Law Council
OF AUSTRALIA

Identifying issues in tax and corporate whistleblowing frameworks

The Treasury

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Contents

Acknowledgements 1
Introduction 2
Responses to consultation questions 3
Australia's tax and corporate whistleblower frameworks 3
Qualifying as a whistleblower 5
Legal professional regulation 6
Protecting whistleblowers' identities 7
Conduct of whistleblowers 8
Recipients of disclosures 10
Matters that can be disclosed 11
Compensation and other private remedies 12
Penalties 12
Financial incentives for whistleblowers 13
Assistance and guidance to whistleblowers 14
Whistleblower protection authority 14
Whistleblowing policies 15
Further comments 16
Tactical use of whistleblower claims in employment disputes 16
In-house legal practitioners 17
About the Law Council of Australia 18

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- the Corporations Committee of its Business Law Section; and
- The Law Society of New South Wales

for their contribution to the preparation of this submission.

Introduction

1. The Law Council of Australia welcomes the opportunity to respond to The Treasury's Consultation Paper in relation to its review of tax and corporate whistleblowing in Australia (**Consultation Paper**).

2. We are grateful to the Corporations Committee of the Business Law Section of the Law Council (the **Corporations Committee**) and the Law Society of New South Wales (**LSNSW**) for their contributions to this submission.

3. In addition to responding to the questions set out in Appendix A to the Consultation Paper,[1] the Law Council makes the following general comments on the landscape of whistleblowing laws since the enactment of the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (the **2019 Amendments**):

   (a) Subject to the below remarks regarding potential improvements, the Law Council considers that the 2019 Amendments generally strike an appropriate balance between protecting whistleblowers from the personal and financial risks of reporting misconduct and managing the regulatory burden on organisations.

   (b) A key challenge in addressing corporate whistleblowing in Australia continues to be fostering a strong whistleblowing culture within organisations. Community expectations around whistleblowing have strengthened over the past decade and are likely to continue driving positive and necessary cultural change within the existing framework.

   (c) Government and business should continue to promote the view that whistleblowing which identifies and remedies unlawful conduct is a public good. The Law Council supports the policy rationale for whistleblower protections outlined in Consultation Paper.[2]

   (d) Further legislative amendments in this area may be unlikely, on their own, to change attitudes or organisational culture.

   (e) The Law Council considers that, while the existing guidance, information and support available to corporate whistleblowers are generally effective, government resources would be well directed towards and significant benefit would come from ongoing investment in reinforcing community expectations and pursuing clarifying amendments rather than significant legislative reform.

   (f) Business has an important role to play through effective whistleblower policies and strong leadership from senior management and boards. It is our understanding that the majority of public companies and large proprietary companies have generally complied with the policy requirements introduced by the 2019 Amendments. The focus should remain on supporting compliance

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1 Australian Government, Department of The Treasury, *Review of tax and corporate whistleblowing in Australia* (Consultation Paper, June 2026) 28-29.

2 Law Council of Australia, *Whistleblower Protections in the corporate, public and not-for profit sectors* (Submission to Parliamentary Joint Committee on Corporations and Financial Services, 9 February 2017) 3.

with, and advancing the objectives of, the existing regime through further clarification rather than imposing sweeping prescriptive requirements.

Responses to consultation questions

4. The Law Council's responses below are confined to those consultation questions on which it has a view. No comment is made on the remaining questions.

Australia's tax and corporate whistleblower frameworks

Question 1

Do current administrative arrangements under the tax and corporate regimes encourage people to make disclosures about wrongdoing?

5. The Law Council considers that current administrative arrangements would be strengthened by more accessible regulator reporting on the outcomes of whistleblower disclosures. In the Law Council's view, potential whistleblowers may be more likely to make disclosures where they can access information about the regulatory outcomes that disclosures have achieved, particularly given the limited body of case law concerning the operation of the regime.

