

**Response to PwC – Whistleblower  
protections:** Exposure Drafts of the  
Treasury Laws Amendment (Measures for  
Consultation) Bill 2023 (Cth) and *Treasury  
Laws Amendment (Measures for  
Consultation) Regulations 2023 (Cth)*

Submission to The Treasury

**4 October 2023**



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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal people of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into The Treasury's consultation on the Exposure Draft of the Treasury Laws Amendment (Measures for Consultation) Bill 2023 (Cth) ('Draft Bill') and the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023* (Cth) ('Draft Regulations').
2. The ALA notes the following intention behind the amendments proposed by the above Draft Bill and Draft Regulations:<sup>2</sup>

The draft bill amendments extend existing whistleblower protections to a new range of disclosures related to potential misconduct by tax practitioners, include disclosures to the Tax Practitioners Board (TPB). The draft regulations prescribe the TPB and Australian Charities and Not-for-profits Commission (ACNC) as eligible recipients, improving information sharing within the regulator community.

3. With consideration of the above, the ALA broadly welcomes the Federal Government's commitment to extending whistleblower protections for those who make disclosures to the TPB and other entities regarding misconduct by tax practitioners.
4. The ALA strongly believes that the protection of whistleblowers is essential for promoting integrity, accountability and trust in all institutions and sectors. Whistleblowers – whether they are in the private sector, public sector or not-for-profit sector – perform an important function for the community, ensuring that individuals can truly be held to account if they are not operating within the confines of the law.
5. Despite that, the victimisation of whistleblowers – including but not limited to the termination of their employment, reputational damage and even prosecution – too often follows the disclosures those whistleblowers have made.
6. The ALA's submission will discuss the patchwork of whistleblower protections frameworks currently in place and the need for a Whistleblower Protection Authority or Commissioner.

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<sup>2</sup> The Treasury, Australian Government, *Response to PwC – whistleblower protections* (Web Page, 2023) <[www.treasury.gov.au/consultation/c2023-444750](http://www.treasury.gov.au/consultation/c2023-444750)>.

## A patchwork of whistleblower protections frameworks

7. The ALA notes that the reforms proposed by the Draft Bill and the Draft Regulations operate within a patchwork of whistleblower protections frameworks which apply to different sectors, industries and programs – including but not limited to the whistleblower protections frameworks in the *Public Interest Disclosure Act 2013* (Cth), the *Corporations Act 2001* (Cth) and the *National Disability Insurance Scheme Act 2013* (Cth).
8. The ALA also notes ongoing consultation by the Department of Health and Aged Care on a new Aged Care Act, which would include its own whistleblower protections framework.<sup>3</sup>
9. One result of this patchwork of whistleblower frameworks is that some protections are available for whistleblowers in one industry, sector or program that are not available to whistleblowers in other industries, sectors or programs. The ALA submits that:
  - a. it is unfair that some whistleblowers should benefit from some strong and necessary protections (for example, being able to make disclosures to trade or industry unions, as this Draft Bill intends)<sup>4</sup> that are not available to others simply and arbitrarily because the whistleblower protections framework from a different industry, sector or program applies to them; and
  - b. these inconsistencies make whistleblowers more vulnerable to not being protected fully or even at all for the disclosures they make, which increases the likelihood of those whistleblowers facing reprisals.
10. **The ALA thus recommends that The Treasury urges the Federal Government to harmonise whistleblower protections between all legislative schemes and between public, private and not-for-profit sectors into one legislated whistleblower protections framework.**

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<sup>3</sup> Department of Health and Aged Care, Australian Government, *A new aged care Act* (Web Page, 28 September 2023) <[www.health.gov.au/our-work/aged-care-reforms/aged-care-legislative-reform/a-new-aged-care-act](http://www.health.gov.au/our-work/aged-care-reforms/aged-care-legislative-reform/a-new-aged-care-act)>.

<sup>4</sup> Explanatory Memorandum, Treasury Laws Amendment (Measures for Consultation) Bill 2023 (Cth) 5.

## Establishing a Whistleblower Protection Authority or Commissioner

11. The ALA believes that whistleblowers in all sectors, industries and programs would benefit from having an independent, objective source to whom whistleblowers can turn for support, guidance and protection in relation to their disclosures.
12. **The ALA, therefore, supports the establishment of a Whistleblower Protection Authority or a Whistleblower Protection Commissioner.** Whistleblowers making disclosures about misconduct by tax practitioners could safely make disclosures to and receive support during the disclosure process from that Whistleblower Protection Authority or Commissioner, as could all whistleblowers.
13. The merits of establishing a Whistleblower Protection Authority have been discussed at parliamentary inquiries since the 1990s.<sup>5</sup> That includes in 2017, when the Parliamentary Joint Committee on Corporations and Financial Services made several recommendations regarding the establishment of a Whistleblower Protection Authority to cover both public and non-public arenas.<sup>6</sup> More recently, the proposal for a Whistleblower Protection Commissioner has been advanced.<sup>7</sup>
14. The Federal Government has committed to “consult widely on whether there is a need to establish a Whistleblower Protection Authority or Commissioner”.<sup>8</sup> **The ALA welcomes this commitment from the Federal Government and contends this must be treated as a priority matter.**

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<sup>5</sup> Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections* (Final Report, 14 September 2017) 141.

<sup>6</sup> *Ibid* 158–163.

<sup>7</sup> Australian Federal Integrity Commission Bill 2021 (Cth) div 2, cl 17.

<sup>8</sup> Mark Dreyfus KC MP, Attorney-General, ‘Public Interest Disclosure Reform’ (Media Release, 30 November 2022) <<https://ministers.ag.gov.au/media-centre/public-interest-disclosure-reform-30-11-2022>>.

## Conclusion

15. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input on expanding protections for whistleblowers through amendments proposed in the Exposures Drafts of the Treasury Laws Amendment (Measures for Consultation) Bill 2023 (Cth) and the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023* (Cth).
16. The ALA is available to provide further assistance to the Treasury on the issues raised in this submission.



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