Whistleblower Protections in Sport: The Missing Element in Australia's Sports Integrity Framework?

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Abstract

Whistleblowers play a central role in exposing organisational wrongdoing. However, many potential whistleblowers stay silent for fear of the risks involved in speaking up. To encourage whistleblowing, governments and authorities have enacted whistleblower protection laws and created whistleblower support and incentive schemes. The potential utility of these mechanisms in sporting contexts has been insufficiently considered by researchers and policymakers. Given increased national and international attention on integrity in sport, including in Australia following the establishment of Sport Integrity Australia in 2020, consideration of the application and limitations of whistleblower protections in sport is timely. In this article, I identify critical gaps in Australia's whistleblowing framework as it applies to sport and offer recommendations for reform to ensure sport-related whistleblowers can speak up safely and lawfully. The sporting context also offers a valuable case study to consider wider limitations of Australian whistleblowing law amid an active federal law reform agenda. Whistleblowers make a meaningful contribution to integrity in sport and elsewhere, and it is vital they are empowered to expose wrongdoing and protected when they do.

Please cite this article as:

Kieran Pender, 'Whistleblower Protections in Sport: The Missing Element in Australia's Sports Integrity Framework?' (2025) 47 *Sydney Law Review* 20339: 1–36 <https://doi.org/10.30722/slr.20339>.

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All views expressed are the author's own. With thanks to Associate Professor Catherine Ordway and Hayden Opie AM, and the *Sydney Law Review* editors and reviewers, for their helpful comments. Thanks to Hannah Price for her research assistance.

I Introduction

> Sport won't be clean. Never.
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> — Anti-doping whistleblower Grigory Rodchenkov[1]

> It is notable that none of the historic cases of doping have been identified through testing programs — instead whistle-blowers have brought major cases of systemic and deliberate doping to the attention of anti-doping authorities who would otherwise have remained unaware. This situation highlights the complexity of the doping environment, and the need for fresh and innovative approaches.
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> — Australian Sports Anti-Doping Authority[2]

Whatever the organisational context, whistleblowers play a critical role in exposing wrongdoing.[3] However, the decision to speak up often comes with significant risk, including potential criminal liability,[4] civil litigation,[5] or retaliation at work.[6] Prior Australian research has shown that as many as 8 in 10 whistleblowers face some form of detriment for blowing the whistle.[7] In response, recognising the vital public interest in whistleblowing, legislatures in Australia and around the world have responded with laws to protect and empower whistleblowers. Queensland enacted Australia's first dedicated whistleblower protection provisions in 1990[8] and such provisions have

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1 Grigory Rodchenkov quoted in Murad Ahmed, 'Whistleblower Grigory Rodchenkov: "Sport Won't Be Clean. Never"', *Financial Times* (online, 31 July 2020) <https://www.ft.com/content/0630521e-37d3-4a44-a7ea-b2dc82f8bad9>.

2 The Australian Sports Anti-Doping Authority ('ASADA', as it then was) quoted in *Report of the Review of Australia's Sports Integrity Arrangements* (2018) 52 ('*Wood Review Report*').

3 See generally David Lewis, AJ Brown and Richard Moberly, 'Whistleblowing, its Importance and the state of the research' in AJ Brown, David Lewis, Richard Moberly and Wim Vandekerckhove (eds), *International Handbook on Whistleblowing Research* (Edward Elgar, 2014) 1, 1–34.

4 Sarah Basford Canales, 'David McBride: Former Army Lawyer Sentenced to Five Years for Stealing and Leaking Afghanistan War Documents', *The Guardian* (online, 14 May 2024) <https://www.theguardian.com/australia-news/article/2024/may/14/david-mcbride-former-army-lawyer-sentenced-to-five-years-for-stealing-and-leaking-afghanistan-war-documents> ('David McBride, 14 May 2024'); Sarah Basford Canales, 'ATO Whistleblower Richard Boyle to Face Trial after High Court Refuses Attempt to Appeal', *The Guardian* (online, 7 November 2024) <https://www.theguardian.com/australia-news/2024/nov/07/ato-whistleblower-richard-boyle-to-face-trial-after-high-court-refuses-appeal-ntwnfb>.

5 See, eg, Harriet Alexander, '"I've Nothing to Lose": Dying Whistleblower Sued by ClubsNSW', *The Sydney Morning Herald* (online, 22 September 2022) <https://www.smh.com.au/national/nsw/i-ve-nothing-to-lose-dying-whistleblower-sued-by-clubsnsw-20220921-p5bjsr.html>.

6 Note that throughout the article, 'reprisal', 'detriment' and 'retaliation' are used interchangeably to describe the mistreatment of a whistleblower as a consequence of their whistleblowing.

7 See, eg, an empirical study that found '[a]round four in every five whistleblowers (81.6%) experienced at least one type of these informal repercussions, compared with one in two (48.8%) who experienced at least one type of formal repercussion': AJ Brown, Sandra Lawrence, Jane Olsen, Louise Rosemann, Kath Hall, Eva Tsahuridu, Chris Wheeler, Michael Macaulay, Rodney Smith and Paula Brough, Clean as a Whistle: A Five Step Guide to Better Whistleblowing Policy and Practice in Business and Government (Whistling While They Work 2 Key Findings and Actions, Griffith University, August 2019) 24.

8 Whistleblowers (Interim Protection) and Miscellaneous Amendments Bill 1990 (Qld). See generally Zac Dadic, 'Whistleblower Protection and Disclosures to Members of the Queensland Legislative Assembly' (2009) 24(2) *Australasian Parliamentary Review* 97.

since proliferated across the Australian legislative landscape. The question of whether these laws are working has been subject to considerable public, policy and political scrutiny.[9] In recent years, whistleblowing reforms have been enacted in New South Wales ('NSW') and federally,[10] while reform is ongoing in Queensland and to the primary federal public and private sector whistleblowing laws.

Sport offers a useful case study for analysing the shortcomings of Australian whistleblowing law, in order to inform those ongoing law reform processes. Organised sports worldwide face manifold integrity challenges. These challenges are acute and receive considerable attention at the highest levels: from doping in professional cycling to match-fixing in international cricket to safeguarding shortcomings in elite gymnastics. However, the integrity risks faced by sport are not isolated to the world stage. At all levels, from fifth-tier regional football competitions to the Olympics, integrity risks exist. In response, and prompted by numerous high-profile scandals, regulatory authorities in Australia and internationally have pursued an active sporting integrity agenda in recent years. Given the cultural, economic and political salience of sport in Australia, integrity in sport — and the ability of whistleblowers to speak up — is an important issue in its own right. Without robust integrity measures, public confidence in the legitimacy of sport and sporting outcomes is undermined. But given some of the distinct structural and legal aspects of sport in Australia, and its breadth (from volunteer-run amateur competition to multi-billion-dollar commercial leagues), whistleblowing in sport is also an insightful field against which to assess whistleblower protections in Australia more generally.

In 2020, the Australian Government established Sport Integrity Australia ('SIA'), following the Review into Australia's Sports Integrity Arrangements ('Wood Review').[11] The *Wood Review Report* had outlined considerable integrity challenges faced by Australian sport, including in relation to match-fixing and anti-doping, and highlighted the risks of inaction. The Report noted that '[f]or many years the integrity of sport has been under threat internationally, in particular through doping scandals and competition manipulation' and 'Australia has not been immune from such events'.[12] The Government agreed with most of the Wood Review's recommendations,[13] and SIA was established to ensure a robust integrity framework for Australian sports.

Wrongdoing in sport, as in any field, can be detected in various ways. The anti-doping regime overseen locally by SIA and globally by the World Anti-Doping

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9 See generally Alan Wilson, *Review of the Public Interest Disclosure Act 2010* (Report, Queensland Department of Justice and Attorney-General (Qld), June 2023); 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) ('*Reforms Consultation Paper*'); The Australia Institute, 'Voters Overwhelmingly Support Stronger Whistleblower Protections – New Poll' (Media Release, 24 April 2025) <https://australiainstitute.org.au/post/voters-overwhelmingly-support-stronger-whistleblower-protections-new-poll>.

10 *Public Interest Disclosures Act 2022* (NSW); Public Interest Disclosure Amendment (Review) Bill 2022 (Cth).

11 *Sport Integrity Australia Act 2020* (Cth).

12 *Wood Review Report* (n 2) 26.

13 Department of Health (Cth), *Safeguarding the Integrity of Sport – The Government Response to the Wood Review* (February 2019).

Agency ('WADA') has a comprehensive testing regime, both in and out of competition. Match-fixing can often be detected through analysis of money flows and betting patterns. However, in many cases, detection of wrongdoing requires an insider to speak out. Wrongdoing typically takes place covertly; often, illicit behaviour can only be identified and held to account if someone privy to the wrongdoing blows the whistle. It is for this reason that, across the public and private sectors, whistleblowers are widely recognised as the primary mechanism for organisational or regulatory identification of wrongdoing.[14]

However, in sporting contexts and elsewhere, organisational cultures are often hostile to those who speak up. For example, a study of professional football players in the United Kingdom indicated an intra-club culture that forbids reporting wrongdoing (especially bullying).[15] The study indicated that 'snitching' to internal reporting mechanisms was likely to result in ostracism and exclusion by fellow team members.[16] Since 2018, the *Code of Ethics* of the International Federation of Association Football ('FIFA') has prohibited public statements of a 'defamatory nature'[17] — a development that may further silence potential whistleblowers, who fear retaliation should their allegations reach the public domain.[18] Indeed whistleblowers often face retaliation for speaking up, which can have a silencing effect.[19] As a result, wrongdoing stays hidden because prospective whistleblowers are worried about the risks of speaking up.

Australia has not been alone in pursuing dedicated laws to address these risks and encourage whistleblowing.[20] Almost a third of countries globally now have standalone whistleblower protection laws;[21] some countries also have independent whistleblower protection authorities, or other support schemes, to assist whistleblowers.[22] In sport specifically, international organisations such as WADA have also introduced provisions holding those who discourage or retaliate against whistleblowers to the same standard of accountability as wrongdoers themselves,

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14 See generally National Whistleblower Center, *Proven Effectiveness of Whistleblowers* (Factsheet, 2010) <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf> and sourced cited therein. See also 'Why Whistleblowing Works', *National Whistleblower Center* (Web Page) <https://www.whistleblowers.org/why-whistleblowing-works/>.

15 James A Newman, Victoria E Warburton and Kate Russell, 'Whistleblowing of Bullying in Professional Football: To Report or Not to Report?' (2022) 61 *Psychology of Sport and Exercise* 102177:1–10, 6.

16 Ibid.

17 Fédération Internationale de Football Association ('FIFA'), *Code of Ethics* (2023) cl 23.2.

18 Associated Press, 'FIFA Defends Overhaul of Ethics Code That Protects "Reputations of Others"', *ESPN* (online, 15 August 2018) <https://www.espn.com.au/football/story/_/id/37559968/fifa-defends-overhaul-ethics-code-protects-reputations-others>.

19 See generally Kieran Pender, *The Cost of Courage: Fixing Australia's Whistleblower Protections* (Human Rights Law Centre, August 2023) ('*Cost of Courage*').

20 See generally International Bar Association and Government Accountability Project, *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation* (2021).

21 'Whistleblower Laws Around the World', *National Whistleblower Center* (Web Page), <https://www.whistleblowers.org/whistleblower-laws-around-the-world/>.

22 See generally CEELI Institute, *Beyond Paper Rights: Implementing Whistleblower Protections in Central and Eastern Europe* (November 2023).

while offering amnesties to wrongdoers who disclose code violations.[23] Such changes are signs of a growing global consciousness of whistleblowing's important role in safeguarding sport integrity, and the protections and incentives needed to facilitate it.

The field of sport integrity, in Australia and abroad, has received considerable academic attention, including through a legal lens.[24] Similarly, there has been substantial academic and policy literature on whistleblower protections and how to better protect and encourage individuals to expose wrongdoing.[25] However, perplexingly, one area where the utility of whistleblowing as an integrity tool has been less considered is sport. While sport-related whistleblowers have often proven central in exposing doping violations, match-fixing and other integrity concerns, there has been little sustained focus in Australia, or elsewhere, about the unique challenges and opportunities faced in seeking to protect and encourage these whistleblowers. The relatively recent literature that does exist has focused on whistleblowers' intentions or experiences in speaking up,[26] rather than analysing the legal framework that does or does not protect them in doing so. In this article, I seek to address that lacuna, asking whether Australia's whistleblower protection framework adequately protects sport-related whistleblowers. The answer, in short, is no — there is much work to be done, with considerable opportunity for such whistleblowers to be better protected.

Whistleblowing in sport in Australia has received renewed attention in recent years. In January 2025, concerns were raised about a sporting body trying to silence a whistleblower who had spoken up about sexual abuse.[27] In April 2025, a manager at AFL club Carlton resigned after a whistleblower sparked an integrity investigation.[28] In 2024, a federal MP used parliamentary privilege to bring forward

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23 World Anti-Doping Agency ('WADA'), *World Anti-Doping Code* (1 January 2021) cls 2.11.1, 10.7.1 ('*WADA Code*').

