



## WHISTLEBLOWERS NEED SUPPORT, NOT HARASSMENT

### MEAA Call for Urgent Action to Help Whistleblowers

MEAA wants the cold war on whistleblowers, journalists and the public's right to know to end.

We have been disturbed by Government and its agencies hunting whistleblowers and ignoring the misconduct and untruths that honest people want to bring to public attention. Our members are tired of political inconvenience and embarrassment being the real drivers behind tying whistleblowers in knots.

Whistleblowing should not be about payback and future unemployment; it should be about the free flow of information and acknowledging a public good. Australia is a long way from such ideals.

That is why MEAA is calling for:

1. **Consolidated Public and Private Sector Whistleblower Legislation**<sup>1</sup> and eliminate the private sector's sub-standard regulation of whistleblowing<sup>2</sup>;
2. An **independent statutory office** or **Public Interest Disclosure Panel**<sup>3</sup> with broad-based membership to investigate whistleblower claims. Whistleblowers need an advocate and a body they can trust;
3. The **right to disclose information to the media** in cases where the public interest is threatened;
4. **Immunity from suit** or **direct assistance for legal costs** in defending actions where the disclosure has been made in good faith and the discloser and journalist believe the information to be true;
5. **Strengthen penalties** – including imprisonment – for impliedly or actually taking or threatening reprisal against a person because they have made or propose to make a disclosure; and
6. A **protected fund** to be created where a proportion of funds from successful prosecutions and settlements are preserved to support whistleblowers whose future employment is unviable due to their disclosures.<sup>4</sup>

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<sup>1</sup> The UK's Public Interest Disclosure Act protects most workers in the public, private and voluntary sectors. The Act protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they blow the whistle on wrongdoing.

<sup>2</sup> As MEAA has previously highlighted and as established by recent Senate inquiries, Part 9.4AAA of the Corporations Act 2001 is inadequate for whistleblowers. The wrong-doing covered is unclear, anonymous complaints are not protected, there are no requirements for internal company procedures, there is no oversight agency or guidance on compensation.

<sup>3</sup> As proposed by Liberty Victoria.

<sup>4</sup> The US, on the other hand, has an incentive scheme offering "financial compensation" to whistleblowers who uncover fraudulent acts, which can be quite lucrative if the law suit is successful and when large sums are involved (see [here](#)). As recently as 2014, one whistleblower received a \$US30 million reward. Known as the Dodd Frank Act (2011), rewards of between 10%-30% of a US Securities Exchange Commission enforcement settlement is given to a person if voluntarily providing information on corporate and securities fraud. Please note that MEAA does not support bounties.

## **MEAA's Proposal**

### **Disclosures to the Media**

MEAA believe that disclosures to the media should be protected where:

- i. the employee honestly believes on reasonable grounds that it is in the public interest that the material be disclosed;
- ii. the employee honestly believes on reasonable grounds that the material is substantially true;
- iii. the employee honestly believes on reasonable grounds either that:
  - a. to make an internal disclosure is likely to be futile or result in victimisation of the whistleblower; or
  - b. the disclosure is of such a serious nature that it should be immediately brought to public attention

### **Comment on Disclosures to the Media**

*A J Brown* is Professor of Public Policy and Law and program leader, Public Integrity & Anti-Corruption in the Centre for Governance and Public Policy, Griffith University. He is also a member of the board of directors of Transparency International Australia.

Professor Brown is quoted in the 2016 Senate Economic References Committee's Issues Paper on Corporate Whistleblowing as saying:

"There were circumstances, Professor Brown argued, in which it was widely accepted that this approach was reasonable; for example, when internal disclosure or disclosure to the regulator was not acted on, or where it was impossible or unreasonable to make an internal disclosure or disclosure to ASIC".<sup>5</sup>

The Issues Paper also noted ASIC's prior parliamentary evidence where it advised:

"There may be circumstances where a person suffers reprisal following their making external disclosures to third parties, such as the media and it may be useful to consider extending the whistleblower protections in such a situation".<sup>6</sup>

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<sup>5</sup> Page 46 of Issues Paper

<sup>6</sup> *Ibid*, page 46