6. While the Australian Securities and Investments Commission's (**ASIC**) report *Insights from the ASIC whistleblower questionnaire: July 2024 to June 2025* is a useful contribution to understanding whistleblower policies, programs and disclosures within corporations,[3] the Law Council considers that it would also be beneficial for ASIC to publish more readily accessible information about its own activities under the corporate whistleblowing scheme. This could include:

   - statistics on the number of disclosures received annually and since the commencement of the scheme;
   - whether information from those disclosures informed or assisted compliance activities;
   - whether disclosures contributed to litigation (including civil penalty proceedings); and
   - whether disclosures resulted in other regulatory outcomes, such as enforceable undertakings, remedial action or other agreed compliance measures.

7. Increased transparency regarding regulatory responses to disclosures may strengthen confidence in the regime and encourage reporting of wrongdoing.

[3] Australian Securities and Investments Commission, *Insights from the ASIC whistleblower questionnaire: July 2024 to June 2025* (Report 827, December 2025).

Question 2

Are the potential gaps or overlaps between concurrent whistleblowing regimes a concern for tax and corporate sector whistleblowers?

8. There are some areas where a more coordinated overall regime, including establishment of a whistleblower protection authority, would be preferable. However, as set out in the General Comments section above and in response to Question 3 below, the Law Council considers that these issues justify partial but not wholesale reform at this stage.

9. To the extent that amendments made to the tax whistleblower regime in 2024 have not been adopted in the corporate regime, the Law Council supports further consideration of amendments to promote consistency between the regimes. As elaborated on in our response to Question 14, this includes protections for disclosures made to medical practitioners and psychologists, and clarification of the evidential burden for protection from civil, criminal or administrative liability.

Question 3

Do you have any other views on the current administrative arrangements, powers or functions of the regulators?

10. If government were designing a whistleblowing regime from first principles, the Law Council considers that the preferable model would be a single piece of legislation, supported by a single agency able to act as a clearing house and refer protected disclosures to the appropriate agency for consideration. This would address the continued spread of whistleblowing provisions across multiple Acts, which the 2019 Amendments reduced but did not eliminate.

11. However, while a single piece of legislation would be the preferable long-term solution, the Corporations Committee notes that there would be significant cost in adopting this model at this stage. On balance, the Law Council considers that government should persevere with the current regime of interlinked legislation and agencies, while seeking to ensure that the system operates as efficiently as possible.

12. The complexity of the schemes may make it difficult for whistleblowers to identify the most appropriate reporting pathway. Further consideration could be given to a 'no wrong door' approach for disclosures where alleged wrongdoing may fall across multiple regulatory mandates and where disclosure is made to a regulator which would reasonably be considered to have a regulatory interest in the disclosure. For example, disclosures protected under the corporate whistleblowing regime may relate to conduct investigated by another regulator, such as the Australian Competition & Consumer Commission (**ACCC**), while tax-related misconduct may engage multiple agencies with overlapping responsibilities.

13. The LSNSW notes that given that regulators such as the ACCC rely on Memoranda of Understandings to share and exchange information (including confidential information), it would be helpful for express provisions to be made regarding regulators referring disclosable matters to other regulators for the purpose of investigations. It suggests that such an approach would provide greater certainty than reliance on administrative arrangements or memoranda of understanding between agencies and would complement the development of clearer, coordinated guidance for potential whistleblowers. For example, guidance directing whistleblowers in relation to tax evasion to the Australian Taxation Office, rather than the Australian Federal Police or AUSTRAC which do not appear to have their own regimes, would be a beneficial solution to this issue.

Qualifying as a whistleblower

Question 4

Do the current categories of 'eligible whistleblower' under the tax and corporate regimes sufficiently cover all individuals who have the potential to disclose relevant information about entities?

14. The Law Council considers that the current categories are sufficiently broad in this regard.

Question 5

Is the current range of 'entities' captured by the tax and corporate regimes adequate? Do you have any particular concerns about entity types that are not covered?