24 See by way of context Andy Harvey and Mike McNamee, 'Sport Integrity: Ethics, Policy and Practice: An Introduction' (20198) 4(1) *Journal of Global Sport Management* 1, 1–7 and subsequent articles in the (2019) 4(1) special edition on 'Sport Integrity: Ethics, Policy and Practice'. For a discussion of sports integrity and decision-making as a 'de facto legal system', see Ryan M Rodenberg, 'Review Essay: Entering the "Grey Zone" of Sports Jurisprudence' (2022) 44(2) *Sydney Law Review* 329, 330 <https://openjournals.library.sydney.edu.au/SLR/article/view/19529>.

25 See the literature outlined below in Part II(B).

26 See, eg, Kelsey Erickson, Laurie B Patterson and Susan H Backhouse, '"The Process Isn't a Case of Report It and Stop": Athletes' Lived Experience of Whistleblowing on Doping in Sport' (2019) 22(5) *Sport Management Review* 724; Vassilis Barkoukis, Dmitriy Bondarev, Lambros Lazuras, Sabina Shakverdieva, Despoina Ourda, Konstantin Bochaver and Anna Robson, 'Whistleblowing against Doping in Sport: A Cross-National Study on the Effects of Motivation and Sportspersonship Orientations on Whistleblowing Intentions' (2021) 39(10) *Journal of Sports Sciences* 1164.

27 Jessica Halloran and Stephen Rice, '"They're Trying to Silence Me": Pole Vault Sex Abuse Whistleblower Paul Burgess Hits Back', *The Australian* (online, 7 January 2025) <https://www.theaustralian.com.au/sport/theyre-trying-to-silence-me-pole-vault-sex-abuse-whistleblower-paul-burgess-hits-back/news-story/e75c3837f3c14b0a1bb8292b6971b224>; Jessica Halloran and Stephen Rice, 'Athletics Embroiled in Civil War over Whistleblower', *The Australian* (online, 28 January 2025) <https://www.theaustralian.com.au/sport/athletics-embroiled-in-civil-war-over-whistleblower/news-story/dbf756cbf7a12fd819f30e9184ae091a>.

28 Sam McClure, 'Carlton Manager under Investigation after Staff Complaints', *The Age* (online, 16 April 2025) <https://www.theage.com.au/sport/afl/carlton-manager-under-investigation-after-staff-complaints-20250416-p5lscx.html>; Peter Ryan and Scott Spits, 'Carlton Manager Resigns

the concerns of a whistleblower about illicit drug use in AFL being covered up.[29] A year earlier, the AFL Players' Association established a whistleblowing program after research showed athletes did not feel comfortable speaking up, for fear of reprisal.[30] In 2021, a whistleblower's allegations of sexism and misogyny shocked professional swimming.[31] Among the recommendations of the independent review commissioned in response to that controversy was the establishment of a dedicated whistleblowing policy and procedure.[32] Accordingly, a sustained examination of the application of whistleblower protections to sport in Australia is overdue.

And while sport is an atypical context, the challenges faced by sport-related whistleblowers are by no means unique. Sport provides an illuminating case study in which to consider limitations arising under Australian whistleblowing law more broadly. Many of the issues arising in the sporting context are acute examples of more widespread challenges. For example, the limited jurisdictional scope of private sector whistleblowing laws in relation to non-corporate entities, explored in Part III(C)(3), is particularly vexing in the sport context because of the variety of legal forms sporting bodies take, particularly at a grassroots level. But it is a wider problem: the shortcoming has recently caught the Australian Government Treasury's attention following the PwC leaks scandal, in relation to application to partnership legal forms.[33] Questions of who the whistle can be blown to, a vexing issue in sport explored at Part III(C)(2), has also been subject to recent judicial and media attention.[34] Analysing whistleblower protections as they apply to sport can therefore tell us a great deal about the flaws in the framework generally, which affect all Australian whistleblowers. Sport is a helpful analytical prism through which to assess the wider landscape.

I drafted this article before, during and after the Paris Olympics, which I attended in a professional capacity. The proximity of the Olympics felt apt — integrity in sport was a central theme of the Olympics, including in relation to anti-doping in swimming and governance in boxing. The anti-doping scandals currently troubling international swimming, and other sports, demonstrate how fraught these

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after Whistleblower Sparked Investigation', *The Age* (online, 24 April 2025) <https://www.theage.com.au/sport/afl/carlton-manager-resigns-after-whistleblower-sparked-investigation-20250424-p5lu3n.html>.

29 Tiffanie Turnbull, 'Australia Football League Denies It Has a Cocaine Problem after Whistleblower Claims', *BBC* (online, 27 March 2024) <https://www.bbc.com/news/world-australia-68622832>.

30 Sarah Burt, 'AFLPA Set to Launch Whistleblower Service after Staggering Survey Results', *7News* (online, 27 June 2023) <https://7news.com.au/sport/afl/aflpa-set-to-launch-whistleblower-service-after-staggering-survey-results--c-11101999>.

31 SBS and AAP, 'Australian Swimmers Urged to Detail Sexism after Maddie Groves Withdraws from Olympics', *SBS News* (online, 12 June 2021) <https://www.sbs.com.au/news/article/australian-swimmers-urged-to-detail-sexism-after-maddie-groves-withdraws-from-olympics/7z0dz8knq>.

32 Julian Linden, 'Swimming Australia Rethinking Promise on How to Implement Reforms Tackling Abuse', *The Daily Telegraph* (online, 11 December 2022) <https://www.dailytelegraph.com.au/sport/swimming-australia-rethinking-promise-on-how-to-implement-reforms-tackling-abuse/news-story/5b858190458ef905638e3ff1353658d5>.

33 Treasury (Cth), *Regulation of Accounting, Auditing and Consulting Firms in Australia: Consultation Paper* (May 2024) 39–40.

34 See, eg, *Mount v Dover Castle Metals Pty Ltd* (2025) 339 IR 1; Christopher Knaus, 'Whistleblower Claims He Was Told to Fabricate Data for AEC during Indigenous Voice Campaign', *The Guardian* (online, 20 August 2024) <https://www.theguardian.com/australia-news/article/2024/aug/20/firm-hired-by-aec-accused-of-fabricating-data-during-indigenous-voice-campaign>.

issues are. Allegations and counter-allegations have been rife, including between WADA and Western anti-doping authorities.[35] In that challenging context, the importance of insiders speaking up — as has been a feature of the investigative reporting on Chinese anti-doping issues[36] — is ever more crucial.

In Part II I situate this discussion in the wider sport integrity landscape, outlining the existing domestic and international context, including a review of the limited scholarship on whistleblowing in sport. In Part III, I consider how sports integrity issues map against Australia's existing whistleblower protection framework, including the federal public sector protections in the *Public Interest Disclosure Act 2013* (Cth) ('*PID Act*') and protections in the *Corporations Act 2001* (Cth) ('*Corporations Act*'). This discussion will have three parts: an introduction to the Australian whistleblower protection landscape, a consideration of the existing (limited) integration of those protections to sport, and a deeper analysis of how current protections could apply to sporting contexts, informed by four hypothetical scenarios. In undertaking this analysis, I will identify shortcomings in the application of existing whistleblower protections to sport in Australia, with many potential sport-related whistleblowers not adequately covered by legal protections. This includes, but is not limited to, challenges in applying orthodox whistleblower protections, which are largely framed around workplace participants and workplace retaliation, in the sporting context. While the hypothetical examples are framed around common sporting integrity issues, and informed by prior cases, they provide a more suitable analytical tool than retrospective analysis of known cases.

In Part IV I consider opportunities for reform, including how Australia's sports integrity framework could be adapted to better support people coming forward to expose wrongdoing in sport, and the potential for sport to pioneer innovative solutions that could ultimately benefit all whistleblowers. In Part V, I conclude with some reflections on areas for future research.

The importance of whistleblowing in sport was not lost on the landmark Wood Review. The *Wood Review Report* quoted the predecessor to SIA, the Australian Sports Anti-Doping Authority ('ASADA'), which said in its submission to the Review:

> Those most likely to know who is doping in any sport are fellow athletes. However, most athletes remain unwilling to 'blow the whistle' on drug cheats. The consequences for athletes of breaking the silence on doping can be acute. Whistleblowers can be ostracised by fellow athletes and by the governing body of their sport, can have their sporting careers ended, and can ruin their chances of a career in the sporting industry. Consequently, a fundamental contemporary challenge for anti-doping organisations is the development of a framework for obtaining information from athletes and athlete support

[35] See, eg, Kieran Pender, 'Adam Peaty Calls for "Fair Game" amid Doping Concerns at Olympic Swimming', *The Guardian* (online, 27 July 2024) <https://www.theguardian.com/sport/article/2024/jul/27/adam-peaty-calls-for-fair-game-amid-anti-doping-concern-at-olympic-swimming-heats>.

[36] Michael S Schmidt and Tariq Panja, 'Top Chinese Swimmers Tested Positive for Banned Drug, Then Won Olympic Gold', *The New York Times* (online, 20 April 2024) <https://www.nytimes.com/2024/04/20/world/asia/chinese-swimmers-doping-olympics.html>. See also Sean Ingle, 'Chinese Swimmers Won Olympic Golds after Testing Positive for Banned Drug', *The Guardian* (online, 20 April 2024) <https://www.theguardian.com/sport/2024/apr/20/chinese-swimmers-won-olympic-golds-after-testing-positive-for-banned-drug>.

> persons on doping within sport that affords whistleblowers the protections that they require.[37]

Consequently, the *Wood Review Report* recommended the establishment of a robust whistleblower protection scheme alongside whistleblowing reporting systems.[38] In its response, the Australian Government agreed to this and a related recommendation.[39] While SIA has established a whistleblowing intake process, there has not yet been movement towards legislative reform to establish sport integrity-specific whistleblower protections. In its *2022–26 Corporate Plan*, SIA indicated its intent to '[e]stablish a Whistleblower Scheme to enable confidential reporting of integrity threats', which would include 'the establishment of the legislative framework required to support protected disclosures as a Commonwealth authority under the whistleblower laws'.[40] In the latest *2025–29 Corporate Plan*, this specific initiative has been consolidated into generalised integrity objectives.[41] It is unclear whether the Government and SIA remain committed to sport-specific whistleblower protections.

These circumstances make this article timely. Recent events in global and local sport have underscored the fact that integrity issues remain a critical risk for Australian sports. Protecting and empowering whistleblowers to raise concerns can be a vital mechanism for sports and oversight bodies to protect the integrity of sport and take action against wrongdoers. Over the past six years, there has been increased international attention on sport-related whistleblowers. For example, Transparency International published a best practice guide for whistleblowing in sport in 2018,[42] while in 2022 a monitoring group of the Council of Europe issued a recommendation on whistleblower protection in the context of anti-doping.[43] As I demonstrate in this article, legislative and non-legislative initiatives are needed to ensure that Australian whistleblowers are protected when they raise concerns about wrongdoing in sport. While recent international contributions should be heeded, the *Wood Review Report*'s recommendation and SIA's prior plans in this respect also remain salient. Protections for whistleblowers are good for integrity in sport. I hope that this article makes a modest contribution to policy consideration of the next phase of reform to the Australian sports integrity landscape, and to whistleblower protection reform in Australia more generally.

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37 *Wood Review Report* (n 2) 15 (recommendation 23), 18 (recommendation 47).
38 ASADA quoted in *Wood Review Report* (n 2) 130.
39 Department of Health (Cth) (n 13) 25.
40 Sport Integrity Australia ('SIA'), *Corporate Plan: 2022–2026* (2022) 20 ('*2022–26 Corporate Plan*').
41 SIA, *Corporate Plan: 2025–2029* (2025) 6–8 ('*2025–29 Corporate Plan*').
42 Iñaki Albisu Ardigó, Transparency International, *Best Practices for Whistleblowing in Sport* (7 September 2018).
43 Council of Europe Monitoring Group, *Recommendation on the Protection of Whistleblowers in the Context of the Fight Against Doping in Sport* (T-DO (2021) 28 Final, 11 January 2022).

II Context

A *Integrity in Sport*

Cheating has been prevalent for as long as humans have gathered to participate in organised sport.[44] Famously, at the Olympics in Ancient Greece, pedestals were held up by statues inscribed with the names of those who had transgressed: 'to punish, in perpetuity, athletes who violated Olympic rules'.[45] The use of performance-enhancing drugs can also be traced back to Ancient Greece, and perhaps even earlier,[46] although anti-doping regulation is relatively recent. Athletics became the first sport to ban doping in 1928, while doping controls at the Olympics were not introduced until the mid-1960s. It was only in 1999 that WADA was established.[47] Nevertheless, in the past quarter-century, there has been considerable international attention on integrity in sport, prompted by high-profile cases of doping, match-fixing and other forms of competitive manipulation.[48] This has led to a burgeoning academic subfield, with considerable research undertaken on the prevalence of sports-related wrongdoing and the efficacy of efforts to address it. Today, integrity is a priority for most major international sports.[49]

B *Whistleblowing in Sport*

Over the past decade, there has been increased academic research attention directed towards whistleblowing in sport, driven by high-profile contemporary examples and greater policy focus on whistleblower protections. Much of this literature has focused on the experiences of athletes in speaking up. For example, one research team considered the lived experience of anti-doping whistleblowers.[50] Another major cross-national study in 2021, recognising that 'research on whistleblowing against doping is scarce', undertook the first quantitative study on whistleblower motivations in sport.[51] Other researchers have considered what contributes to the effectiveness of reporting channels for sport-related whistleblowers,[52] and the

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44 But see Richard H McLaren, 'Is Sport Losing Its Integrity?' (2011) 21(2) *Marquette Sports Law Review* 551, 553.

