosure of classified information could continue to be relied upon as an appropriate safeguard where disclosure to a legal practitioner does not meet the other requirements in the PID Act'.[40] The Law Council considers such frameworks to be sufficient for the purpose of reasonably protecting security classified information (other than intelligence information).

Recommendation

- **The Australian Government should implement recommendation 24 of the Moss Review to permit disclosures of security classified information (other than intelligence information) to a lawyer for the purpose of seeking legal advice about a public interest disclosure, without requiring the lawyer to hold a security clearance.**

[33] See Criminal Code, Pt 5.6.
[34] Moss Review, 56, recommendation 24.
[35] Ibid 55.
[36] For further detail see, Law Council of Australia, Submission to the Independent National Security Legislation Monitor, *Review into the operation and effectiveness of the National Security Information (Criminal and Civil Proceedings) Act 2004* (26 June 2023), [10]-[12] and [36]-[44].
[37] Ibid.
[38] Consultation Paper, 14.
[39] See PID Act, s 67; and Criminal Code, Pt 5.6. For disciplinary proceedings against lawyers, see, for example, s 88 of the *Legal Profession Uniform Law* (NSW).
[40] Consultation Paper, 14, citing Moss Review, 55-56.

A list of security-cleared lawyers

40. In December 2020, the then Government indicated, when responding to the Moss Review, that it was 'considering options for creating a list of security-cleared lawyers that may be used by public officials who wish to seek legal advice in relation to information that has a national security or other protective security classification'.[41] No such list of security-cleared lawyers has been published.

41. If this previous recommendation is not implemented, the Law Council recommends that the PID Act be amended to include a provision that obliges the Australian Government to publish and to maintain a list of lawyers with security clearance to ensure that individuals who are contemplating making disclosures of secret information may more easily seek out appropriate legal counsel.

42. In the alternative, the Law Council recommends that consideration be given to promulgating a Public Interest Disclosure Rule under section 83 of the PID Act which requires the publication and maintenance of a list of security-cleared lawyers.

43. Implementation of reforms along these lines would simplify the process of identifying solicitors and barristers with the appropriate security clearance and provide at least some improvement on the current approach.

Recommendation

- **In the event that recommendation 24 of the Moss Review is not implemented, the Australian Government should:**
  - **amend the *Public Interest Disclosure Act 2013* (Cth) to include a provision that obliges the Australian Government to publish and to maintain a list of lawyers with a security clearance; or**
  - **in the alternative, promulgate a Public Interest Disclosure Rule that requires the publication and maintenance of a list of security-cleared lawyers.**

Access to legal advice concerning disclosure of 'intelligence information'

44. Members of the Australian Intelligence Community (**AIC**) are the least protected group of public officials under the PIDA because of the special status accorded to 'intelligence information'.[42]

45. The term 'intelligence information' is defined to include 'information that originated with, or has been received from, an intelligence agency'.[43] Further, such information may, in no circumstances, be the subject of an 'external disclosure' by a whistleblower. Such information may only be disclosed by a member of the AIC internally to their supervisor, to an 'authorised person' or to the IGIS. Even legally privileged and confidential disclosures of intelligence information to security-vetted legal counsel are prohibited.

46. In the Law Council's view, the term 'intelligence information' is currently defined too widely and should be restricted to the minimum coverage reasonably required.

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[41] Australian Government, *Australian Government response to the Review of the Public Interest Disclosure Act 2013 by Mr Philip Moss AM* (16 December 2020) 16.
[42] The meaning of 'intelligence information' is set out in PID Act, s 41.
[43] Ibid s 41(1)(a).

47. In the Law Council's view, the strict prohibition on members of the AIC seeking assistance from lawyers on the limited disclosures of 'intelligence information' permitted under the PIDA does not strike the right balance between the principles of accountable government, the rights of individuals to seek legal advice, and the need to protect the national interest.

48. The Law Council is concerned that the inability of members of the AIC to seek legal advice about potential disclosures of intelligence information may undermine the effectiveness of the public-interest disclosure system in an area of vital importance.[44]

49. While national security must be maintained, it is submitted that members of the AIC should not be barred in all circumstances from obtaining legal advice about public-interest disclosures that may concern 'intelligence information'.