15. The Law Council supports, in principle, greater regulatory parity across businesses operating in Australia. Whistleblower protections should not turn unduly on the technical legal form of the entity about which a disclosure is made, particularly where non-corporate structures operate in functionally corporate ways or receive public funding, tax concessions or other public benefits. This is important to consider as whistleblowers may not know whether the entity is a corporation, partnership, trust or hybrid structure, and this lack of thorough knowledge of an entity's legal structure should not be a prohibitive factor.

16. Careful consideration should be given to the expansion of entity types captured by a whistleblower protection regime, including partnerships, unincorporated associations, charities that are not companies or trading or financial corporations, joint ventures and other non-corporate structures.

17. However, the Law Council also acknowledges that there are significant legal and practical considerations relevant to any extension of the current regime to other entities or unincorporated bodies that presently fall outside the meaning of 'regulated entity' in Part 9.4AAA.

18. Any proposed expansion should proceed cautiously, by reference to a clear constitutional foundation and legislative mechanism, including whether the objective is best achieved through targeted Commonwealth amendments, complementary State and Territory legislation, or a referral of power. Such reforms to Part 9.4AAA should be considered together with the broader question of regulatory oversight of large accounting, audit and consulting firm partnerships that is the subject of Treasury's July 2026 Options Paper which is presently open for public consultation.[4]

19. The Law Council also notes the practical implications of extending the regime to a broader range of entity types. Without appropriate thresholds or limits, expanding the definition of 'regulated entity' could significantly increase the number of entities and disclosures falling within ASIC's remit, with corresponding implications for resourcing and regulatory effectiveness.

20. Accordingly, we support further consideration of identified gaps in the current coverage of the tax and corporate whistleblower regimes, but caution that any expansion should be targeted, constitutionally sound and supported by adequate regulatory resourcing. Any reform should also account for the particular features of partnership and other non-corporate structures, including questions of State and Territory regulation and the attribution of knowledge and liability between partners or participants.

Legal professional regulation

21. The Law Council notes that legal practitioners already operate within a comprehensive national professional regulatory framework. For example, in New South Wales, Victoria, and Western Australia, solicitors are subject to the *Legal Profession Uniform Law* regime and associated professional conduct rules, which apply regardless of practice structure and provide established mechanisms for the confidential reporting, investigation and resolution of complaints.

22. The stringent and comprehensive regime of existing national legal profession laws regulating legal practitioners and the provision of legal services in all Australian jurisdictions, including ethical and other professional responsibilities, complaint mechanisms and sanctions for misconduct is outlined in the Law Council's 2024 report on the regulations of lawyers in Australia.[5]

23. Any extension of the whistleblower regime should take account of existing professional standards and regulatory oversight arrangements. Reform should be designed to complement, rather than duplicate or create uncertainty within, existing legal profession complaint-handling and disciplinary frameworks.

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4 Australian Government, The Treasury, *Regulation of accounting, auditing and consulting firms in Australia* (Options Paper, July 2026).

5 Law Council of Australia, *Lawyer Regulation in Australia: An Overview* (Report, 16 October 2024).

Protecting whistleblowers' identities

Question 6

Are whistleblowers sufficiently protected by the anonymous and confidential disclosure provisions? If not, why not?

Question 7

Are entities able to sufficiently rely on the carve-out allowing limited disclosures for the purposes of investigating whistleblower disclosures? If not, why not?

24. The current limited carve-outs can create practical barriers for internal investigations. Entities may need to rely on broader audits or cultural reviews to avoid identifying the whistleblower,[6] which may make it difficult to investigate the specific allegations. In the LSNSW's view, the anonymity protection is required but the confidentiality protection should include more carve outs for specific circumstances.[7] For example, where the whistleblower has self-identified to multiple parties or where their identity is otherwise known. Inclusion of the exemptions as listed under section 64 of the *Public Interest Disclosures Act 2022* (NSW) could be considered relevant to this point.

25. Additionally, the Law Council is concerned that there is insufficient clarity to permit disclosure of a qualifying disclosure to the board or other ultimate governing body of the regulated entity that is the subject of the disclosure. Express exceptions should also facilitate disclosure to the board or ultimate governing body where appropriate, given the board's role in supervising organisational risk and responding to serious wrongdoing.