45 Charles E Yesalis and Michael S Bahrke, 'History of Doping in Sport' (2002) 24(1) *International Sports Studies* 42, 42.

46 Ibid 44.

47 See generally Ivan Waddington and Verner Møller, 'WADA at Twenty: Old Problems and Old Thinking?' (2019) 11(2) *International Journal of Sport Policy and Politics* 219.

48 For a summary of recent cheating scandals in sport, see Danielle Kamis, Thomas Newmark, Daniel Begel and Ira D Glick, 'Cheating and Sports: History, Diagnosis and Treatment' (2016) 28(6) *International Review of Psychiatry* 551, 551–2.

49 See, eg, International Olympic Committee ('IOC'), 'IOC Teams Up with Paris 2024 and French Authorities to Protect Games Integrity' (Media Release, 27 July 2024) <https://olympics.com/ioc/news/ioc-teams-up-with-paris-2024-and-french-authorities-to-protect-games-integrity>.

50 Erickson, Patterson and Backhouse (n 26).

51 Barkoukis et al (n 26) 1164. See also Lambros Lazuras, Vassilis Barkoukis, Dmitriy Bondarev, Yannis Ntovolis, Konstantin Bochaver, Nikolaos Theodorou and Kevin Bingham, 'Whistleblowing Against Doping Misconduct in Sport: A Reasoned Action Perspective with a Focus on Affective and Normative Processes' (2021) 43(4) *Journal of Sport and Exercise Psychology* 285.

52 Pim Verschuuren, 'Whistleblowing Determinants and the Effectiveness of Reporting Channels in the International Sports Sector' (2020) 23(1) *Sport Management Review* 142; Apolena Ondráčková and

failures of generalised whistleblower protection policies within sport.[53] Albeit starting from a limited base, this research has begun to elucidate a more sophisticated understanding of how whistleblowing operates in sport.[54]

There is some debate about what does, or should, motivate individuals to blow the whistle. Traditionally, it was assumed that whistleblowers primarily disclosed 'out of a sense of fairness and justice' rather than for personal gain.[55] In certain jurisdictions, a perception persists that whistleblowing should remain an act of civic duty, unpolluted by concerns about monetary rewards or career ambition (some whistleblowing laws require that the whistleblower disclose in good faith).[56] This contrasts to the historical position of the United States ('US'), which, from the days of the American Civil War, has used financial incentives to encourage culpable 'rogues' to blow the whistle on their co-conspirators, capitalising on self-interest and vengeance to improve law enforcement outcomes.[57] In practice, whistleblowing — both in whether it occurs and how it takes place — is impacted by individual moral identity, organisational commitment, the perceived ethical values of the organisation being reported on, and the personal costs associated with disclosure.[58] Furthermore, those with greater status and power within an organisation appear more likely to make disclosures — especially in a sporting context.[59] Blowing the whistle can be a difficult decision where sports participants exist in a highly institutionalised environment, with limited power, an intense culture of loyalty and high personal vulnerability associated with disclosing.[60]

While there has been limited Australia-specific research on whistleblowing in sport, the existing application of whistleblowing laws to Australian sports, the potential benefit of these protections and areas of ongoing uncertainty were all considered by the *Wood Review Report*. It noted that '[p]rotection for whistleblowers will be critical in developing a more robust system of sports integrity governance, both in relation to doping and other integrity issues'.[61] Further consideration of sports integrity whistleblowing came in an academic report commissioned by the Australian Government Department of Health as part of its response to the *Wood*

Pim Verschuuren, 'Whistleblowing Platforms as a Solution to Fight Corruption: A Model from the Czech Republic' in Catherine Ordway (ed), *Restoring Trust in Sport: Corruption Cases and Solutions* (Routledge, 2021) 132; Newman, Warburton and Russell (n 15).

53 Hannah M Davis, 'The Cost of Gold: How Generalized Whistleblowing Policies Are Failing Athletes' (2021) 32(1) *Marquette Sports Law Review* 305.

54 There has also been an increase in jurisdiction-specific research: see, eg, Vassilis Barkoukis, Monica Stănescu, Marius Stoicescu and Haralambos Tsorbatzoudis, 'Tackling Irregularities in Sport through Education on Whistleblowing' (2019) 11(1) *Romanian Journal for Multidimensional Education* 1.

55 Klaus Ulrich Schmolke, 'Compensation, but No Rewards for Whistleblowers? – Some Thoughts on the Introduction of Financial Incentive Programmes in the Wake of the EU Whistleblower Directive's Transposition' [2022] (1) *Zeitschrift für Europäisches Privatrecht* 82, 93.

56 Parliamentary Joint Committee on Corporations and Financial Services ('PJCCFS'), Parliament of Australia, *Whistleblower Protections* (Report, September 2017) 133 ('*PJCCFS Report*').

57 Congressional Globe, 37th Cong, 3rd sess, 955–6 (statement of Senator Jacob M Howard).

58 Philmore Alleyne, 'The Influence of Organisational Commitment and Corporate Ethical Values on Non-Public Accountants' Whistle-Blowing Intentions in Barbados' (2016) 17(2) *Journal of Applied Accounting Research* 190; Lazuras et al (n 51).

59 Verschuuren (n 52); Newman, Warburton and Russell (n 15).

60 Newman, Warburton and Russell (n 15).

61 *Wood Review Report* (n 2) 130.

Review Report.[62] The report identified the need to develop 'strong whistleblower/reporting processes that protect individuals and place responsibility on organisations to properly manage and respond to reports' as a key area of best-practice.[63] In light of this context, it is now helpful to trace the emergence of whistleblower protections, before returning to the intersection between whistleblowing and sport.

III Whistleblower Protections and Sport

A *Australian Whistleblower Protections*

The concept of whistleblowing has ancient origins. The Greeks celebrated the notion of *parrhesia*, or fearless speech.[64] As early as the 300s BCE, an Athenian orator noted that 'neither the laws nor judges can bring any results unless someone denounces the wrong doers'.[65] Britain pioneered the first whistleblower incentive laws in the 7th century, providing a share of the punitive proceeds to anyone who informed upon someone working on the Sabbath.[66] A similar mechanism was enacted in the US during the Civil War — a law that is still utilised by American whistleblowers today.[67] The modern concept of whistleblowing, however, emerged in the US in the 1970s, led by consumer advocate Ralph Nader who described it as 'an act of a man or a woman who, believing that the public interest overrides the interest of the organisation he serves, publicly "blows the whistle" if the organisation is involved in corrupt, illegal, fraudulent or harmful activity'.[68] The activism of Nader and others soon sparked the first modern whistleblowing laws in the US and beyond.

Australia was an early adopter of the principles pioneered in the US. Queensland became only the second jurisdiction globally to adopt dedicated whistleblower protections, following the landmark Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct.[69] Other Australian states and territories followed; today, the vast majority of the Australian workforce is covered by dedicated whistleblower protections. Every state and

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62 Kath Hall, Adam Masters and Catherine Ordway, *Sport Integrity and Corruption: Best Practice Australian and International Policy & Program Delivery Approaches* (Working Paper No 1, Transnational Research Institute on Corruption, September 2021) 33.

63 Ibid 33

64 See Alan Chu, 'In Tradition of Speaking Fearlessly: Locating a Rhetoric of Whistleblowing in the Parrhēsiastic Dialectic' (2016) 19(3) *Advances in the History of Rhetoric* 231, 239–48.

65 Lykourgos (Athenian orator) quoted in Kieran Pender, Sofya Cherkasova and Anna Yamaoka-Enkerlin, 'Compliance and Whistleblowing: How Technology Will Replace, Empower and Change Whistleblowers' in Jelena Madir (ed), *FinTech: Law and Regulation* (Edward Elgar, 3rd ed, 2024) 485, 486.

66 International Bar Association, *Whistleblower Protections: A Guide* (April 2018) 5.

67 See generally Patricia Meador and Elizabeth S Warren, 'The *False Claims Act*: A Civil War Relic Evolves into a Modern Weapon' (1998) 65(2) *Tennessee Law Review* 455.

68 Ralph Nader, 'An Anatomy of Whistle Blowing' in Ralph Nader, Peter J Petkas and Kate Blackwell (eds) *Whistle Blowing: The Report of the Conference on Professional Responsibility* (Bantam Books, 1972) vii.

69 GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989).

territory has whistleblower protections for their public sector workers.[70] At a federal level, there are primary regimes for the public sector (in the *PID Act*) and the private sector (in the *Corporations Act* ch 9 pt 9.4AAA). There are also sector-specific regimes: for unions,[71] tax,[72] aged care,[73] the National Disability Insurance Scheme ('NDIS'),[74] Aboriginal and Torres Strait Islander corporations,[75] and for those blowing the whistle to the National Anti-Corruption Commission.[76]

While all these schemes have minor variations, broadly they seek to do at least three things:

(1) to provide avenues and protocols for whistleblowers to speak up about wrongdoing;

(2) to establish requirements and procedures for the investigation of those allegations of wrongdoing; and

(3) to provide protections for the whistleblower.

Those protections take two forms: a shield, with immunity from civil, criminal and administrative liability,[77] and a sword, with a whistleblower able to take legal action for compensation, reinstatement and so on in the event they suffer detriment for blowing the whistle.[78]

B *Whistleblower Protections and Sport*

It is against this backdrop that I consider protections for sports integrity whistleblowers in Australia. It is helpful to consider these frameworks as having three distinct eligibility requirements for the scheme to be engaged.

First, in terms of the personal scope (persons, or prospective whistleblowers covered by the regime), all Australian whistleblower protection regimes are employment or workplace focused. The *PID Act* covers federal public servants and contractors;[79] state and territory equivalents encompass state and, in some cases, local public servants. The *Corporations Act* extends beyond a narrow employment focus, extending to contractors, subcontractors, unpaid workplace participants (volunteers) and family members.[80] However, its protection regime still hinges on a workplace or quasi-workplace relationship: the whistleblower must have some workplace nexus with a 'regulated entity', being a corporation or particular financial

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70 *Public Interest Disclosure Act 2012* (ACT); *Public Interest Disclosures Act 2022* (NSW) (n 10); *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); *Public Interest Disclosure Act 2003* (WA).

71 *Fair Work (Registered Organisations) Act 2009* (Cth).

72 *Taxation Administration Act 1953* (Cth).

73 The *Aged Care Act 1997* (Cth) will be replaced by the *Aged Care Act 2024* (Cth) from 1 November 2025.

74 *National Disability Insurance Scheme Act 2013* (Cth).

75 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

76 *National Anti-Corruption Commission Act 2022* (Cth).

77 See, eg, *Public Interest Disclosure Act 2013* (Cth) s 10 ('*PID Act*'); *Corporations Act 2001* (Cth) s 1317AB ('*Corporations Act*').

78 See, eg, *PID Act* (n 77) ss 13–17; *Corporations Act* (n 77) s 1317AD.

79 *PID Act* (n 77) s 69.

80 *Corporations Act* (n 77) s 1317AAA.

services legal entity.[81] If a whistleblower falls within one of these categories, they satisfy the first eligibility requirement: the scope of persons covered by the law.

The second requirement relates to the subject matter of the disclosure. Here, the Australian regimes diverge. The *PID Act* is very prescriptive, setting out different categories of wrongdoing on which the whistle can be blown, including unlawful conduct, conduct that is an abuse of public trust and conduct that causes danger to health, safety or the environment.[82] Other regimes are broader: the *Corporations Act* covers information that 'concerns misconduct, or an improper state of affairs or circumstances, in relation to' the regulated entity.[83] In both cases, the regimes are engaged whether or not the alleged wrongdoing is in fact true — provided the whistleblower has 'reasonable grounds to suspect' their allegations, the whistleblower will be protected.[84]

The third and final requirement relates to the recipient scope: the disclosure must be made to an eligible recipient. Each whistleblowing regime sets out who can receive a disclosure, which then engages the law (although there are also protections for attempted whistleblowing, or detriment taken against someone presumed to be a whistleblower). Most laws provide for three categories of recipients:

- internal whistleblowing to supervisors or senior executives;
- external whistleblowing to regulators and oversight bodies; and
- public whistleblowing to the media or members of parliament, in emergency or last-resort cases.[85]

On its face, then, there is much potential for Australia's protections to apply to sports integrity whistleblowers. Certainly, anyone within government, at any level, is likely to be protected if they raise concerns about integrity issues in relation to regulation and oversight. The breadth of private sector protections, applying to almost all corporate entities in Australia, mean that many sporting organisations — which are often proprietary limited companies or companies limited by guarantee — are within the scope of these laws. The breadth of the disclosure scope under the *Corporations Act* means that most sports integrity issues would be captured by the regime. Finally, some of the sector-specific laws might have sporting application. If, for example, a sporting team is evading its tax liability, a whistleblower could raise concerns consistently with the tax whistleblower protections.[86] Similarly, a whistleblower could raise concerns with the National Anti-Corruption Commission about corruption in sport involving some Australian Government nexus.[87]

As a concrete example, in 2016 the chief executive of the Brumbies rugby union team succeeded (on an interlocutory basis) in proving he was entitled to whistleblower protections under the *Public Interest Disclosure Act 2012* (ACT) after

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81 Ibid s 1317AAB.
82 *PID Act* (n 77) s 29.
83 *Corporations Act* (n 77) s 1317AA(4).
84 Ibid.
85 See, eg, *PID Act* (n 77) s 26.
86 *Taxation Administration Act 1953* (Cth) (n 72) pt IVD.
87 Albeit protections for non-government whistleblowers are limited to offences against reprisals: see *National Anti-Corruption Commission Act 2022* (Cth) (n 76) s 30.

making multiple disclosures to the Australian Capital Territory ('ACT') Government and the University of Canberra (a team sponsor).[88] The whistleblower had raised concerns about the lawfulness of the club's commercial arrangements and was stood down as a result, precipitating the legal action. While this comprises one of few successful actions under Australian whistleblowing laws (and perhaps the sole sporting one), it demonstrates the potential for protections and accountability within Australia's existing scheme.