50. The Law Council, therefore, recommends that consideration be given to amending the PID Act to include a provision which grants the IGIS powers to authorise a person to seek discrete legal advice on certain matters concerning 'intelligence information', subject, if necessary, to prescribed conditions. Alternatively, the Law Council recommends that consideration be given to the enactment of some other mechanism that would enable members of the AIC to obtain independent legal advice in circumstances involving 'intelligence information'.

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to include a provision that grants the Inspector-General of Intelligence and Security powers to authorise a person to seek discrete legal advice on certain matters concerning 'intelligence information', subject, if necessary, to prescribed conditions.**

Legal practitioners' criminal liability under the PID Act

51. Under section 67 of the PID Act, legal practitioners who provide legal advice to whistleblowers may themselves be held criminally liable if they use or disclose information concerning public-interest disclosures received from their clients unless that information is used for the provision of advice about a public-interest disclosure or has been lawfully published.

52. The Law Council is concerned that the operation of section 67 of the PID Act:

- may unnecessarily impede the provision of legal advice to whistleblowers concerning matters ancillary to public-interest disclosures;
- operates strictly and without regard to:
  - the type of information used or disclosed; and
  - whether any adverse consequences did, or were likely to, arise because of the secondary use or onward disclosure of information; and
- does not sufficiently recognise:

[44] A point previously raised by the Law Council in its submission to the Moss Review: Law Council of Australia, Submission to the Department of Prime Minister and Cabinet, *Public Interest Disclosure Act 2013 (Cth) Review* (28 April 2016), [20]-[26].

- the concurrent operation of secrecy offences in Part 5.6 of the *Criminal Code* which already penalise the misuse of 'security classified' information; and
- the regulatory consequences that could flow from a legal practitioner's misuse of material divulged by a whistleblower.

53. The Law Council, therefore, recommends that section 67 of the PID Act be amended to limit the offence provision to the misuse or wrongful disclosure by legal practitioners of:

- 'security classified' information within the definition in section 90.5 of the *Criminal Code*; or
- information that may cause significant harm to national security.

Recommendation

- **The Australian Government should amend that section 67 of the *Public Interest Disclosure Act 2013* (Cth) to limit the offence provision to the misuse or wrongful disclosure by legal practitioners of:**
  - **'security classified' information within the definition in section 90.5 of the *Criminal Code*; or**
  - **information that may cause significant harm to national security.**

Whistleblower access to other professional advice

54. Recommendation 25 of the Moss Review was that the PID Act 'be amended to protect disclosures for the purposes of seeking professional advice about using the [Act]'.[45] The 'professional advice' envisaged in the Moss Review would be provided by unions, employee assistance programmes (**EAPs**) and professional associations.[46]

55. Allowing public officials to obtain advice on proposed disclosures from such bodies would assist the operation of the PID Act by ensuring that:

- those contemplating making a disclosure are able to seek advice on the impropriety (or otherwise) of others' conduct and their own actions as whistleblowers from agencies such as the Australian Public Service Commission's Ethics Advisory Service which may offer views on integrity matters related to the kinds of misconduct that may be 'disclosable' under the PIDA; and
- public-sector whistleblowers have access to adequate support from, for instance, EAPs, which provide mental health and counselling services to their members, services of particular importance as individuals who have made public-interest disclosures report 'long-term health and career effects because they reported [others'] wrongdoing'.[47]

56. The Law Council, therefore, recommends that the PID Act be amended to permit disclosures for the purposes of seeking professional advice about the PID Act. If deemed necessary, those receiving disclosures under a professional-advice

[45] Moss Review, 57.
[46] Ibid 56.
[47] Moss Review, [22].

exception could be made subject to obligations not to use or disclose information provided by a whistleblower that are similar in form to the secrecy duties that currently apply to legal practitioners.[48]

Recommendation

- **The Australian Government should implement recommendation 25 of the Moss Review to permit disclosures for the purpose of seeking professional advice about using the *Public Interest Disclosure Act 2013* (Cth).**

Expanding the grounds for when a public official can make an external disclosure—delays and failures to allocate disclosures

57. The PIDA imposes a 90-day timeframe on investigations.[49] This time limit may be extended by the Commonwealth Ombudsman (or the IGIS if the disclosure concerns intelligence-related matters) where it is appropriate to do so.[50] There are no statutory limits on the number of occasions on which the time limit to complete an investigation may be extended.

