In the Public Interest: Johnson Winter Slattery's Pro Bono Partnership with Australia's First Dedicated Whistleblower Legal Service

By Olivia Roney and Jade Tyrrell

JWS Senior Associate Jade Tyrrell and HRLC Senior Lawyer Kieran Pender at the South Australian Court of Appeal during the Boyle proceedings

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The Whistleblower Project

The Human Rights Law Centre's (HRLC's) Whistleblower Project is a dedicated pro bono legal service for whistleblowers. It provides whistleblowers and prospective whistleblowers access to legal advice and representation. The lawyers who work on the Project also undertake work on law reform, and in policy and advocacy to strengthen whistleblower protection regimes in the public and private sectors across the country.

Launch

The Project was launched in August 2023 in Sydney. The Honourable Tony Fitzgerald AC KC, former Chair of the Commission of Inquiry into Official Corruption in Queensland that uncovered Bjelke-Petersen-era corruption in the Queensland government, delivered the keynote address at the launch, remarking that:

"*Currently, there is no dedicated legal service, specialising in whistleblower protection, operating on a not-for-profit basis, and applying public interest criteria in order to offer free legal support to whistleblowers who need and deserve it. From today, thanks to the Human Rights Law Centre and its supporters from inside and outside the legal profession, that gap will be filled [...] Affording legal protection to whistleblowers is not just about protecting individual rights. It is also about protecting the interests of the community.*"

"The initial conversations with the HRLC about pro bono support led to the development of the partnership in a flexible manner which responds to the needs of the program – be it supporting court proceedings, assisting on legal resources or the provision of senior and junior level secondees on long-term placements."

HRLC Senior Lawyer Kieran Pender facilitates the speaker panel at the launch of the Whistleblower Project in August 2023. L-R Jeff Morris OAM, Rawan Arraf, Adele Ferguson AM, Richard Denniss, and Kieran Pender

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Pro bono partnership with JWS

The aim of the JWS pro bono practice is to engage with social justice and community organisations and ask them how our lawyers could best help. The practice seeks to fit in with the needs of the organisation, not the other way around. JWS consistently exceeds the Australian Pro Bono Centre's National Pro Bono Target, reaching 48 hours per lawyer in 2021 and maintaining a benchmark above the Target ever since. The initial conversations with the HRLC about pro bono support led to the development of the partnership in a flexible manner which responds to the needs of the program – be it supporting court proceedings, assisting on legal resources or the provision of senior and junior level secondees on long-term placements.

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Since its launch in August, the Project has received over 150 requests for legal support from individual whistleblowers and its lawyers have been invited to make submissions and appear at inquiries across the country. Part-time and full-time secondees from JWS have also supported the Project's advice and representation work, including by:

- triaging new clients
- drafting and submitting public interest disclosures to relevant bodies
- advising on prospects of success in litigation after whistleblowers have suffered retaliation for speaking up, and drafting letters of demand to employers
- providing access to further avenues for disclosure including the media and to MPs and Senators through parliamentary privilege, and
- ensuring whistleblowers' right to confidentiality.

A current client of the Project reflected:

"Thank you for answering the call this year and offering your support. When I made the decision to blow the whistle, I found myself entirely on my own without any support or guidance, exhausting my life savings in the public interest as I tried to navigate the process. Without the help of the Human Rights Law Centre, this would be yet another matter of serious misconduct swept under the rug. The work you do ensures that people aren't left with no option but to turn a blind eye and walk away."

"It is a privilege to work in a role in which I can influence legal policy and legislation and provide advice to government on the best way to address complex legal policy issues, particularly in the social justice and social policy space. I really feel very honoured to be able to give advice to government about changing systems that do actually impact people's lives, particularly really vulnerable people."

Jade and Massooma Saberi at a rally for whistleblowers

JWS secondee lawyers have also been involved in the Project's law reform activities focused on human rights and transparent legal frameworks for whistleblowers, such as through submissions on:

- the Attorney-General's Department's comprehensive review of secrecy laws
- the review of federal public sector whistleblower protections, the *Public Interest Disclosure Act 2013* (Cth)
- the Independent National Security Legislation Monitor's (INSLM) review of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) and secrecy offences in Part 5.6 of the *Criminal Code 1995* (Cth). In March 2024, alongside Senior Lawyer at the Project, Kieran Pender, JWS secondee Olivia Roney made oral submissions at the INSLM's public hearings in Canberra, and
- the Senate Economics Legislation Committee inquiry into the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023. In April 2024, alongside Kieran Pender, Senior Associate at JWS and secondee to the Project, Jade Tyrrell, appeared at the Senate Standing Committee on Economics to make oral submissions on behalf of the Project.