26. The Corporations Committee considers that a continuing issue for business organisations is that the legislation does not sufficiently encourage escalation of serious whistleblowing concerns to the board or other ultimate governing body. Board members are most likely to be able to bring an unconflicted approach to a disclosure and to take a broader organisation-wide view of the issue, except where board default is the subject of the complaint. Too often, serious disclosures are dealt with by employees who may have self-interest or behavioural bias in assessing the motives of the whistleblower.

27. The confidentiality obligations in the legislation do not currently include an express exception to the general prohibition on disclosure of a qualifying disclosure that permits disclosure to the ultimate governing body of the organisation. As board members are most likely to bring an unconflicted approach and take a broader organisation-wide view of the issue (except where board default is the subject of the complaint), boards should be supported, where appropriate, to receive full information about matters arising within the organisations they supervise and should be protected when making good faith decisions in relation to complaints they receive.

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6 See for example, *Public Interest Disclosures Act 2022* (NSW) s 64.

7 See *Corporations Act 2001* (Cth) s 1317AAE(2).

28. The Law Council emphasises that amendments recognising organisational governance structures, and encouraging and supporting internal escalation in appropriate circumstances, would be a useful and targeted area of reform.

Conduct of whistleblowers

Question 9

Do you consider that the law is sufficiently clear with regards to the protections whistleblowers have against the enforcement of any contractual rights against them?

- **Are whistleblowers' protections against action for breaches of confidentiality and non-disclosure agreements sufficiently clear and balanced?**

29. The Consultation Paper asks whether it is sufficiently clear that whistleblowers are protected from claims under non-disclosure agreements and defamation claims. In the Law Council's view, the legislation already provides sufficient clarity on this issue.

30. However, we support consideration of a non-derogation provision confirming that contractual terms cannot prevent, penalise or create a chilling effect on a protected disclosure, including through confidentiality clauses, non-disclosure agreements, return-of-property clauses, non-disparagement provisions, settlement terms or employment policies.

Question 11

Is the law sufficiency clear with regards to any protections for acts committed in preparing for making a disclosure? What circumstances and qualifications would need to be addressed in any clarification?

31. The Law Council notes that the Consultation Paper asks whether preparatory acts undertaken in advance of making a disclosure should be expressly protected. We consider this to currently be a grey area which would benefit from clarification.

32. The Law Council shares the concerns of the Court in *JDS Uniphase Corporation v Jennings*,[8] as noted in the Consultation Paper, that any such additional protection should not encourage employees who are potential whistleblowers to remove documents from their workplace in a wholesale manner on the basis that they may be useful at a later date. Caution should therefore be exercised in pursuing such an exception without regard to the ways in which it could be misused for ancillary purposes.

33. The Law Council considers that any clarification should avoid a blanket protection for collecting or removing material and should instead focus on necessity, security and non-misuse.

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[8] *JDS Uniphase Corporation v Jennings* 473 F. Supp. 2d 697 (ED Va, 2007), at 702.

34. In a different but related context of public sector whistleblowing reforms, the Law Council has previously accepted that further room is appropriate in relation to the regulation of preparatory acts.[9] In recognition of the practical realities of whistleblowing, we referred to the Hon Alan Wilson KC's 2023 Review of the Queensland *Public Interest Disclosure Act 2010* (Qld) (the **Wilson Review**).[10]

35. The Wilson Review succinctly set out a number of arguments in relation to the question 'should a public official be permitted to engage in illegal conduct when preparing a PID—and, if so, where should the limits of that permission lie'.[11] As outlined by Mr Wilson, a careful balancing act is required between, on the one hand, not wanting to condone illegal activity or encourage 'amateur sleuthing' which may prevent or undermine the independent investigation and prosecution of that wrongdoing, and on the other hand, accounting for the 'nuances that effective whistleblowing may necessarily entail'.[12]