C *Coverage and Gaps*

To illustrate areas of potential coverage and shortcomings with the status quo, it is helpful to examine how current whistleblower protections would or would not apply to different sporting contexts in Australia. These examples are not intended to be exhaustive but they do seek to be indicative — hypotheticals that are foreseeable, and demonstrate both the potentially beneficial application of whistleblowing laws and the gaps that undermine such protections' utility in sport.[89] SIA's guidance paper for sports on the application of the *Corporations Act* also offers various instructive hypotheticals, although, understandably, its analysis is more focused on the law's practical operation than on its shortcomings.[90]

The below case studies may be hypothetical, but that should not distract from the real practical significance of whistleblowing in sport and what these scenarios tell us about the strengths and shortcomings in Australian whistleblower protections more generally. The establishment of SIA and the heightened focus on integrity within sports, including the roll-out of national integrity frameworks, coincide with greater public and policy focus on whistleblower protections in Australia. Whistleblowers have always had a role to play in sports integrity — as the starting epigraph from SIA's predecessor made clear in its submission to the Wood Review.[91] But with an active regulator, improving speak-up infrastructure in sport and elsewhere, and an active reform horizon ahead (discussed further in Part IV), we are likely to see more whistleblowing in sport, and greater sport-applicable whistleblower protections, in the years ahead. That makes it all the more critical to consider scenarios in which different types of sport whistleblowing might arise, and the challenges that might be faced by whistleblowers.

1 *Integrity within Integrity Bodies*

To begin with a straightforward hypothetical scenario, say Dylan works at SIA as part of its anti-doping program. As an employee of an Australian Government agency, Dylan is within the personal scope of the *PID Act*.[92] If Dylan became concerned about wrongdoing (say, a colleague was erroneously applying anti-doping protocols in a way that might advantage or disadvantage a particular athlete), he

88 *Jones v University of Canberra* (2016) 311 FLR 1.

89 The sports and names have been chosen randomly. The hypothetical scenarios are not intended to have any resemblance to real-life equivalents.

90 SIA, *Whistleblower Laws: Summary Paper* (July 2020) ('*SIA Summary*').

91 See above n 2 and accompanying text.

92 Public interest disclosures can be made by current or former public officials: *PID Act* (n 77) s 26. An Australian Public Service employee is a public official: s 69.

could raise concerns with his supervisor, the head of the agency or an authorised internal recipient, satisfying the recipient scope.[93] Provided Dylan had reasonable grounds to believe that his disclosure tended to show one or more instances of 'disclosable conduct' (eg, conduct that was unlawful, involved corruption, or was maladministration for being done with improper motives), his whistleblowing would constitute a protected disclosure, meeting the disclosure scope.[94]

Once Dylan had spoken up, SIA would be required to investigate his concerns.[95] He would consequently gain immunity for blowing the whistle[96] and if he faced employment-related detriment such as being dismissed or demoted, he could bring proceedings for reprisal.[97] He would also be entitled to confidentiality protections and any person who took detrimental action against him would be criminally liable.[98] The personal scope of this regime is also broad. If Dylan was instead a laboratory technician employed by a third-party laboratory engaged by SIA to undertake secondary testing and he had concerns about improper directives from an SIA official, he could still make a protected disclosure in relation to the SIA (in addition to any whistleblower protections under the *Corporations Act* he might have as an employee of a company).[99]

Of course, none of the above guarantees a positive outcome for Dylan, but the *PID Act* creates a comprehensive scheme for him to safely and lawfully expose wrongdoing within SIA and for those concerns to then be investigated. If his concerns related to the conduct of senior officials, such as the head of SIA, Dylan could instead report them to the Commonwealth Ombudsman.[100] If his concerns went unheeded, he could even escalate them by disclosing to journalists or politicians.[101] Finally, if Dylan suffered retaliation for speaking up, he would have a suite of legal protections available to him.[102] These measures do not guarantee integrity or an absence of wrongdoing within SIA or other government bodies with a role to play in ensuring sporting integrity (such as the National Sports Tribunal and the Australian Government Department of Health, Disability and Ageing). However, they encourage those who witness wrongdoing to speak up, and by so doing (a) ensure more whistleblowing; and (b) disincentivise wrongdoing by increasing the risks associated with it.

2 *Exposing a Doping Culture within Rugby League*

Regrettably, the situation is less straightforward across other parts of the Australian sporting landscape. Say Zack is a rugby league player with a professional team in the

93 Ibid s 26(1) item 1 column 2.
94 Ibid s 29.
95 Subject to various requirements and exceptions, including reallocation to other investigative agencies: ibid pt 3.
96 Ibid s 10.
97 Ibid ss 13–19A.
98 Ibid pt 2.
99 Ibid s 69(1) item 16.
100 Ibid s 34. See also 'Information for Disclosers', *Commonwealth Ombudsman* (Web Page) <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/information-for-disclosers>.
101 *PID Act* (n 77) s 26(1) item 2.
102 Ibid ss 13–19A.

National Rugby League ('NRL'). Zack is worried about a doping culture within the team after a club doctor pressures him to take a substance that Zack believes is prohibited under the *WADA Code*.[103] Professional sporting teams typically operate with a corporate structure involving a company regulated by the *Corporations Act* Therefore, it is likely that Zack falls within the personal scope of those whistleblower protections, as an employee of the club.[104] Under those provisions,[105] Zack could blow the whistle to an eligible recipient to satisfy the recipient scope — being either an officer or senior manager (such as the chief executive or general counsel of the club), an auditor or actuary of the club, or a person authorised by the club to receive disclosures (such as under a specific whistleblowing policy).[106] In relation to the disclosure scope, SIA has previously taken the position that '[a]llegations of breaches of match-fixing, anti-doping or breaches of integrity rules' likely meet the 'misconduct, or an improper state of affairs or circumstances' threshold.[107]

If Zack blew the whistle about his doping concerns to the club chief executive, he would be entitled to protections under the *Corporations Act* that largely mirror those under the *PID Act* outlined above in Part III(B) . However, unlike the *PID Act*, the *Corporations Act* protections are more restrictive when it comes to recipient scope: if Zack raised concerns with his coach, or the head doctor, these individuals would likely not constitute senior managers.[108] Zack would lack recourse to whistleblower protections in such circumstances. For example, if he raised concerns with his coach and was then dismissed, he would not be protected (at least under the *Corporations Act*).

What if Zack did not feel comfortable speaking up internally, due to fears that the wrongdoing was systemic and that all senior managers were implicated? He might fear that if he disclosed internally, nothing would be done in response to his concerns. Under the NRL's Anti-Doping Policy, '[i]t is the responsibility of all participants in Rugby League to promote anti-doping in Rugby League [and] [i]f you are aware that a participant is doping, you can report this confidentially'.[109] The Policy then provides contact details for the NRL's Integrity Unit, a specialised NRL Integrity Hotline, and SIA. SIA has a portal on its website for making integrity complaints, including in relation to anti-doping. However, if Zack were to raise his concerns pursuant to those avenues, he would not enjoy any whistleblower protections under the *Corporations Act* because the recipient scope under private sector whistleblowing law is limited to: (i) internal recipients;[110] (ii) the corporate regulator, the Australian Securities and Investments Commission ('ASIC'), or the banking regulator, the Australian Prudential Regulation Authority ('APRA');[111] (iii) a lawyer for the purpose of seeking legal advice in relation to the

103 *WADA Code* (n 23).
104 *Corporations Act* (n 77) s 1317AAA.
105 Ibid pt 9.4AAA.
106 Ibid s 1317AAC(1).
107 SIA, *SIA Summary* (n 90) 13.
108 Ibid 14.
109 'Anti-Doping', *NRL (National Rugby League)* (Web Page) <https://www.nrl.com/operations/integrity/anti-doping>.
110 *Corporations Act* (n 77) s 1317AA(2).
111 Ibid s 1317AA(1)(b)(i)–(ii).

whistleblowing;[112] or (iv) a journalist or member of parliament in certain narrow circumstances.[113]

This demonstrates a significant gap in current whistleblower protections in the sport integrity context. It means that whistleblower protections are only engaged when an athlete at a professional club reports internally (and even then, only to the right internal recipients) or through limited external pathways. There is presently no scope for protected reporting to leagues/competitions or SIA. Thus, if Zack reported his anti-doping concerns directly to SIA, and subsequently faced retaliation at his club, he would not have access to whistleblower-specific legal remedies.

Another potential gap relates to the on-field nature of retaliation that a whistleblowing athlete might face. Section 1317ADA of the *Corporations Act* gives a broad, inclusive definition to 'detriment', including ('without limitation'), dismissal, injury or alteration of an employee's position or duties, discrimination, harassment, injury (including psychological harm), reputational harm or damage to a person's financial position. The compensation provisions also provide for a reverse onus: provided the whistleblower can adduce or point to evidence 'that suggests a reasonable possibility of the [relevant] matters',[114] the burden is on the respondent (the employer, and/or individual who perpetrated the alleged reprisal) to disprove the claim.[115] Broadly, these provisions should make it easy for whistleblowers to make out detriment claims. However, in practice there has been very little litigation and not a single successful compensation claim under either the *PID Act* or *Corporations Act*.[116]

Despite these advantages for applicants, the orthodox workplace focus of Australian whistleblowing laws, including in relation to conceptions of detriment, may add additional challenges in the sports integrity context. Say Zack's head coach came to know that he had blown the whistle, either formally because the head coach was a designated recipient under the club's whistleblowing policy or through some informal means. Perhaps Zack had blown the whistle to the club's chief executive (a senior manager, and hence an eligible recipient), who had then unlawfully disclosed that fact to the head coach.[117] Perhaps, if an investigation eventually commenced, the team doctor — suspicious that Zack may have been the one to raise concerns — told the head coach, even if the whistleblowing itself remained confidential. What would Zack's options then be if the head coach elected not to start Zack in the next game or played him out of position? There are a variety of imaginable ways in which the head coach could seek to exact retribution on Zack for his whistleblowing, while remaining defensible in the sporting context: the coach could argue that the club is

112 Ibid s 1317AA(3).
113 Ibid s 1317AAD.
114 Ibid s 1317AD(2B)(a).
115 Ibid s 1317AD(2B).
116 Pender, *Cost of Courage* (n 19) 9.
117 While breaching the *Corporations Act* (n 77) confidentiality protections is an offence giving rise to civil penalties, there is some uncertainty around enforcement of the obligations. On one view (probably the better one), only the corporate regulator (not individual whistleblowers) has standing to bring an application for failure to comply with the confidentiality obligations. That said, it may be that disclosure of a whistleblower's identity could constitute detriment, the penalties for which are enforceable in the ordinary way. See *Mount v Dover Castle Metals Pty Ltd* (2025) 339 IR 1, 38–41 [154]–[168].

saving Zack for a big game coming up, or experimenting with a new formation, or wants to avoid a match-up between Zack and a superior opponent. Granted, this can also occur in other workplace contexts: it is commonplace that, in response to a whistleblowing claim, employers seek to justify employment action on the basis of some other, justifiable ground: for example, by claiming that there were separate, unrelated misconduct or performance issues. However, the atypical nature of the sporting context adds further complexity. While courts and workplace tribunals are familiar with interrogating organisational decision-making, they may find it more troubling to attempt to review sporting decisions made by coaching staff. One person's retaliation could be another's reasonable coaching decision.

The subtlety of retaliation caused through coaching decisions may therefore prove difficult to effectively address through litigation. While any of the above likely falls within the definition of 'alteration of an employee's position or duties to his or her disadvantage'[118] (a specified form of detriment), proving it may be more difficult — even with the help of the shifting burden. Additionally, the *Corporations Act* allows for courts to grant a range of remedies, including reinstatement,[119] or 'an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct'.[120] Once more, while, on their terms, these provisions are broad enough to allow appropriate application in the sporting context, until they are deployed effectively, question marks linger about their application to an employment context with the distinct overlay of high performance sport.