Jade was also instrumental in establishing Australian best practice in whistleblower protection, leading the publication of the Draft Design Principles for a Whistleblower Protection Authority. As those who work in pro bono will appreciate, this experience has given Jade deep understanding and insights, which are also relevant to her client work at the firm.

In 2024, JWS launched the Pro Bono Gap Year program – an initiative that sends JWS law graduates on a 12-month pro bono secondment to one or two of its community legal partners. The inaugural Gap Year secondee, Olivia Roney, has spent the last six months on a full-time basis with the HRLC's Project. About her time with the Project, Olivia said:

"To start my career on pro bono secondment with the Whistleblower Project has been incredible. While the law behind whistleblowing is complex, it touches so many aspects of our lives, and the exposure JWS and the Project has provided, as such a junior lawyer, to clients fighting systemic fraud, structural racism, and even Robodebt, has been a very powerful way to start my career."

JWS work in strategic litigation

JWS has also provided direct strategic litigation support to the Project, acting pro bono for the HRLC and assisting the HRLC to successfully apply to intervene as amicus curiae (friend of the court) in the appeal brought by whistleblower Richard Boyle in the Court of Appeal of the Supreme Court of South Australia. At the time of writing, the Court of Appeal has not delivered judgment.

Richard Boyle was an Australian Tax Office debt collection officer who was charged in relation to material he gathered prior to making a public interest disclosure concerning unethical revenue raising tactics targeting individuals and vulnerable small businesses. Initially, Mr Boyle spoke up internally, making a public interest disclosure under the *Public Interest Disclosure Act 2013* (Cth).

HRLC Senior Lawyer Kieran Pender and JWS Secondee Lawyer Olivia Roney providing oral submissions to the INSLM Hearing in March 2024

When nothing was done, he went to the Inspector-General of Taxation. As a last resort, he engaged the media—following the procedure set out in the *PID Act*.

In March 2023, Mr Boyle's application for protection as a whistleblower was dismissed by the South Australian District Court, which determined that protections applied to the act of blowing the whistle, but not to preparatory acts. In Mr Boyle's case, this applied to the evidence gathered by him in making his internal disclosure.

On the partnership between JWS and HRLC, Partner and Joint Chair of Pro Bono at JWS, Frances Dreyer said:

"Our pro bono practice has a social justice focus. Its dominant aim is to assist the disadvantaged. This is done both at an individual level, and on projects which seek to use 'the law' to help level the playing field by addressing issues of structural disadvantage. We view a transparent legal system in respect of whistleblowers as relevant to both elements of our practice."

What's next for the Project

As the Project's advice service grows, secondees will assist the HRLC to continue to expand its capacity to support individual whistleblowers. The Project team will continue championing the establishment of a Whistleblower Protection Authority and dedicate further resources to the Project's law reform agenda. ■

Olivia Roney is a law graduate at Johnson Winter Slattery, and the inaugural Pro Bono Gap Year participant. She is undertaking her gap year with the Human Rights Law Centre's Whistleblower Project, and the Public Interest Advocacy Centre. She is also part of Australian Lawyers for Human Rights' LGBTI Subcommittee and the New South Wales Law Society Young Lawyers Human Rights Subcommittee. She has a background in social enterprise and innovation, and is a Director of Pride by Side.

Jade Tyrrell is a litigation and dispute resolution Senior Associate at Johnson Winter Slattery. She has acted in various proceedings in the Federal Court of Australia and in numerous state courts and tribunals, with over a decade of experience acting in general commercial litigation, defamation, and employment-related disputes in particular.
In addition to her commercial work, Jade has a strong interest in supporting pro bono projects. She is currently undertaking a part-time pro bono secondment at the Human Rights Law Centre to assist on its Australia-first Whistleblower Project.
Jade is a Councillor of the Law Society of New South Wales and a director of the Public Interest Advocacy Centre.

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