36. The Wilson Review ultimately found that an approach that reflects the 'realities of whistleblowing' is required, and recommended that a 'discretionary test' be articulated, either in the definition of a specific immunity in the Act, or through the introduction of a specific 'whistleblower defence' to criminal and civil proceedings.[13] Under the discretionary test approach, an individual would be entitled to immunity from liability for preparatory acts and self-reported wrongful conduct where they can satisfy a court that they should have a limited immunity for that conduct based on a non-exhaustive list of the following factors:

    - *whether the conduct was reasonably necessary to make a PID, or to protect a discloser's other rights under the Act, such as to prove that a disclosure was a PID in a claim of reprisal;*
    - *whether the preparatory acts attract criminal or civil liability, and the seriousness of the conduct;*
    - *whether the preparatory acts created risks to a particular third party, and the proportionality of those risks, including whether they were more serious than the risks posed by the alleged wrongdoing;*
    - *whether a person took steps to mitigate the risks created by the preparatory acts, or whether they behaved recklessly;*
    - *whether the preparatory acts were likely to prejudice an investigation of the PID;*
    - *whether the preparatory acts were to retain copies of information that the discloser became aware of in the ordinary course of their work, or extended beyond that to conducting an independent investigation;*
    - *whether there was any delay between the preparatory acts and the making of a PID, and the length and reasons for that delay; and*
    - *whether the person sought legal advice before undertaking the preparatory act.*[14]

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9 The Law Council of Australia, *Public sector whistleblowing reforms* (Submission to the Attorney-General's Department, 8 October 2025) 12.
10 Hon Alan Wilson KC, *Review of the Public Interest Disclosure Act 2010* (Report, 19 June 2023).
11 Ibid 176.
12 Ibid 175-177.
13 Ibid 178-179, 259.
14 Ibid.

37. We indicated that in the Law Council's view, such an approach would guide potential whistleblowers, could discourage whistleblowers from excessive or unnecessary actions and would allow judicial consideration of the often-complex circumstances of each case.[15]

38. We suggest that, in the current context, other factors that could be considered include whether the whistleblower: kept the material secure, disclosed it only to an eligible recipient, regulator, prescribed body or lawyer, and did not use it for another purpose.

Recipients of disclosures

Question 13

Do you consider that the regulators that are able to receive disclosures under the tax and corporate regimes are appropriate? If not, why not? Should protection for whistleblowers extend to disclosures made to any other regulators or bodies? If so, which regulators and why?

39. The Law Council agrees with the proposition in the Consultation Paper that a whistleblower may qualify for protection under more than one regime, which may make it difficult for the whistleblower to identify which laws apply to their disclosure. To this point, a useful regulatory improvement would be to make explicit that any responsible government agency receiving disclosures that qualify for protection under the legislation may disclose that matter to another government agency that could reasonably be considered to have a regulatory interest in the disclosure, provided the whistleblower consents.

40. We believe this amendment would allow a regulator to refer a protected disclosure to another regulator where appropriate, including where the matter falls within the remit of more than one regulator, while maintaining the protection attaching to the disclosure.

41. The Law Council also supports prescribing the ACCC and the Australian Charities and Not-for-profits Commission as additional bodies able to receive disclosures under the corporate regime.

[15] The Law Council of Australia, *Public sector whistleblowing reforms* (Submission to the Attorney-General's Department, 8 October 2025) 12.

Question 14

Are there any other professional services that a whistleblower might seek to make a disclosure to for the purposes of seeking support (in a similar way that they may need to disclose to legal or medical practitioners)?

42. The Law Council considers that the legislation should not impede whistleblowers from making disclosures to psychologists and medical practitioners. The potential harm suffered through victimisation of whistleblowers is well recognised, and the ability to obtain professional support of this kind should be expressly acknowledged. To this end, we consider that the *Corporations Act 2001* (Cth) should permit disclosures to medical practitioners and psychologists in the same way as the *Taxation Administration Act 1953* (Cth).