3 *Match-Fixing in Table Tennis*

Zack's case demonstrates some of the difficulties aligning the sporting reality with the *Corporations Act* framework. However, at least that regime applies to him, notwithstanding some idiosyncrasies. The situation may be worse where a sporting organisation falls entirely outside the remit of the private sector whistleblowing laws. Consider a hypothetical scenario involving match-fixing in table tennis. In Australia, table tennis is governed through a federated structure: Table Tennis Australia ('TTA'), constituted as a public company limited by guarantee, is the recognised national sporting organisation.[121] TTA is constituted by 'member state' entities, being recognised table tennis governing bodies in each state and territory otherwise known as state sporting organisations. These entities have voting rights, while there are also other membership categories that do not have voting rights. For the ACT, the member state entity is Table Tennis ACT ('TTACT'), an association incorporated under the *Associations Incorporation Act 1991* (ACT).[122]

Say Camille is a competition administrator at TTACT, charged with administering the ACT rounds of a national qualifying process that ultimately determines which Canberra-based players progress to national playoffs for potential Olympic selection. Say Camille's manager at TTACT, Ahmed, instructs her to

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118 *Corporations Act* (n 77) s 1317ADA(c).
119 Ibid s 1317AE(1)(e).
120 Ibid s 1317AE(1)(c).
121 Table Tennis Australia ('TTA'), *Constitution: Table Tennis Australia Limited* (at 24 April 2021) <https://cdn.revolutionise.com.au/cups/tta/files/feogabkuhlsa1ml5.pdf>.
122 Table Tennis ACT Incorporated, *Objects and Rules* (at 15 December 2008) <https://cdn.revolutionise.com.au/cups/tabletennisact/files/cevxdz6o4yxxhwce.pdf>.

structure the draw for a forthcoming competition, not at random, but in a certain way that would advantage some players over others. Camille is concerned that Ahmed's direction is improper, in that it is contrary to TTACT competition policies, and might have been influenced by other factors (say Camille had heard rumours that Ahmed was in financial difficulties, and wonders whether he might have been paid by players to secure a favourable draw).

There are at least five problems occasioned by the above governance structures from a whistleblowing perspective. First, while TTA is the peak body and, as a company limited by guarantee, subject to the whistleblowing regime in the *Corporations Act*, that framework is only applicable to wrongdoing *in relation to the regulated entity*, being TTA. Therefore, wrongdoing in relation to TTACT or other state bodies, even if reported to TTA will not engage whistleblower protections because the disclosure scope is not satisfied. If Camille went to the TTA website, she would see an extensive suite of information about TTA's National Integrity Framework, including avenues for raising concerns.[123] However, if Camille raised concerns about Ahmed's conduct to TTA, she would not be classified as a protected whistleblower because the wrongdoing relates to TTACT, rather than TTA. This may be the case even if the apparent wrongdoing contravenes TTA policies as SIA has conceded in its summary of the *Corporations Act* protections and their application to sports:

> information concerning a team's alleged match-fixing is unlikely to be a disclosable matter, to the sport's [national sporting organisation], where the conduct arises in a competition administered by an SSO, and involves state or club-level athletes, even where the applicable anti-match fixing policy was imposed by the [national sporting organisation].[124]

This is a significant accountability gap in any federated structure within Australia sport.

There are also imaginable variations of this hypothetical scenario that give rise to further uncertainty (which is only likely to deter whistleblowing). Say Ahmed was an employee of TTA rather than TTACT; in that situation, his apparent match-fixing would comprise wrongdoing related to the regulated entity, satisfying the disclosure scope. However, it is less clear whether Camille would satisfy the personal scope, given she is an employee of TTACT. It is commonplace for national sporting organisation and state sporting organisation employees to work closely together to organise and administer competitions. Whether Camille would fall within TTA's whistleblower protection framework would depend on whether her engagement with TTA constituted the supply of services to that organisation (directly or indirectly through TTACT).[125] While the *Corporations Act* provides that such supply can be paid or unpaid, which may mean informal collaboration between the two organisations is sufficient, coverage may depend on the nature and extent of their relationship and Camille's role in relation to any particular competition. That is hardly a level of certainty that would incline someone to blow the whistle.

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123 Table Tennis Australia, 'Integrity – Protecting Table Tennis Together', *TTA National Integrity Framework* (Web Page, 1 March 2024) <https://www.tabletennis.org.au/about-governance/national-integrity-framework>.

124 SIA, *SIA Summary* (n 90) 13.

125 *Corporations Act* (n 77) ss 1317AAA(c)–(d).

The second issue resulting from the governance structure of table tennis in Australia arises as a consequence of TTACT's legal status. The above analysis related to Camille's attempt to blow the whistle to TTA, but what if she blew the whistle to her immediate employer, TTACT? The *Corporations Act* framework applies to regulated entities, being (a) companies; (b) certain financial entities; and (c) 'corporation[s] to which paragraph 51(xx) of the *Constitution* applies'.[126] TTACT is an incorporated association; it does not satisfy the first or second category. Is it a corporation to which s 51(xx) applies? This is a complex constitutional question, arising because the *Corporations Act* was legislated on the basis of the trading, financial and foreign corporations head of power in the *Australian Constitution*. In some cases, particularly if an incorporated association undertook significant revenue-generating activity (such as offering paid membership, charging fees for competition entry and selling merchandise), this might satisfy the constitutional definition. However, it is by no means certain that this will always or even typically be the case. Thus, SIA says in its guide:

> there are a variety of cases that have held that sport organisations registered as an incorporated association are not constitutional corporations for the purposes of the *Fair Work Act 2009*, which uses the same definition … Importantly however, the fact that sport organisations are usually not-for-profit is not, alone, sufficient to be considered 'not trading'.[127]

Consequently, Camille would be left in the invidious position of requiring a working knowledge of constitutional law, or an astute lawyer, to know whether she would be protected by the *Corporations Act* in blowing the whistle to a senior manager at TTACT. Furthermore, that uncertainty will never be resolved with any comprehensiveness, say through a judgment or a counsel opinion procured by SIA, because it will always depend on a case-by-case assessment of the constitutional test.[128] As such, even if TTACT's activities were sufficient to satisfy the constitutional threshold, that is no guarantee that, say, Table Tennis Victoria would also be covered by the whistleblowing regime.

The third potential issue relates to the status of participants. Say Camille was not an employee of TTACT, but instead a player in the competition. While in professional clubs athletes like Zack are employees and therefore satisfy the personal scope, in many other sports, most participants are not employees of governing bodies, but instead participate on a voluntary basis — even at a relatively high-level, some may be required to pay registration fees to compete, while others may compete for prize money. If Camille inspected the draw for the qualifying competition and grew concerned that one of her rivals had a suspiciously easy route to the finals (a route that would be highly unlikely in a randomised draw), she may wish to register her concerns. However, it is uncertain whether the *Corporations Act*, even if it did apply to TTACT, would extend to Camille. The personal scope is predicated on some form of workplace relationship with the regulated entity,[129] with the prototypical category being employees. Although it extends to service providers, whether paid or

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126 Ibid s 1317AAB.

127 SIA, *SIA Summary* (n 90) 11 (emphasis omitted).

128 See, eg, *R v Federal Court of Australia; Ex parte WA National Football League (Inc)* (1979) 143 CLR 190, 233 (Mason J).

129 *Corporations Act* (n 77) s 1317AAA.

unpaid, it seems unlikely that a participant in a TTACT-organised competition could be described as a service provider. While the retaliation risks might be more direct for employees, there remains ample scope for detriment against participants: blacklisting from competition, impact on membership, access to coaching and development opportunities and so on. The lack of protections would therefore likely inhibit whistleblowing for participants who are not employees of a sporting body.

Fourth, in none of these circumstances could someone at TTACT or TTA blow the whistle to SIA and be entitled to protections. Despite being the national integrity body for sport, individual reports of match-fixing or other forms of competition manipulation are not within SIA's jurisdiction. If a whistleblower otherwise met the personal and disclosure scope of the *Corporations Act* regime, the only regulatory disclosure pathway would be to ASIC or APRA. Neither is likely to be particularly interested in match-fixing in sport. While a report to law enforcement may engage standalone witness protections, they are largely enforced through criminal offence provisions, rather than the suite of civil remedies available to whistleblowers.

A fifth and final hurdle that Camille might face is that, depending on the policies enforced by TTA and TTACT, she may also be under a positive obligation to disclose wrongful conduct to a superior or other organisation, despite potentially having only limited access to legal protections if she does so. Many sporting organisations now impose disciplinary penalties on participants, employees and volunteers who fail to blow the whistle after becoming aware of misconduct, pursuant to SIA model frameworks.[130] This places whistleblowers in a difficult position, where they face consequences whether they report or fail to do so. Obligations to disclose may also raise complexities as further reform is pursued. Since some whistleblowing frameworks do not apply where disclosures are made in the ordinary course of a person's duties, whistleblower protections might not be available where someone faces a positive obligation to report.[131] This highlights the need for better integration across whistleblowing and accountability frameworks moving forward.[132]

4 *Cultural Issues in Cycling*

Further complications arise from the disclosure scope, and the exclusion of personal grievances from whistleblower protections. Say Amira is an elite cyclist within the track cycling program at AusCycling. Say too that Amira is of Iranian heritage. Over the past decade, there has been a growing focus on organisational culture giving rise to integrity concerns.[133] This has arisen both in acute cases of wrongdoing (such as

[130] See, eg, Sport Integrity Australia and Swimming Australia, *National Integrity Framework: Competition Manipulation and Sport Gambling Policy* (2024) cl 4.1(g) <https://www.swimming.org.au/resources/swimming-national-integrity-framework>.

[131] See, eg, *PID Act* (n 77) s 26(1) item 1 column 3(b).

[132] See discussion below at Part IV(B).

[133] See, eg, Nino Bucci, 'Gymnastics Australia Asked Child Athletes Who Reported Abuse to Sign Gag Orders before Meetings', *The Guardian* (online, 10 August 2022) <https://www.theguardian.com/australia-news/2022/aug/10/gymnastics-australia-asked-child-athletes-who-reported-abuse-to-sign-gag-orders-before-meetings>; Tom Maddocks and Russell Jackson, 'AFL Terminates Investigation

sexual abuse and harassment and racial vilification) and more generalised concerns about toxic organisational cultures that cause harm to participants. In response to such allegations, there have been a number of reports and inquiries. Ensuring healthy and respectful organisational cultures within Australian sport has become a priority for SIA — both in relation to child participants (under the safeguarding framework)[134] and for athletes generally. For sports that have adopted the National Integrity Framework, SIA can receive complaints of unlawful discrimination.[135] 'Discrimination in sport is any type of unfair treatment based on a Protected Characteristic', SIA has previously explained, 'which results in a negative outcome and can include both direct and indirect discrimination'.[136]

Say Amira has been experiencing a toxic training environment due to repeated comments involving racial stereotypes by the squad's sports scientist, Stephan. At first Amira might have stayed quiet, but after seeing other high-profile cases of athletes calling out racial discrimination in sport, she decides to speak up. In doing so, she would face many of the same challenges outlined in Part III(C)(2) above. As an employee of AusCycling, a company limited by guarantee, Amira would be within the personal scope of the *Corporations Act* framework, albeit with limits on protected disclosure pathways and complaints to SIA due to issues with the recipient scope.

However, two more acute issues arise in relation to the disclosure scope. First, would the conduct constitute 'misconduct, or an improper state of affairs or circumstances' in relation to AusCycling?[137] Racial discrimination is unlawful under the *Racial Discrimination Act 1975* (Cth) ('*Racial Discrimination Act*') and state and territory equivalents.[138] The plain wording of the disclosure scope indicates a breadth of conduct is captured, but the indicative examples provided suggest a somewhat higher bar. For example, the *Corporations Act* suggests that the disclosure scope requirement will be satisfied where the regulated entity has engaged in conduct in contravention of certain financial laws, or where the conduct 'constitutes

into Alleged Racism at Hawthorn, Making No Findings Against Alastair Clarkson and Chris Fagan', *ABC News* (online, 30 May 2023) <https://www.abc.net.au/news/2023-05-30/afl-hawthorn-racism-review-makes-no-findings/102413056>; Mostafa Rachwani, 'Swimming Australia Report Calls for Skinfold Test Ban and Female Coach Quota', *The Guardian* (online, 21 January 2022) <https://www.theguardian.com/sport/2022/jan/21/swimming-australia-report-recommends-banning-skinfold-tests-and-introducing-female-coach-quota>; Kieran Pender, 'The Week that Rocked Australian Swimming: Maddie Groves Blows Lid on Ugly Culture', *The Guardian* (online, 20 June 2021) <https://www.theguardian.com/sport/2021/jun/20/the-week-that-rocked-australian-swimming-maddie-groves-blows-lid-on-ugly-culture>. Note, this trend does have longstanding origins: see, eg, Hayden Opie, *Report of the Independent Inquiry into Women's Artistic Gymnastics at the Australian Institute of Sport* (1995).

134 'Safeguarding for Children and Young People', *Sport Integrity Australia* (Web Page) <https://www.sportintegrity.gov.au/what-we-do/safeguarding/safeguarding-children-and-young-people>.

135 'What You Can Report', *Sport Integrity Australia* (Web Page) <https://www.sportintegrity.gov.au/make-a-report/what-you-can-report>.

136 'Tell Us About a Concern or Issue', *Sport Integrity Australia* (Web Page) <https://www.sportintegrity.gov.au/contact-us/reporting> archived at <https://web.archive.org/web/20250315022029/https://www.sportintegrity.gov.au/contact-us/reporting>.

137 *Corporations Act* (n 77) s 1317AA(4).