58. A failure by an agency to investigate a disclosure within the 90-day time limit (without reasonable reason for extension) ultimately undermines the effectiveness of the PID Act in meeting its objectives of providing protection from adverse consequences relating to disclosures and ensuring that disclosures are properly investigated and dealt with.[51] Timely investigation is critical to ensuring that individual and systemic misconduct can be addressed quickly without additional harm.

59. In its submission to the Senate Legal and Constitutional Affairs Legislation Committee in relation to the Public Interest Disclosure Amendment (Review) Bill 2022 (Cth) (**Stage 1 Bill submission**), the Law Council observed that investigations under the PID Act are routinely taking longer than the 90-day period envisaged in the Act, and that extensions of time to investigate matters are routinely granted by the Commonwealth Ombudsman.[52]

60. In order to encourage public agencies to investigate disclosures expeditiously—and in recognition that in certain circumstances, where a matter is not being dealt with in a timely manner, external disclosure of information may be in the public interest—the Law Council suggests consideration of the following additional grounds for external disclosures:

    - prolonged investigations; and
    - failures to allocate disclosures.

61. These two grounds are discussed further below.

[48] See PID Act, s 67.
[49] Ibid s 52(1).
[50] Ibid ss 52(3)-(4).
[51] The objects of the PID Act are set out in s 6.
[52] Law Council of Australia, Stage 1 Bill Submission, 17.

Grounds for external disclosures: prolonged investigations

62. Subsection 1317AAD(1) of the Corporations Act extends protections to a whistleblower for a 'public interest disclosure' if the following requirements are met:

    (a) a 'previous disclosure' has been made by a whistleblower to the Australian Securities and Investments Commission or Australian Prudential Regulation Authority and that previous disclosure qualified for protection;

    (b) at least 90 days have passed since the previous disclosure was made;

    (c) the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related;

    (d) the discloser has reasonable grounds to believe that making a further disclosure of the information would be in the public interest;

    (e) after the end of 90 days, the discloser gave the body to which the previous disclosure was made a written notification that:

        (i) includes sufficient information to identify the previous disclosure;

        (ii) states that the discloser intends to make a public-interest disclosure;

    (f) the public-interest disclosure is made to:

        (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or

        (ii) a journalist; and

    (g) the extent of the information disclosed in the public-interest disclosure is no greater than is necessary to inform the recipient of the misconduct, improper state of affairs, circumstances, or conduct, as the case may be.

63. To harmonise the private-sector and public-sector whistleblowing provisions, and to provide an incentive for public agencies to investigate disclosures expeditiously, the Law Council recommends that the sub-paragraph set out in the recommendation box below (or an equivalent provision) be inserted into paragraph (c) of item 2 in the table in subsection 26(1) of the PID Act.[53] It should be noted that, were such a provision to be inserted into the PIDA, before making an external disclosure, a public official would still need to meet the requirements in sub-paragraphs (a), (b) and (e)–(i) of item 2 in the table in subsection 26(1), which are as follows:

[53] The table in subsection 26(1) of the PIDA lists the circumstances in which, amongst other matters, external disclosures may be made.

2	External disclosure	Any person other than a foreign public official	(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct. (b) On a previous occasion, the discloser made an internal disclosure of information that consisted of, or included, the information now disclosed. (c) Any of the following apply: (i) a disclosure investigation relating to the internal disclosure was conducted under Division 2 of Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate; (ii) a disclosure investigation relating to the internal disclosure was conducted (whether or not under Division 2 of Part 3), and the discloser believes on reasonable grounds that the response to the investigation was inadequate; (iii) this Act requires an investigation relating to the internal disclosure to be conducted under Division 2 of Part 3, and that investigation has not been completed within the time limit under section 52. (e) The disclosure is not, on balance, contrary to the public interest. (f) No more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct. (h) The information does not consist of, or include, intelligence information. (i) None of the conduct with which the disclosure is concerned relates to an intelligence agency.