Question 15

Are the requirements for public interest and emergency disclosures appropriate? If not, why not?

43. The Law Council considers the public interest and emergency disclosures provisions to be appropriate.

Matters that can be disclosed

Question 17

Is there sufficient clarity around the types of disclosures that would qualify for protection under the two regimes?

44. The Law Council considers that greater clarity would assist whistleblowers to understand which disclosures qualify for protection. In particular, the two regimes would benefit from further guidance on what is intended to be covered, in addition to misconduct, by the phrase "improper state of affairs or circumstances". However, consistent with our comments elsewhere, we consider that any change should be considered carefully, balancing cost to business of continued tweaking against any benefits of further perfecting regulatory settings.

Compensation and other private remedies

Question 18

What, if any, improvements can be made to the processes or laws relating to compensation and remedy for detriment suffered by whistleblowers?

45. The Law Council considers that the existing compensation and remedy framework is broadly appropriate.

Penalties

Question 19

Do the civil and criminal penalties outlined in this section act as a sufficient deterrent against:

- **the victimisation of whistleblowers? Why or why not?**
- **breaching the anonymity of a whistleblower? Why or why not?**
- **failing to have a compliant whistleblowing policy? Why or why not?**
- **engaging in tax or corporate misconduct or wrongdoing more generally? Why or why not?**

46. The Law Council considers that the existing civil and criminal penalties are substantial and capable of operating as a deterrent. In practice, however, deterrence is better achieved through enforcement of those penalties as well as visible consequences for breaches of whistleblower protections, failures to maintain compliant policies, and tax or corporate misconduct more generally. We note that to date, ASIC has only undertaken one enforcement action for contraventions of corporate whistleblower provisions.[16]

Question 20

Do you consider that there are any other actions or omissions which should attract a penalty which are currently not covered under the regimes?

47. The Law Council does not support the imposition of further penalties in this regard.

[16] See for example, *Australian Securities and Investments Commission v TerraCom Ltd (No 3)* [2025] FCA 1017; Australian Securities and Investments Commission, 'TerraCom to pay $7.5 million after ASIC whistleblower action' (Media Release, 27 August 2025.

Financial incentives for whistleblowers

Question 21

Do you consider that there are insufficient incentives for whistleblowers to come forward with disclosable information? Why or why not?

48. The Law Council does not consider that insufficient financial incentives are the primary barrier to disclosures. Rather, potential whistleblowers may be deterred by concerns about enforcement, personal and professional risk, the cost of obtaining advice, and the practical difficulty of enforcing protections.

49. For that reason, the Law Council does not support the introduction of a United States-style bounty or rewards scheme. Such a scheme may distort behaviour, create a perception that whistleblowers are motivated by private financial gain rather than the public interest, and sit uneasily with traditional Australian legal policy settings.

50. Serious and careful assessment of the potential costs and unintended consequences is required with respect to any such scheme.[17] While strong whistleblower protections are essential, there is a risk that victimisation claims may be used by some individuals strategically in employment disputes (as discussed below), imposing significant costs on organisations even where claims lack merit. In the Law Council's view, any expansion of the regime should be justified by clear regulatory benefits and balanced against the costs of unmeritorious claims, particularly given the breadth of existing protections.

51. The Law Council considers that fostering a safe speak-up culture, strengthening confidence in enforcement, and improving access to independent advice and support are more likely to encourage disclosures than financial incentives. This would be further supported through access to advice and support provided by, for example, an independent whistleblowing authority. We consider that this would have a stronger effect on legitimate reporting of wrongdoing and the deterrence of unmeritorious claims.

Question 22

Do you consider that a rewards scheme would lead to a larger volume of low-value disclosures? Why or why not?

52. For the reasons outlined above in Question 21, the Law Council does not support a rewards scheme. Such a scheme may encourage unmeritorious or low-value disclosures, divert regulator resources, and undermine the perception of whistleblowing as a public interest activity.

