



## Protecting and Rewarding Whistleblowers

August 2019

Recent action by the Australian Federal Police against journalists to gather evidence against the whistleblowers who provided them with information has called into question the adequacy of our whistleblower laws. It is undesirable to allow public servants to leak to journalists any information of the public servant's choosing. Public servants might leak information out of their own political or personal motivations. However, there needs to be the ability of whistleblowers to expose wrong-doing within government, business or other organisations where it is in the public interest to do so and where the wrong-doing has not been appropriately addressed internally.

While there have been significant improvements to whistleblower laws in Australia in recent years, they are still inadequate. Brian Martin, the vice-president of Whistleblowers Australia, wrote on 15 July 2019 in the media that he had met with hundreds of whistleblowers:

*They have gone to bosses, upper management, internal grievance procedures, ombudsmen, auditors-general, industry watchdogs, anti-corruption agencies and politicians, and all too often not received sufficient help. Some of these bodies do their best, but they are underfunded and hamstrung by formal procedures.*

### Why care about Whistleblower protection?

Whistleblowers are often a vital source of information to law enforcement agencies. They reveal harmful and criminal activities that might be taking place inside businesses, unions, community organisations and governments. If not for whistleblowers, many of these dangerous and criminal activities would go undetected.

### Whistleblowers can save lives

Two former Takata employees, Mark Lillie and another man who chose to remain anonymous, provided extensive assistance to the US authorities in its criminal case against Takata. Takata was the maker of defective airbags that exploded and claimed the lives of 22 people. The case set off a worldwide recall of nearly 100 million airbag inflators. In January 2017, Takata pled guilty to wire fraud and agreed to pay \$1 billion in criminal penalties stemming from the company's fraudulent conduct concerning sales of defective airbag inflators. The criminal action also resulted in three high-level Takata executives pleading guilty to wire fraud and conspiracy charges.

Whistleblowers are often vulnerable to reprisals. Research has shown that even honest people often shun whistleblowers in their organisations. As a result, many whistleblowers suffer a significant psychological toll as a result of speaking up. Thus, whistleblowers need to be supported and encouraged.

### Position of the Uniting Church in Australia, Synod of Victoria and Tasmania

The 2014 Synod meeting resolved to call on the Commonwealth Government to:

*To introduce legislation to protect and reward private sector whistleblowers who expose fraud and corruption against Australian governments, similar to laws that already exist in the UK and US.*

### What still needs to be done to support Whistleblowers?

A key gap in the support whistleblowers in Australia has been the failure of the Commonwealth Government to set up a Whistleblower Protection Authority. Such an Authority would act as a one-stop-shop for all whistleblowers. It would refer their information to the appropriate authorities to be dealt with, investigate reprisals against whistleblowers and manage any rewards to be provided to the whistleblower. The Authority would make it much easier for whistleblowers to come forward and reduce the risk of reprisals for doing so. In cases of non-criminal reprisals against whistleblowers, the Authority would pursue these matters before workplace tribunals and courts on behalf of the whistleblower. It would provide advice and support to whistleblowers.

The Commonwealth Government has indicated that it will consider the establishment of a Whistleblower Protection Authority. It is helpful if members of the community expressed support for the establishment of such an Authority.

### **Should Whistleblowers be financially rewarded?**

Governments such as those of the USA, Canada and Korea recognise that governments benefit when whistleblowers expose crime and corruption that allows the government to recover the stolen funds. They provide financial rewards to whistleblowers in recognition that most whistleblowers will never work again in their industry. Whistleblowers will often incur substantial legal fees in cases they may end up losing and may face harassment.

The US *False Claims Act* is one of the US laws that rewards whistleblowers for exposing corporate wrong-doing. Due to tips from whistleblowers under the *False Claims Act*, the US Government was able to recover \$67 billion stolen from it between 1986 and 2015.

In Canada, their whistleblower scheme related to cases of tax evasion was set up in 2014. It has so far recovered \$19 million in taxes owed and penalties from those involved in tax evasion and paid out \$1 million to whistleblowers.

The Commonwealth Government has agreed to consider the merits of a reward scheme for whistleblowers. It is helpful if members of the Australian community express support for such a scheme.

### **What you can do**

Write polite and respectful letters to:

The Hon Christian Porter MP  
Attorney General  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

The Hon. Scott Morrison MP  
Prime Minister  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

Salutation: Dear Minister

Salutation: Dear Prime Minister

Points to make in your letter:

- Welcome that the Commonwealth Government recently put in place laws to protect and compensate whistleblowers who come forward from within businesses and unions.
- Ask that the Commonwealth Government amend the whistleblower laws covering public servants who become whistleblowers to grant them access to compensation where the government agencies they are part of fail to support and protect them from reprisals.
- Ask the Commonwealth Government establish a Whistleblower Protection Authority to provide advice and support to whistleblowers. The Authority should refer the whistleblowers to the appropriate agency to deal with their information. It should provide legal support to whistleblowers to pursue cases of compensation. It should also be able to investigate cases of alleged reprisals against whistleblowers.
- Ask that the Commonwealth Government introduce a system to provide rewards to whistleblowers. The experience of other countries is that providing rewards encourages whistleblowers to come forward. Rewards mean whistleblowers know they will be compensated for the damage they will suffer to their careers by becoming a whistleblower.
- Ask that the law covering whistleblowers in the public service create a reality that allows them to go to the media in cases where the wrong-doing they are exposing has not been dealt with in a reasonable timeframe. Ask that the government amend the law to protect journalists from retribution for publishing the information in such cases.