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to insert the following sub-paragraph to paragraph (c) of item 2 in the table in subsection 26(1):**

  (vi) more than 90 days have passed since the disclosure investigation relating to the internal disclosure being conducted under Part 3 commenced and:

  1. ***an extension of the 90-day investigation period has been granted under section 52; and***
  2. ***the discloser believes on reasonable grounds that the investigative action taken has been inadequate.***

Grounds for external disclosures: failures to allocate disclosures

64. Recommendation 9 of the Moss Review is:

> *That the PID Act be amended to include situations when an Authorised Officer failed to allocate an internal PID, or a supervisor failed to report information they received about disclosable conduct to an Authorised Officer, as grounds for external disclosure.*[54]

65. The rationale behind recommendation 9 was that failures to allocate disclosures represented a 'threat to the integrity of the [PIDA] scheme and, by extension, the effectiveness of the Commonwealth public sector's integrity and accountability'.[55] A failure to allocate a disclosure will forestall any investigation of alleged misconduct under the PIDA while preventing the whistleblower himself or herself from making an external disclosure.

66. The Law Council supports the implementation of Recommendation 9.[56]

Recommendation

- **The Australian Government should implement Recommendation 9 of the Moss Review and amend the *Public Interest Disclosure Act 2013* (Cth) to include situations when an Authorised Officer failed to allocate an internal PID, or a supervisor failed to report information they received about disclosable conduct to an Authorised Officer, as grounds for external disclosure.**

Additional suggestions

67. The Law Council also suggests that consideration be given to:

(a) amending the PID Act to provide that disclosures made reasonably to a relevant parliamentary committee explicitly attract public interest disclosure protections. Where the information disclosed contains intelligence or national security information, consideration could be given to limiting public interest

[54] Moss Review, 39, recommendation 9.
[55] Ibid 38.
[56] For further info see, Law Council, Stage 1 Bill submission, 20-21; Australian Human Rights Commission, Submission No 5 to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Public Interest Disclosure Amendment (Review) Bill 2022 (Cth)* (20 January 2023) 33-34.

disclosure protections to disclosures only to the Parliamentary Joint Commission on Intelligence and Security;

(b) publishing guidance material on the application of the public interest test under section 26 of the PID Act to help to minimise the risk of unprotected disclosures—this role could be performed by a WPA if established (see discussion below); and

(c) providing dedicated funding to support access to legal assistance for whistleblowers seeking to take action and/or to secure remedies.

Issue 3: Protections and remedies under the PID Act

Whistleblower policies

68. Consistent with the requirements for covered corporations,[57] agencies and each of their contractors and respective sub-contractors should be required to have a whistleblower policy, and to ensure that it is made available to employees and the public. The policy should at least include:

- the procedures for disclosures;
- who can receive disclosures;
- where assistance is available (including the WPA if established);
- the protections available to whistleblowers; and
- how the agency or other organisation and the Commonwealth (if applicable) will support whistleblowers and protect them from detriment.

69. As is the case in NSW under the *Public Interest Disclosure Act 2022* (NSW), and consistent with the treatment of covered companies under the *Corporations Act 2001* (Cth),[58] agencies should be held liable for damages if they fail to comply with their obligations to administer their policy, and take proactive steps to minimise the risk of detrimental action against a person as a result of a disclosure.

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to insert a requirement for agencies (and their contractors and sub-contractors) to have a whistleblower policy.**

Remedies and protections for preparatory acts

70. The Law Council considers that whistleblowers should be protected against liability for acquiring or accessing information that is the subject of their disclosure if:

- the conduct is no greater than is reasonably necessary to making a disclosure;
- the preparatory acts do not constitute a criminal offence; and

[57] Corporations Act, s 1317AI.
[58] Corporations Act, s 1317AI.

- in the case of Australian Public Service (**APS**) whistleblowers—the APS Code of Conduct has not been breached.[59]

71. If a whistleblower has concerns that certain conduct that is necessary to support a disclosure may constitute a criminal offence, then there must be an alternative path for referral of concerns to a trusted independent authority such as a WPA to determine whether and how to pursue the matter.