138 *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1992* (NT); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 1984* (WA).

an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more'.[139] However, the regime established by the *Racial Discrimination Act* is largely based on civil rather than criminal liability.[140]

Second, and relatedly, the *Corporations Act* excludes from the disclosure scope 'personal work-related grievance[s]' (with equivalent limitations in other regimes).[141] That phrase is defined as including

> information [that] concerns a grievance about any matter in relation to the discloser's employment, or former employment, having (or tending to have) implications for the discloser personally[142]

unless the disclosure has

> significant implications for the regulated entity to which it relates, or another regulated entity, that do not relate to the discloser'.[143]

A listed indicative example includes 'an interpersonal conflict between the discloser and another employee'.[144]

Greater clarity about the policy intent of this exclusion can be found in the equivalent provision in the *PID Act*, which was amended in mid-2023. The revised *PID Act* provision provides that 'personal work-related conduct is not disclosable conduct unless', for example,

> (b) the conduct:
>
> (i) is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
>
> (ii) has other significant implications for an agency (or agencies).[145]

Both the disclosure scope and personal work-related grievance exclusion would cause uncertainty for someone in Amira's position. Clearly there are versions of this scenario where the disclosure scope is satisfied, with no concerns about the exclusion. The disclosure scope is evidently met if there is systemic, organisation-wide racial discrimination, including obvious contraventions of the *Racial Discrimination Act*, impacting Amira alongside other members of the squad and AusCycling employees. But what if Stephan's comments were made only once, only to Amira? Notwithstanding that they may constitute unlawful conduct contrary to the *Racial Discrimination Act* and have a harmful impact on Amira, the disclosure scope threshold in the *Corporations Act* in relation to such conduct is not clear and the exclusion may be applicable. Does a single incident of racial discrimination have 'significant implications' for an organisation? The answer to that question is vexed, and may depend on the nature of the discrimination, its impact, the power imbalance between those involved, and possibly even the size of the sporting organisation (an

139 Ibid s 1317AA(5)(d).
140 *Racial Discrimination Act 1975* (Cth) pt II, but see pt IV.
141 *Corporations Act* (n 77) s 1317AADA(1)(a). See, eg, *PID Act* (n 77) s 29A.
142 *Corporations Act* (n 77) s 1317AADA(2)(a).
143 Ibid s 1317AADA(2)(b)(i).
144 Ibid s 1317AADA(2) example (a).
145 *PID Act* (n 77) s 29(2A) (emphasis omitted).

incident in a small organisation may be more significant than one in an organisation with hundreds of staff).

These nuanced distinctions are evidenced in a 'help sheet' prepared by SIA, where '[m]y work mate propositioned me at the office after a drinks function' is classified as a workplace grievance, while the following is provided as an example of a qualifying whistleblower disclosure: 'My work mate propositioned me. I'm the fifth woman in our office he has sexually harassed. We have all complained to HR and nothing has happened.'[146] These are polar examples, but there is likely to be a range of conduct between these poles where the answer is less straightforward. That would leave Amira in a position of uncertainty should she wish to raise concerns about Stephan's conduct.

It is worth noting that certain additional whistleblower-style protections exist in relation to conduct that might otherwise be considered a 'workplace grievance'. For example, the *Sex Discrimination Act 1984* (Cth) s 47A makes it unlawful to victimise a person for making allegations of its contravention or for making or proposing to make a complaint under the *Australian Human Rights Commission Act 1986* (Cth). There is theoretically a broad array of remedies available in the event of victimisation, including monetary damages and orders to reinstate a person's employment where they have been unjustly dismissed.[147]

D *Discussion*

From the foregoing analysis, a few themes emerge that helpfully articulate some of the dilemmas facing sport-related whistleblowers and sports integrity policymakers wishing to improve the framework.

1 *Availability of Protections*

Evidently, there are substantial gaps in the availability of protections for prospective sports integrity whistleblowers. These gaps arise for a few reasons, including because of the corporation-focus of the *Corporations Act* (reflecting its constitutional underpinnings), and the employment-centric nature of the existing regime (which may exclude the breadth of potential sports integrity whistleblowers, encompassing non-contracted players, volunteers, parents and so on). Thus, while the private sector framework potentially offers partial coverage for sports integrity whistleblowers, the existing scope of potential coverage is deeply unsatisfactory.

This is particularly so in relation to entities covered by the *Corporations Act* regime. Australia's sporting organisation landscape is characterised by a breadth of legal types of governing bodies. Most national sporting organisations are companies limited by guarantee, but due to Australia's federal structure, these national sporting organisations are often the tip of the organisational pyramid. Beneath them are state sporting organisations, which may or may not take corporate form (and, even if they do, may or may not be trading corporations for constitutional purposes). Beneath them are clubs and other sporting bodies, some formal and some informal. Any of

146 SIA, *SIA Summary* (n 90) 20.
147 *Australian Human Rights Commission Act 1986* (Cth) pt IIB.

these entities could face integrity risks. However, only those that fall within the scope of the *Corporations Act* benefit from a regime that will help whistleblowers speak up.

Advocacy groups are increasingly arguing for a broad-based approach to whistleblower protections, suggesting that there are a range of heads of power in the *Australian Constitution* that could underpin a more holistic whistleblower protection regime.[148] Even if a conservative constitutional approach was taken, Australia became a signatory to the *Council of Europe Convention on the Manipulation of Sports Competitions* ('*Macolin Convention*') in 2019[149] and is a longstanding participant in various international anti-doping instruments, meaning the external affairs power in the *Australian Constitution* would likely support sports-specific whistleblower protections.[150] This could apply to all sporting organisations or be framed so as to apply only to national sporting organisations, but permit whistleblowers to raise concerns to national sporting organisations as they arise throughout the sport organisational pyramid.

Nor is the need to extend application beyond the employment context an insurmountable obstacle. The whistleblower protections in the *Aged Care Act 1997* (Cth), for example, extend to 'a family member, carer, representative, advocate (including an independent advocate) of the recipient, or another person who is significant to the recipient'.[151] There is no conceptual reason why an appropriately-drafted whistleblowing framework for sports integrity whistleblowers cannot encompass the broad spectrum of people who may have information about wrongdoing in sport.

2 *SIA's Role in the Framework*

It is a major flaw of the existing regime that SIA can offer no legal protection to whistleblowers who provide it with information. While SIA's role in Australia's sports integrity regime may offer a degree of practical protection — national sporting organisation, for example, may be hesitant to retaliate against a whistleblower who gives information to SIA — this is hardly sufficient to assure prospective whistleblowers. This shortcoming is not unique to sports integrity: because ASIC and APRA are the only regulators eligible to receive *Corporations Act* disclosures, whistleblowers wanting to disclose to any other regulatory body are left with no protected pathway.[152] Accordingly, a significant improvement to the private sector whistleblowing regime generally, which would specifically benefit sports integrity, would be the inclusion of a range of regulatory bodies, including SIA, within the *Corporations Act* framework. This adjustment need not be difficult; the regime

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148 See, eg, Human Rights Law Centre, Transparency International Australia and Griffith University Centre for Governance and Public Policy, Submission to Treasury, *Response to PwC – Regulation of Accounting, Auditing and Consulting Firms in Australia* (29 June 2024) 7 ('*Treasury Submission*').

149 *Council of Europe Convention on the Manipulation of Sports Competitions*, opened for signature 18 September 2014, CETS No 215 (entered into force 1 September 2019) ('*Macolin Convention*').

150 *Australian Constitution* s 51(xxix).

151 *Aged Care Act 1997* (Cth) (n 73) s 54-4(1)(d). The *Aged Care Act 2024* (Cth) (n 73), which will take effect from November 2025, adopts the same approach.

152 For one recent controversy and associated commentary about inadequate reporting channels, see Knaus (n 34).

already provides for disclosures to 'a Commonwealth authority prescribed for the purposes of [s 1317AA(1)(b)] in relation to the regulated entity'.[153] However, as yet, no Commonwealth authorities have been so prescribed. SIA should be incorporated within the *Corporations Act* framework in relation to sports integrity whistleblowing. It seems absurd that, at present, a whistleblower can gain far more protection by disclosing to a national newspaper than by speaking to SIA.[154]

3 *Evolving Notions of Sports Integrity*

Amira's circumstances demonstrate the ongoing evolution of what constitutes sports integrity issues. In the past, instances of workplace bullying, sexual harassment, discrimination and other forms of toxic behaviour might have been considered matters for employment law generally, or anti-discrimination law. Increasingly, a sports integrity lens is being applied to these issues — as demonstrated by their inclusion within SIA's scope, and the numerous, recent high-profile reviews and inquiries into cultural issues within sports, including swimming, gymnastics and AFL clubs.[155] Amira's examples demonstrate some of the uncertainties that arise as a result, which may reflect a lag between the law and societal expectations around wrongdoing. It also demonstrates the need for flexibility in the law to permit continuing evolution. Particularly in the sporting context, where competitive imperatives often drive rapid change, whistleblower protections regimes need to be wide enough, or updated frequently enough, to capture new and emerging forms of sports integrity risks.

4 *Need for Whistleblower Protections*

Finally, it is worth underscoring why the shortcomings and loopholes in protection are so problematic. As things stand, sports integrity whistleblowers who are not employed by a sporting organisation are entitled to no form of protection (although, conversely, they face fewer legal risks in speaking up). For those who are employed, workplace law may provide some legal protections even in the absence of the application of whistleblower protection law. For example, general protections in the *Fair Work Act 2009* (Cth) protect against adverse action for raising a complaint or inquiry,[156] including to an external body such as SIA. This is better than nothing, but whistleblower protections exist for a reason — they are additional, enhanced legal protections, in recognition of whistleblowers' important societal role. Whistleblower protections are meaningfully different and, in critical respects, more protective than employment law. Accordingly, it is not an answer to the above to say that

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153 *Corporations Act* (n 77) s 1317AA(1)(b)(iii).

154 Provided they follow the steps set out in the *Corporations Act* (n 77) s 1317AAD (see above Part III(C)(2)).

155 See, eg, 'Policies: 2021 Independent Panel Report Response', *SwimAus* (Web Page) <https://www.swimming.org.au/resources/2021-independent-panel-report-response>; Australian Human Rights Commission, *Change the Routine: Independent Review into Gymnastics in Australia* (Report, 2021) <https://humanrights.gov.au/our-work/sex-discrimination/publications/change-routine-independent-review-gymnastics-australia>; University of Technology Sydney ('UTS'), *Do Better — Independent Review into Collingwood Football Club's responses to Incidents of Racism and Cultural Safety in the Workplace* (Final Report, 2021) <https://resources.afl.com.au/afl/document/2021/02/01/0bd7a62e-7508-4a7e-9cb0-37c375507415/Do_Better.pdf>.

156 *Fair Work Act 2009* (Cth) s 340.

employment law is enough. The compelling policy rationale for whistleblower protections in corporate Australia and in public sector Australia is equally strong in the sports integrity context.

Consider Zack's example from Part III(C)(2) above. Say Zack threatened to blow the whistle to SIA after initial attempts to raise concerns with his coach (which would not satisfy the recipient scope). Because SIA is not an authorised recipient, the club could dismiss Zack's employment for breach of contract. It could even seek an injunction to prevent Zack from exposing confidential information. Furthermore, if Zack went ahead and blew the whistle to SIA, the club could seek damages in contract, equity and under statute. That may sound far-fetched — and there is some authority in equity that no confidence lies in iniquity[157] — but it is hardly novel. In recent years, ClubsNSW sued former employee and whistleblower Troy Stolz after he gave board documents to Andrew Wilkie MP and journalists, disclosing widespread non-compliance with anti-money laundering law by ClubsNSW's member clubs.[158] The case eventually settled, but not before Stolz faced substantial legal costs.[159] It is for this reason that whistleblowing law provides both a sword (the ability to seek compensation for retaliation) and a shield — an immunity from criminal, civil and administrative liability. Only if Zack is covered by the *Corporations Act* and SIA is an eligible recipient can he safely and lawfully raise concerns about doping to the regulator. At present, someone in Zack's shoes would face an unenviable choice.

IV Reform

A *State of Play*

The identification of these issues is timely, given the considerable current momentum around stronger whistleblower protection laws in Australia. There has been widespread recognition of the fact that Australia's protection framework, particularly at a federal level, is inadequate.[160] This policy discourse has been made more salient by the high-profile prosecutions of several whistleblowers.[161] In mid-2023, the

[157] See, eg, *Gartside v Outram*, where it was said that 'there is no confidence as to the disclosure of iniquity': (1856) 26 LJ Ch 113, 114. However, note the caution expressed in the authoritative Australian text: Mark Irving, *The Contract of Employment* (LexisNexis, 2nd ed, 2019) 620–1.

[158] Christopher Knaus, 'NSW Clubs' Lobby Alleges Whistleblower Troy Stolz Waged Media Campaign to "Tarnish" Its Reputation', *The Guardian* (online, 15 August 2022) <https://www.theguardian.com/australia-news/2022/aug/15/nsw-clubs-lobby-alleges-whistleblower-troy-stolz-waged-media-campaign-to-tarnish-its-reputation>.

[159] Michael McGowan, 'ClubsNSW Settles Case with Terminally Ill Whistleblower Troy Stolz', *The Guardian* (online, 7 February 2023) <https://www.theguardian.com/australia-news/2023/feb/07/clubsnsw-settles-case-with-terminally-ill-whistleblower-troy-stolz>.

[160] Pender, *Cost of Courage* (n 19) 13; Griffith University Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Protecting Australia's Whistleblowers: The Federal Roadmap* (2022) 2 ('*Federal Roadmap*').