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[17] Law Council of Australia, *Whistleblower Protections in the corporate, public and not-for profit sectors* (Submission to Parliamentary Joint Committee on Corporations and Financial Services, 9 February 2017) 21.

Assistance and guidance to whistleblowers

Question 23

Is the existing guidance, information and support available to whistleblowers and potential whistleblowers sufficient?

53. The Law Council considers that existing guidance, information and support resources are broadly useful and should remain a focus for government and regulators. Continued investment in clear, accessible guidance is likely to be more effective than further prescriptive amendments to the legislation.

54. In particular, ASIC's information sheets and other practical guidance for whistleblowers are useful resources. As a general principle, concise fact sheets and plain-language materials are likely to be more effective for potential whistleblowers than lengthy guidance documents.

Question 24

Would other additional forms of assistance be effective? If so, what specific support mechanisms would assist whistleblowers and potential whistleblowers?

55. The Law Council supports further consideration of additional assistance mechanisms for whistleblowers. These could include empowering regulators to bring, intervene in or support compensation and civil penalty proceedings where a matter has broader public significance.

Whistleblower protection authority

56. The Law Council has also previously expressed strong support for a standalone whistleblower protection authority.[18]

57. Most recently, in response to the Attorney-General's Department's consultation on proposed public sector whistleblower reforms, the Law Council submitted that, in the longer term, it would be preferable, to establish an independent whistleblower protection authority with comprehensive jurisdiction in relation to all federal whistleblowing laws, including:

- the public sector framework under the *Public Interest Disclosure Act 2013* (Cth); and
- private sector frameworks under, for example, the *Corporations Act 2001* (Cth), *Taxation Administration Act 1953* (Cth), *Fair Work (Registered Organisations) Act 2009* (Cth) and *Aged Care Act 2024* (Cth).

[18] See Law Council of Australia, *Public sector whistleblower reforms* (Submission to the Integrity and Criminal Law Division of the Attorney-General's Department, 8 October 2025) 2; Law Council of Australia, *Public sector whistleblowing reforms: Stage 2* (Submission to the Attorney-General's Department, 22 December 2023) 6.

58. A dedicated whistleblower protection authority could also provide assistance such as legal information, referrals, psychological support pathways, case management, regulator liaison, confidentiality advice and data reporting. It could also provide a clear point of entry to assist in eliminating confusion amongst prospective whistleblowers about who may receive disclosures and which protection regime may apply.

Whistleblowing policies

Question 25

Do you consider that whistleblower policies are helpful in:

- **encouraging entities to have transparent internal whistleblower procedures in place?**
- **discouraging wrongdoing?**
- **educating whistleblowers about their rights and obligations?**
- **encouraging people to make disclosures about wrongdoing?**

59. The Law Council considers that whistleblower policies are an important part of the current regime. In the Law Council's experience, Australian businesses operating through public companies or large proprietary companies have generally been diligent in adopting policies required by the 2019 Amendments.

60. The focus should remain on supporting compliance with, and the policy objectives of, the existing regime rather than introducing more prescriptive legislative requirements. Internal policies and procedures should be accessible and user-friendly and should be accompanied by education and leadership that promotes a safe 'speak-up' culture.

Further comments

Tactical use of whistleblower claims in employment disputes

61. While recognising the important purpose of whistleblowing legislation in protecting genuine whistleblowers, practitioner feedback to the Law Council indicates that at times, whistleblowing allegations may be used tactically in employment disputes to increase pressure on regulated entities and seek financial compensation, regardless of whether the employer has acted unlawfully.[19] Practitioners have observed that this may occur through combining adverse action claims under the *Fair Work Act 2009* (Cth) with victimisation claims under the *Corporations Act 2001* (Cth), and applying pressure tactics such as making generalised claims, pursuing broad discovery over lengthy periods, and naming senior executives of regulated entities in pleadings, or seeking to join them to proceedings. Such tactics may increase reputational pressure and the costs of defending allegations, thereby encouraging settlement.[20]

62. Where a whistleblowing complaint genuinely addresses a serious compliance failure, the fact that it is raised in the context of an employment dispute does not make the complaint any less important or diminish the importance of its being brought forward. However, unmeritorious complaints advanced tactically should not be encouraged by the regulatory settings.