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to provide public sector whistleblowers with protection against liability for acquiring or accessing information that is the subject of their disclosure if:**
  - **the conduct is no greater than is reasonably necessary to making a disclosure;**
  - **the preparatory acts do not constitute a criminal offence; and**
  - **in the case of Australian Public Service whistleblowers—the APS Code of Conduct has not been breached.**

Evidentiary burden where civil remedies are sought in relation to (threatened) reprisal

72. As noted in the Consultation Paper, the PID Act requires a public sector whistleblower, when applying for a civil remedy, to prove that the respondent undertook or threatened the reprisal because the respondent believed or suspected that the person had made, may have made, proposed to make, or could make a disclosure.[60]

73. Whistleblowers should not bear the burden of proof of reprisals. Consistent with the provisions for private sector whistleblowers under the Corporations Act,[61] where a whistleblower provides evidence of a reasonable possibility that they have suffered detriment that was reasonably connected to their disclosure or contemplated disclosure, the burden should shift to the respondent to prove the disclosure was not a reason for their detrimental conduct. This would also be consistent with the approach in section 23 of the PID Act, which reverses the onus of proof in proceedings for claims of protection of disclosures.

Recommendation

- **The Australian Government should amend the *Public Interest Disclosure Act 2013* (Cth) to reverse the evidentiary burden where civil remedies are sought in relation to reprisal or threatened reprisal.**

Incentives for public sector whistleblowers—proposed rewards scheme

74. The Law Council notes that the PJCCFS, in its 2017 Whistleblower Protections Report, recommended that certain bodies (such as a court or whistleblower

[59] The APS Code of Conduct is set out in s 13 of the *Public Service Act 1999* (Cth).
[60] Consultation Paper, 17.
[61] Corporations Act, s 1317AD(2B).

protection body) could be empowered to provide a reward to a whistleblower if their disclosure results in a penalty being imposed on their employer.[62]

75. However, the Law Council notes that the establishment of rewards schemes for whistleblowers is an issue prompting differing views among members of the legal profession. In the Law Council's 2017 submission to the PJCCFS, the Law Council's preliminary view was that a reward system should not be supported.[63]

76. At this stage, and on balance, the Law Council's preliminary view is that, if the PID Act operates as intended, and potential whistleblowers are encouraged to report matters with confidence that they will receive genuine protection and support as well as compensation for any harm caused in the event of detrimental action, there should be no need for additional financial or other rewards or incentives to be offered. Such additional incentives could send the wrong message about the role and motives of whistleblowers, complicate the process unnecessarily, and increase the risk of spurious reports resulting in wasted resources or other unintended consequences.

Aligning whistleblower protections

77. As far as is reasonably practicable, whistleblowers in both the public and private sectors should receive equivalent protections and support regardless of the disclosure pathway. Apart from fairness, the key benefits of equivalency would be simplification, clarity and greater confidence in the whistleblower framework, fulfilling the objects of the PID Act including by promoting integrity and accountability as well as helping to deter disclosable conduct. For further discussion in relation to improving the clarity of Commonwealth whistleblower protection schemes, see paragraphs [4]–[13] above.

Issue 4: Oversight and integrity agencies, and consideration of a potential Whistleblower Protection Authority or Commissioner

Establishment of a Whistleblower Protection Authority

78. In its 2017 Whistleblower Protections Report, the PJCCFS recommended that a WPA covering both the public and private sectors be established to exercise the following functions:

- provide a clearinghouse for whistleblowers bringing forward public interest disclosures;
- provide advice and assistance to whistleblowers; and
- support and protect whistleblowers, including by:
  - investigating non-criminal reprisals in the public and private sectors; and

[62] PJCCFS Report, 138-139, recommendations 11.1 and 11.2. See also, Consultation Paper, 18-19.
[63] Law Council of Australia, Submission to the Treasury, *Review of Tax and Corporate Whistleblower Protections in Australia* and the Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Whistleblower Protections in the corporate, public and not-for-profit sectors* (9 February 2017) 17-21. The Law Council provided an analysis of a number of potential advantages and disadvantages of rewards schemes in the table provided at paragraph [74].