[161] See, eg, Basford Canales, 'David McBride, 14 May 2024' (n 4); Paul Karp, 'Prosecution of Whistleblower Lawyer Bernard Collaery Dropped after Decision by Attorney General', *The Guardian* (online, 7 July 2022) <https://www.theguardian.com/australia-news/2022/jul/07/prosecution-of-whistleblower-lawyer-bernard-collaery-dropped-after-decision-by-attorney-general>; Olivia Mason, 'ATO Whistleblower Richard Boyle has Protection Appeal Dismissed — but Reasons

Australian Parliament enacted a first phase of reform to the *PID Act*, largely comprising technical changes to improve its functioning.[162] In late 2023, the Australian Government's Attorney-General's Department published a consultation paper on more comprehensive reform to the *PID Act*.[163] Among the issues listed for consideration in the discussion paper was whether the Government should establish a whistleblower protection authority.[164] In September 2025, the Attorney-General's Department released an exposure draft of the Public Interest Disclosure and Other Legislation Amendment (Whistleblower Protections) Bill 2025 to reform the *PID Act* and create a Whistleblower Ombudsman within the Commonwealth Ombudsman, with some though not all of the functions envisaged by advocates of an authority.[165]

Whistleblower protection reform has also been part of several responses to recent major scandals and shortcomings. The *Aged Care Act 2024* (Cth) was a reform that arose from the Royal Commission into Aged Care Quality and Safety and includes stronger whistleblower protections.[166] In response to the PwC leaks scandal, whistleblower protections in the tax sector have been strengthened,[167] while consideration is ongoing regarding improving arrangements for the consulting, accounting and audit sector.[168] Better protections for whistleblowers in the NDIS sector have been mooted,[169] while new whistleblower protections were introduced in late 2024 for parliamentary staff as part of the Independent Parliamentary Standards Commission.[170]

However, together with the second phase of *PID Act* reform, perhaps the most substantial development in this context has just commenced with the statutory review of the *Corporations Act* whistleblower protections, which is being led by Treasury. The review, required under the last round of amendments to the framework

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Suppressed for Now', *ABC News* (online, 19 June 2024) <https://www.abc.net.au/news/2024-06-19/richard-boyle-has-bid-for-whistleblower-protections-dismissed/103996456>.

162 Public Interest Disclosure Amendment (Review) Bill 2022 (Cth).

163 Attorney-General's Department (Cth), *Reforms Consultation Paper* (n 9).

164 Ibid 20–3.

165 See Attorney-General's Department (Cth), 'Public Sector Whistleblower Reforms', *Consultation Hub* (Web Page)<https://consultations.ag.gov.au/integrity/public_sector_whistleblower_reforms/>.

166 See *Aged Care Act 2024* (Cth) (n 73) ch 7 pt 5, which will be in force from 1 November 2025. See further 'About the New Rights-Based Aged Care Act', *Department of Health, Disability and Ageing (Cth)* (Web Page, 18 September 2025) <https://www.health.gov.au/our-work/aged-care-act/about>.

167 *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* (Cth) sch 2. See, eg, *Taxation Administration Act 1953* (Cth) (n 72) ss 14ZZT, 14ZZXA.

168 Treasury (Cth) (n 33) 39–40.

169 See, eg, Human Rights Law Centre, Submission to Senate Standing Committees on Community Affairs Legislation Committee, Parliament of Australia, *Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024* (31 May 2024). See also Senator Jordon Steele-John's proposed amendments to the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024 (Cth) that would have strengthened whistleblower protections in the *National Disability Insurance Scheme Act 2013* (n 74) but were rejected by the Senate: National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, Committee of the Whole debate, 12 Aug 2024, [sheet 2738] (Senator Steele-John) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr7181%22>.

170 *Parliamentary Workplace Support Service Amendment (Independent Parliamentary Standards Commission) Act 2024* (Cth) amending *Parliamentary Workplace Support Service Act 2023* (Cth) pt 2A div 8.

in 2019,[171] provides an opportunity for substantial consideration of the efficacy of Australia's private sector whistleblower protections. Given that many of the issues I identify in this article arise from the partial or flawed application of the *Corporations Act* in the sports integrity context, this could represent a prime opportunity for change.

This momentum juxtaposes somewhat awkwardly with SIA's evolving position. As highlighted earlier, SIA's *2022–26 Corporate Plan* indicated an intention to 'initially focus on the establishment of the legislative framework required to support protected disclosures as a Commonwealth authority under the whistleblower laws', as a precondition to 'deliver' a 'Whistleblower Scheme for the sporting community'.[172] The *2025–29 Corporate Plan*, however, only indicates that SIA provides 'avenues for listening to and managing confidential disclosures, providing advice, supporting and protecting people who choose to report' — there is no longer any explicit mention of whistleblowing or whistleblower protections.[173] This dearth of stronger reform objectives may be understandable given SIA is a small agency with limited resources. However, given the importance of whistleblowers to exposing sports integrity shortcomings, the issues I identify in this article and the current momentum for change, SIA may wish to reconsider the prioritisation of a stronger whistleblower protection framework.

B *Legislative Reform*

What, then, would optimal reform look like? A range of civil society groups, including the Human Rights Law Centre at which I work, have consistently called for a singular whistleblowing regime for all non-government whistleblowing, aligned to the maximum extent possible with the *PID Act* regime.[174] Such a proposal is not novel — it was recommended by a 2017 bipartisan joint parliamentary inquiry.[175] Consistency is desirable due to existing overlap and unnecessary confusion: the existence of multiple, inconsistent regimes imposes a sizeable burden on both organisations and prospective whistleblowers. Furthermore, consolidating whistleblower protections into a single regime will ensure harmonised progress moving forward so that future reform can be done cleanly in one place, rather than inconsistently across the existing and increasingly complex patchwork quilt of regulation. As mentioned previously, a singular non-government whistleblowing law might be adequately supported by federal legislative authority under the *Australian Constitution*.[176] The optimal reform, then, is that sports integrity whistleblowers are considered and addressed as part of holistic reform that delivers an overarching, accessible whistleblower protection regime for non-public sector whistleblowers, maximally-aligned with the *PID Act* for consistency and harmonisation.

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171 *Corporations Act* (n 77) s 1317AK.

172 SIA, *2022–26 Corporate Plan* (n 40) 20.

173 SIA, *2025–29 Corporate Plan* (n 41) 9.

174 See, eg, Griffith University Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Federal Roadmap* (n 160); Human Rights Law Centre, Submission No 494035328 to Attorney-General's Department (Cth), *Public Sector Whistleblowing Stage 2 Reforms* (9 January 2024) 37.

175 PJCCFS, *PJCCFS Report* (n 56) xiii.

176 See Human Rights Law Centre, *Treasury Submission* (n 148) 7. See also above nn 148–9 and accompanying text.

Harmonised reform need not overlook the particularities of sports integrity whistleblowers. It has been suggested in other contexts, including aged care,[177] that a single whistleblowing framework can still account for sector-specific distinctions, building from a common base. In other words, from a core framework of best-practice protections, provision could still be made for the distinctive nature of sport — non-employed players might be brought within the personal scope, for example, just as family members might be included in an aged care specific allowance. There is a middle-ground that can be reached through appropriate legislative drafting to ensure the benefits of consistency while remaining sufficiently flexible to accommodate sector-specific needs.

Comprehensive, harmonised reform will take time. As an interim solution, temporary amendments could be made to the *Corporations Act* to better integrate sports integrity whistleblowing. These changes could include the insertion of SIA as a regulatory reporting channel, expansion of the disclosure scope to better permit reporting of wrongdoing within a pyramidal sport organisational structure, and changes to the personal scope to encompass non-employed participants. Such changes would address some, albeit not all, of the shortcomings and uncertainties identified in Part III. As interim solutions, they could all be done within the existing scope of the *Corporations Act*, including its current constitutional basis (by providing coverage for non-constitutional corporations as a consequence of reporting to the parent national sporting organisation, rather than in their own right). Such changes should be considered as a matter of urgency, to ensure sports integrity whistleblowers have the confidence to speak up now.

If comprehensive and harmonised reform is not forthcoming, further consideration of a sports integrity-specific whistleblowing framework may be required. For the reasons outlined above, such a step is the less desirable option — it would further fragment protections, meaning that some sports integrity whistleblowers could find themselves covered by multiple overlapping and potentially inconsistent regimes (that is, even in a simple example, both the *Corporations Act* and the sports integrity-specific framework). However, this may become necessary in the absence of a holistic approach. As mentioned in Part III(D)(1) above, there is likely to be adequate constitutional basis for such legislation under the external affairs power since the *Macolin Convention*, for example, provides that:

> [e]ach Party shall encourage sports organisations to adopt and implement the appropriate measures in order to ensure … (c) effective mechanisms to facilitate the disclosure of any information concerning potential or actual cases of manipulation of sports competitions, *including adequate protection for whistle blowers* …[178]

Such protections could be included in an amended *Sport Integrity Australia Act 2020* (Cth), or a standalone statute. Standalone legislation would have the benefit of being

[177] See, eg, Human Rights Law Centre, Griffith University Centre for Governance and Public Policy and Transparency International Australia, Submission to Department of Health and Aged Care (Cth), *Consultation: Foundations of a New Aged Care Act* (21 September 2023) 10–14.

[178] *Macolin Convention* (n 149) art 7(2) (emphasis added).

fully tailored to the atypical sporting context, albeit may contribute to the further fragmentation of the whistleblower protection landscape in Australia.

C *Beyond Law Reform*

Law reform is a necessary but not sufficient response to the need to protect and empower sport-related whistleblowers in Australia. The history of whistleblowing laws in Australia shows that legal protections are not self-executing; alone, they do not achieve robust, accessible protections for whistleblowers. Accordingly, sports policymakers in Australia should consider a range of non-legislative initiatives to support law reform and best ensure sport integrity whistleblowers can speak up.

1 *Whistleblower Support Function*

First, there has been considerable discussion in recent policy dialogue about the utility of dedicated institutional support for whistleblowers. This has been most visible at a federal level, with growing calls for a whistleblower protection authority or commission, culminating in the introduction of a Bill to establish one in early 2025.[179] Equivalent bodies exist in several other jurisdictions, including the US,[180] the Netherlands[181] and Slovakia.[182] Such a body, if established in Australia, would benefit the sports integrity landscape. However, in the absence of such significant institutional reform, there nevertheless remains scope for positive movement within the sports integrity ecosystem. In 2024 the NSW Ombudsman established a dedicated internal whistleblower support team.[183] An independent review of Queensland's whistleblowing regime in 2023 recommended greater support functions within the state integrity landscape.[184] Many of the major banks, which pursued comprehensive internal whistleblowing initiatives following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, have dedicated whistleblower support officers.[185] SIA could consider following these initiatives and

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[179] For the Bill's current status, see 'Whistleblower Protection Authority Bill 2025', *Parliament of Australia* (Web Page) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs1436%22>. See also Transparency International Australia, Human Rights Law Centre and Griffith University Centre for Governance and Public Policy, *Making Australian Whistleblowing Laws Work: Draft Design Principles for a Whistleblower Protection Authority* (February 2024) ('*Design Principles*'); Whistleblower Protection Authority Bill 2025 (Cth).

[180] 'Disclosure of Wrongdoing: Overview', *US Office of Special Counsel* (Web Page) <https://osc.gov/Services/Pages/DU.aspx>.

[181] 'English', *Huis voor Klokkenluiders* [*Dutch Whistleblowers Authority* (Netherlands)] (Web Page) <https://www.huisvoorklokkenluiders.nl/english>.

[182] 'About Us', *Úrad na Ochranu Oznamovateľov* [*Office for the Protection of Whistleblowers* (Slovakia)] (Web Page) <https://www.oznamovatelia.sk/en/o-nas/>.

[183] NSW Ombudsman's Office, 'Empowering Public Officials to Speak Up: NSW Ombudsman Sets Up New Whistleblower Support Function' (June 2024, Issue 63) *Corruption Matters* <https://www.icac.nsw.gov.au/newsletter/issue63/ombudsman.html>.

[184] Wilson (n 9) 8–9.

[185] See, eg, 'Whistleblower Support Officer': CommBank, 'Group Whistleblower Policy' (April 2025) <https://www.commbank.com.au/content/dam/commbank/assets/about/opportunity-initiatives/commbank-whistleblower-policy.pdf>; 'Whistleblower Protection Officer': Australia and New Zealand Banking Group ('ANZ'), 'Whistleblower Policy' (April 2025) <https://www.anz.com.au/about-us/esg/fair-responsible-banking/culture-conduct/>; National Australia Bank ('NAB'), 'Group Whistleblower Protection Policy' (April 2025) <https://www.nab.com.au/content/dam/nabrwd/

appropriately resourcing a dedicated whistleblower support function to assist those who reach out to provide SIA with information.