63. The 2019 Amendments sought to address these risks by excluding solely personal work-related grievances from the definition of protected disclosure and by limiting immunity from costs where the complainant acts unreasonably. However, the broad immunity from costs creates an asymmetric litigation landscape and, in the experience of practitioners, the assumption of immunity from costs is rarely displaced, even where the respondent is wholly successful. In practice the regime may already provide significant protection for tactical complaints, even where they are entirely unmeritorious.

64. The 2019 Amendments do not address the harm that an unmeritorious whistleblowing claim can have on other employees who become tangentially involved in the claim, including those who are named in unmeritorious complaints. Such individuals have no real recourse for the personal and career damage that such accusations can inflict, even if the complaint is ultimately found to have been without merit.

65. The Law Council does not suggest weakening strong protections for genuine whistleblowers or tipping the balance in favour of organisations in a way that would discourage insiders from bringing genuine wrongdoing to light. Rather, the Law

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[19] See for example, David Marin-Guzman, 'AI adding to surge of meritless dismissal claims' (online, Australian Financial Review, 24 October 2025); David Marin-Guzman and Sally Patten, 'Discontent, AI, paid agents: Why everyone is suing their boss' (online, Australian Financial Review, 7 November 2025). Note the President of the Fair Work Commission has noted the growing phenomenon of claims before the Commission that are "neither meritorious nor serious" and confirmed that about 75% of cases that go to the Fair Work Commission result in the employer settling in order to minimise the significant costs of and risks associated with these claims.

[20] See for example, Justice Hatcher, 'Exposure draft of the Commission's Guidance Note: Use of Generative Artificial Intelligence in Commission cases—opportunity to comment' (President's Statement, Fair Work Commission, 24 March 2026) 1-3.

Council is concerned to ensure that the legislation maintains an appropriate balance between the public benefits of whistleblowing and the public cost of businesses devoting scarce resources to regulatory compliance, and in some cases settling unmeritorious claims, rather than growing their businesses.

In-house legal practitioners

66. A further point to highlight is the position of in-house legal practitioners within a whistleblowing regime, particularly in consideration of an extension of the scheme to partnerships. While in-house legal practitioners will ordinarily fall within the existing categories of an eligible whistleblower as employees and, in some cases, officers, their position raises distinct issues which may warrant express consideration in legislation, regulatory guidance and corporate whistleblower policies. The Law Council considers that ambiguity regarding the interaction between whistleblower protections and other legal obligations may reduce confidence in the operation of the regime and create uncertainty for those required to navigate multiple regulatory and professional responsibilities.

67. Unlike other employees, an in-house solicitor owes professional obligations concerning independence, confidentiality, legal professional privilege, conflicts and the administration of justice, while also advising the corporation and, in some cases, holding corporate office. An in-house practitioner may therefore be required simultaneously to assess professional obligations, discharge statutory and fiduciary responsibilities, and determine whether the circumstances warrant a protected disclosure or escalation of concerns within the organisation, including to the board.

68. The decision in *ASIC v Bekier* illustrates that the responsibilities of a General Counsel, Company Secretary and Chief Legal and Risk Officer are not readily divisible, and that the duty of care and diligence applies across all responsibilities held within the corporation.[21] Although the case did not concern the corporate whistleblower provisions, it demonstrates that reporting suspected misconduct may, in some circumstances, be both a protected disclosure and part of the practitioner's existing professional, governance or statutory responsibilities. This reinforces the broader theme of this submission that the regime would benefit from greater clarity regarding the interaction between whistleblower protections, reporting obligations, and internal governance processes, particularly in relation to escalation of material risks to the board and other governing bodies.

[21] *Australian Securities and Investments Commission v Bekier (Liability Judgement)* [2026] FCA 196.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

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:

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

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.