- taking non-criminal matters to the workplace tribunal or courts on behalf of whistleblowers or on the agency's own motion to remedy reprisals or detrimental outcomes in appropriate cases.[64]

79. Since the release of the Whistleblower Protections Report, the Law Council has consistently expressed strong support for the establishment of a comprehensive whistleblower regime including the creation of a WPA.[65] The Law Council broadly supports the establishment of a WPA with the form and functions recommended by the PJCCFS.

80. The Office of the Commonwealth Ombudsman (**OCO**) has acknowledged that—in accordance with paragraph 5(2)(d) of the *Ombudsman Act 1976* (Cth)—its role in investigating reprisals against a whistleblower is restricted:

> *OCO currently has limited oversight of agencies' compliance with these obligations to protect staff who make public interest disclosures, and the Ombudsman Act provides that OCO does not have jurisdiction to investigate most matters relating to APS employment, including disciplinary action and termination of employment. OCO's consideration of these matters in the PID Act context focuses on whether an agency has undertaken a reprisal risk assessment and adequately considered and responded to reprisal concerns.*[66]

81. The Law Council considers that the role of investigating non-criminal reprisals in the public sector could be undertaken by the WPA, if established. However, the Law Council suggests that further consideration would be required as to how this function might work practically alongside other suggested functions such as taking matters to workplace tribunals or courts on behalf of whistleblowers or on the WPA's own motion (as indicated by the PJCCFS).

82. The Consultation Paper notes that stakeholders have also suggested that functions of a WPA could include:

- advocating and enforcing public sector whistleblowing laws on behalf of whistleblowers;
- providing mediation or arbitration where whistleblowers seek to enforce protections and remedies;
- providing referrals to whistleblowers seeking professional assistance;
- providing complaints handling in relation to alleged reprisals and breaches of positive duties by agencies, and

[64] PJCCFS Report, 157-159, recommendation 12.1.
[65] See, eg, Law Council of Australia, Submission to Attorney-General's Department, *Commonwealth Integrity Commission: Proposed Reforms* (31 January 2019) 30-31; Law Council of Australia, Submission No 40 to Parliamentary Joint Committee on Security and Intelligence, Parliament of Australia, *Inquiry into the Impact of the Exercise of Law Enforcement and Intelligence Powers on the Freedom of the Press* (7 August 2019) 29-30; Law Council of Australia, Supplementary Submission No 40.2 to Parliamentary Joint Committee on Security and Intelligence, Parliament of Australia, *Inquiry into the Impact of the Exercise of Law Enforcement and Intelligence Powers on the Freedom of the Press* (7 August 2019) 16-17; Law Council of Australia, Submission No 49 to Parliamentary Joint Select Committee on National Anti-Corruption Commission Legislation, Parliament of Australia, *National Anti-Corruption Commission Bills 2022* (14 October 2022) 21-22; Law Council, Stage 1 Bill submission, 5 and 9-10.
[66] Office of the Commonwealth Ombudsman, Submission No 2 to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Public Interest Disclosure Amendment (Review) Bill 2022 (Cth)* (20 January 2023) 8.

- conducting public inquiries into systemic issues in relation to the implementation of whistleblowing laws.[67]

83. The Law Council considers that these functions should be included in the design of a WPA.

84. A particular advantage of establishing a WPA is that it should promote the exposure of wrongdoing, which can otherwise be difficult to detect and may assist in triggering investigation by the relevant agency. A WPA may also provide an avenue for members of the public and employees in Commonwealth government agencies to be able to obtain independent, anonymous advice about issues that relate to disclosure and reporting of suspected wrongdoing which is not presently available. This itself may assist in promoting the reporting of undesirable conduct.

Recommendation

- **The Australian Government should establish a Whistleblower Protection Authority broadly in line with recommendation 12.1 of the Parliamentary Joint Committee on Corporations and Financial Services in its 2017 Whistleblower Protections Report.**

Issue 5: Clarity of the PID Act

85. The Law Council generally supports efforts to improve the clarity of the PID Act. At paragraphs [4]–[13], the Law Council has provided some initial comments in relation to improving the clarity of Commonwealth whistleblower protection schemes, including the PID Act. At this stage, the Law Council does not seek to comment further.

[67] Consultation Paper, 21-22.