2 *External Support and Legal Advice*

Recognition of the need for greater institutional support for whistleblowers has been accompanied by an awareness that some of that support must necessarily be delivered independently. There has, accordingly, been growing consideration of the provision of such support — largely focused on legal advice and mental health and psychological support. The need for legal assistance is an obvious consequence of the complexity of whistleblowing schemes and the associated legal risk. Victoria considered a legal funding arrangement for state government whistleblowers in 2019,[186] while the 2023 Queensland review recommended a pilot scheme for legal support.[187] Neither has come to fruition yet and the idea was again raised in the *PID Act* reform consultation paper.[188] SIA might wish to consider whether to pilot a scheme whereby sports integrity whistleblowers can access free or subsidised legal assistance alongside their disclosures.[189]

There is also growing understanding of the mental health and wellbeing impact of whistleblowing.[190] The Victorian scheme envisaged funding for non-legal support, including psychological services and career-counselling.[191] Presently, SIA's website includes links to various free wellbeing services, such as Lifeline, and advises: 'You may be eligible to receive support from the Australian Institute of Sport (AIS) Mental Health Referral Network'.[192] It might also consider providing dedicated psychological support for whistleblowers, as part of an evolved SIA approach to whistleblowing. It is notable that the Council of Europe Monitoring Group's recommendation on whistleblower protection in the anti-doping context included a '[r]ight to assistance', providing that '[w]hen conditions permit, whistleblowers may be provided with assistance, which can notably include legal, psychological, or physical support'.[193]

documents/policy/corporate/whistleblower-policy.pdf>; Westpac, 'Westpac Group Speaking Up Policy' (June 2025) <https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/WBC-speaking-up-policy.pdf>.

186 Discussed in Pender, *Cost of Courage* (n 19) 16.

187 Wilson (n 9) 213 (recommendation 89).

188 Attorney-General's Department (Cth), *Reforms Consultation Paper* (n 9) 22–3.

189 In August 2023, the Human Rights Law Centre launched the Whistleblower Project, Australia's first pro bono legal service for whistleblowers. The author has led the establishment of the service. See Nick Feik, 'Whistle While We Work' (July 2023) *The Monthly* <https://www.themonthly.com.au/issue/2023/july/nick-feik/whistle-while-we-work>.

190 Pender, *Cost of Courage* (n 19) 16.

191 Ibid.

192 'Make an Integrity Complaint or Report', *Sport Integrity Australia* (Web Page) <https://www.sportintegrity.gov.au/contact-us/make-an-integrity-complaint-or-report>. See also 'Mental Health and Wellbeing', *Sport Integrity Australia* (Web Page) <https://www.sportintegrity.gov.au/mental-health-and-wellbeing>.

193 Council of Europe Monitoring Group (n 43) pt III art 7.

3 *Incentive Schemes*

One way to encourage whistleblowing, and address some of the considerable financial risk associated with speaking up, is through whistleblower incentive programs.[194] These have been pioneered in the US, taking two primary forms. Under the *False Claims Act of 1863*,[195] and state-level equivalents, an employee of a private sector entity that is defrauding the Government can bring a lawsuit on the government's behalf. This is known as a *qui tam* suit. The Government can then choose whether to take over the suit or allow the whistleblower to continue it — in either event, if the suit leads to a judgment sum, penalty or settlement, the whistleblower is entitled to a proportion, typically in the order of 15–30%.[196] Over the past four decades, the primary American scheme has helped the taxpayer recover more than A$80 billion, with whistleblowers receiving more than A$15 billion.[197] The second approach is a whistleblower rewards scheme administered by a regulator. In the US, the most prominent, although by no means the only, scheme is overseen by the Securities and Exchange Commission ('SEC'). If a whistleblower brings information to the SEC, which leads to successful enforcement proceedings, the whistleblower can receive a share of the penalty. Since being established in the wake of the 2007–09 Global Financial Crisis, the SEC program has helped recover over A$10 billion, with several billion paid to whistleblowers.[198] Although the US pioneered these schemes, they have caught on elsewhere:[199] several Canadian regulators have recently introduced whistleblower incentive programs, while the British competition and tax regulators both administer reward schemes. A common concern regarding such schemes is that the availability of rewards can lead to an increase in baseless or vexatious disclosures, creating an additional administrative burden for regulators responsible for checking them.[200] However, such issues can be minimised with scheme design. For example, regulators might reject information that, on its face, lacks sufficient evidence , or be empowered to penalise those who submit misleading information.[201] They might also bar further rewards claims for known whistleblowers who have exceeded a certain number of meritless disclosures.

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194 See generally Allan Fels, 'How to Keep Corporations Honest', *The Saturday Paper* (online, 23 March 2024) <https://www.thesaturdaypaper.com.au/comment/topic/2024/03/23/how-keep-corporations-honest>.

195 *False Claims Act of 1863*, 31 USC §§ 3729–33 (1863).

196 US Department of Justice, 'False Claims Act Settlements and Judgments Exceed $2.9B in Fiscal Year 2024' (Press Release 25-58, 15 January 2025) <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024>.

197 US Department of Justice, 'Fraud Statistics – Overview' (2024) <https://www.justice.gov/archives/opa/media/1384546/dl>.

198 See United States Securities and Exchange Commission ('SEC'), 'SEC Announces Enforcement Results for Fiscal Year 2024' (Press Release 2024-186, 22 November 2024) <https://www.sec.gov/newsroom/press-releases/2024-186>; SEC, 'Whistleblower Program' (Web Page), <https://www.sec.gov/enforcement-litigation/whistleblower-program>.

199 See generally Eliza Lockhart, *The Inside Track: The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime* (Serious Organised Crime and Anti-Corruption Evidence Research Programme Research Paper No 31, December 2024).

200 PJCCFS, *PJCCFS Report* (n 56) 134.

201 See, eg, *Commodity Futures Trading Commission Whistleblower Rules*, 17 CFR § 165.3(b) (2017); *Ontario Securities Commission Policy 15-601 Whistleblower Program*, § 2 (2022); *SEC Securities Whistleblower Incentives and Protections*, 17 CFR § 240.21F-9 (2025).

In Australia, a whistleblower incentive program was recommended by the 2017 parliamentary inquiry,[202] and formed part of the Australian Labor Party's (unsuccessful) 2019 Election platform.[203] The concept was raised in the recent *PID Act* discussion paper, and is likely to also be considered as part of the *Corporations Act* review.[204] However, these ongoing reform processes would not prevent SIA considering its own standalone sports integrity whistleblower incentive program. This could take various forms: a simple model might enable SIA to actively solicit whistleblower disclosures on the basis that those leading to successful enforcement proceedings will be entitled to a reward (no different, conceptually, to state police paying for information in missing persons' cases, as is commonplace).[205] While, unlike the American schemes, it may be difficult to base the amount paid on some percentage of the fine, SIA could promulgate a table of rewards that identifies in advance the amounts paid on an escalating scale depending on the regulatory importance and severity of the wrongdoing. This would certainly be a significant step forward.

Furthermore, sport offers a relatively self-contained ecosystem that may prove ideal for piloting a whistleblower incentive program that might have future applications in other sectors.[206] Caution should be taken, however, to ensure that encouraging and rewarding whistleblowing uniquely within SIA does not deter individuals from reporting wrongful and potentially criminal conduct to other forms of law enforcement where appropriate. By way of example, the Korea's Sport and Olympic Committee's Clean Sports Reporting Centre (later subsumed within the Korean Sports Ethics Centre), which allowed for the disclosure of match-fixing and integrity concerns without requiring subsequent police investigation, drew criticism for reducing transparency and accountability regarding the prosecution of sport-related offences that were ordinarily within the remit of Korean public prosecutors.[207] Any measures taken by the SIA to incentivise disclosure should therefore also include safeguards to prevent vital information being cloistered there.

4 *Innovation*

The above suggestions need not be exhaustive. The global whistleblowing landscape is going through a revolution. There has been significant progress towards stronger laws around the world, particularly in the wake of the European Union's landmark

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202 PJCCFS, *PJCCFS Report* (n 56) 138–9 (recommendations 11.1–11.2).

203 Mark Dreyfus MP, 'Labor Will Protect and Reward Banking Whistleblowers' (Media Release, 3 February 2019) <https://www.markdreyfus.com/media/media-releases/labor-will-protect-and-reward-banking-whistleblowers-mark-dreyfus-qc-mp>.

204 Attorney-General's Department (Cth), *Reforms Consultation* (n 9).

205 See 'Rewards Offered', *NSW Police Force* (Web Page) <https://www.police.nsw.gov.au/can_you_help_us/rewards>.

206 See also Hall, Masters and Ordway's suggestion that consideration be given to 'creating a leniency policy for persons who report wrongdoing in relation to any disciplinary outcomes. This might be a discounted penalty in relation to their own wrongdoing or a financial reward for information leading to prosecution', or, alternatively, 'an award or other means of recognition for role models who contribute to the high ethical standing and integrity of sport, or who speak up about wrongdoing': Hall, Masters and Ordway (n 62) 37.

207 Stacey Steele, Jess (Hee Sung) Shin and Sarah (Jin Hyung) Yang, 'Match-Fixing and the Roles of Public Prosecutors in Korea' in Stacey Steele and Hayden Opie (eds), *Match-Fixing in Sport: Comparative Studies from Australia, Japan, Korea and Beyond* (Routledge, 2017) 204.

2019 *Whistleblower Protection Directive*.[208] The US, meanwhile, has led the way on whistleblower incentive programs and other regimes that encourage people to speak up by giving them the tools to make an impact. In June 2024, the US Attorney's Office for the Southern District of New York launched a pilot whistleblower amnesty program to encourage 'early and voluntary self-disclosure of criminal conduct by individual participants in certain non-violent offenses'.[209] Evidently, whistleblower protection best practice is fast evolving, and sport, as a distinct regulatory ecosystem with a high premium on integrity, could well be a trailblazer in promoting innovative laws and initiatives to empower whistleblowers. Sport in Australia need not lag behind; there is every reason to think that Australian sport could lead the way in protecting whistleblowers, enhancing integrity in sport in the process.

V Conclusion

In this article, I have considered the application of Australian whistleblower protections to issues of sporting integrity. Sport is an important context in its own right, given the cultural, economic and political salience of sport in Australia, but it is also an instructive site for analysing shortcomings in whistleblowing frameworks under Australian law more generally. While existing protections cover some categories of potential sports integrity whistleblowers, there are a number of shortcomings, including in relation to individuals covered under the laws, the protected avenues for speaking up and the atypical sporting context. I have concluded that there is work to be done to ensure sport-related whistleblowers can speak up safely and lawfully about integrity issues in Australia. That finding should come as no surprise, given the express recommendation of the *Wood Review Report* in relation to whistleblower protections in sport, but this article is the first rigorous analysis of the integration between Australia's whistleblowing and sports integrity frameworks. These implications are not limited to sport, with many of the concerns that I have identified applying to a range of whistleblowing contexts. I therefore hope that the article usefully contributes to ongoing policy consideration of potential reform. The need for reform is urgent — without stronger protections, prospective whistleblowers in Australia will remain silent and wrongdoing in sport will go unaddressed. It is alarming, for example, that there is presently no protected avenue for a whistleblower to provide information to SIA.

More research needs to be done at the intersection of whistleblowing and sports integrity in Australia. International literature has provided helpful insight into athlete perceptions on whistleblowing.[210] Equivalent research undertaken with Australian athletes could yield important perspectives to inform the work of SIA and other stakeholders. Much Australian whistleblowing policy development has been informed by landmark research on organisational perceptions of, and approaches to,

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[208] *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons who Report Breaches of Union Law* [2019] OJ L 305/17 ('*EU Whistleblower Protection Directive*'). See, eg, CEELI Institute (n 22). But see Transparency International, *How Well Do EU Countries Protect Whistleblowers? Assessing the Transposition of the EU Whistleblower Protection Directive* (2023).

[209] US Department of Justice, 'SDNY Whistleblower Pilot Program', *United States Attorney's Office* (Web Page, 14 January 2025) <https://www.justice.gov/usao-sdny/sdny-whistleblower-pilot-program>.

[210] See the literature outlined above at Part II(B).

whistleblowing, through the Whistling While They Work project and subsequent initiatives.[211] Similar work could be undertaken within sports in Australia as part of efforts to ensure sports teams and governance organisations are taking whistleblowing seriously.

While law reform is a necessary first step, other sectors are increasingly focused on adapting whistleblowing support mechanisms and oversight bodies to ensure the protections work in practice. At a federal level, there have been calls for the establishment of a whistleblower protection authority.[212] At state level, the NSW Ombudsman recently established a dedicated whistleblower protection unit. There is growing awareness of the need to provide legal services and other forms of support to whistleblowers.[213] It might therefore be helpful for researchers to consider other steps, beyond law reform, that SIA and cognate bodies could take to encourage, protect and support whistleblowers.

I began this article with two epigraphs. The first was from anti-doping whistleblower Grigory Rodchenkov,[214] who helped expose systemic doping violations overseen by the Russian state. His whistleblowing led to Russian athletes being restricted from participating in national colours at several Olympics and was subsequently depicted in the film *Icarus*. Rodchenkov's words sound a note of resignation, that the fight against cheating in sport is never over. They were followed by an extract from the submission of SIA's predecessor, ASADA, to the Wood Review. ASADA noted that many of the high-profile cases of systemic doping have been brought to light through whistleblowing, not testing. This, ASADA argued, underscored 'the need for fresh and innovative approaches'.[215] Despite the contrasting tenor of these epigraphs, they are underpinned by a consistent notion: the fight for integrity in sport is never over. The establishment of SIA is an important step, but policymakers cannot 'set and forget'. To maintain public confidence in sport, regulators must use all tools at their disposal. Better utilisation and protection of whistleblowers is a critical next step in protecting the integrity of sport in Australia.

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211 See Brown et al (n 7).

212 Transparency International Australia, Human Rights Law Centre and Griffith University Centre for Governance and Public Policy, *Design Principles* (n 179).

213 See discussion above at Part IV(C)(4).

214 Ahmed (n 1).

215 ASADA (as it then was) quoted in *Wood Review Report* (n 2) 52.