

The Honourable Anthony Albanese MP
Prime Minister

The Honourable Mark Dreyfus KC MP
Attorney-General

16 May 2024

Whistleblower Protections and Whistleblower Prosecutions

Dear Prime Minister, Attorney-General,

On Tuesday, a whistleblower was sentenced to over 5 and a half years imprisonment, marking a dark day in Australian history. David McBride was imprisoned for providing documents to our public broadcaster, the ABC, which led to the Afghan Files, a piece of landmark public interest journalism. The case against McBride, together with other whistleblower prosecutions and the 2019 raids by Australian Federal Police on the ABC and journalist Annika Smethurst, has had a deep chilling effect on whistleblowing and public interest journalism in Australia. These cases have undermined our democracy.

Whistleblowers make Australia a better place. We welcome your Government's commitment to stronger whistleblower protections, and your swift action to end the prosecution of Bernard Collaery in 2022. We also acknowledge the first phase of reform to the *Public Interest Disclosure Act* enacted last June, the improved protections for tax sector whistleblowers contained in the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023, and proposed improvements for whistleblowers in the New Aged Care Act.

But the imprisonment of McBride for his role in exposing war crimes committed by Australian forces in Afghanistan confirms what this government has already acknowledged: that the laws are broken and need urgent reform. We note the condemnation of this outcome by unions, press freedom advocates, and human rights and transparency organisations in Australia and internationally. We also note Australia's recent decline to 39th on the World Press Freedom Index.

We remain deeply concerned about the ongoing prosecution of whistleblower Richard Boyle, who exposed wrongdoing at the Australian Taxation Office, and is being prosecuted for preparatory steps in blowing the whistle internally. We are also concerned about the slow pace of reform and the lack of commitment to establishing a whistleblower protection commission, contrary to your comments ahead of the 2019 federal election.

Without swift action, Mr McBride will languish in jail for at least the next two years and three months (until the end of his non-parole period), and future whistleblowers will continue to suffer in the absence of robust, comprehensive reform. However, you have the power through the Royal Prerogative of Mercy to end this injustice, and push on with reform.

Accordingly, we write to call on you to:

1. Advise the Governor-General to use the Royal Prerogative of Mercy to grant a full pardon to McBride.
2. Discontinue the prosecution of tax office whistleblower Richard Boyle.
3. Commit to urgently overhauling whistleblowing and secrecy laws, at the latest before the end of this parliamentary term.
4. Commit to establishing a whistleblower protection commission, with preparatory work beginning immediately to ensure the body commences during 2025.

In 2020, Prime Minister, you told media outlet *Crikey*, in relation to the Collaery prosecution, “the idea that there should be a prosecution of a whistle-blower, for what’s a shameful part of Australia’s history, is simply wrong”.

We could not agree more. It is equally shameful that the first person imprisoned in relation to Australia’s war crimes in Afghanistan is not a war criminal but the source of the Afghan Files reporting, journalism that was undeniably in the public interest.

By ending the war against whistleblowers, establishing a whistleblower protection commission, and pursuing ambitious, comprehensive law reform, this Government can ensure whistleblowers in Australia are protected – not punished, prosecuted or imprisoned.

We urge you to take the four critical steps outlined above to make Australia fairer and more transparent and to send a clear message to genuine whistleblowers that they are both respected and protected.

Yours sincerely

Andrew Wilkie MP
Member for Clark

Allegra Spender MP
Member for Wentworth

Bridget Archer MP
Member for Bass

Senator Lidia Thorpe
Senator for Victoria

Adam Bandt MP
Member for Melbourne

Senator David Shoebridge
Senator for New South Wales

Senator Mehreen Faruqi
Senator for New South Wales

Senator Larissa Waters
Senator for Queensland

Senator Sarah Hanson-Young
Senator for South Australia

Senator Nick McKim
Senator for Tasmania

Senator Penny Allman-Payne
Senator for Queensland

Senator Dorinda Cox
Senator for Western Australia

Senator Steph Hodgins-May
Senator for Victoria

Senator Barbara Pocock
Senator for South Australia

Senator Jordon Steele-John
Senator for Western Australia

Senator Peter Whish-Wilson
Senator for Tasmania

Stephen Bates MP
Member for Brisbane

Max Chandler-Mather MP
Member for Griffith

Elizabeth Watson-Brown MP
Member for Ryan

Dr Sophie Scamps MP
Member for Mackellar

Kylea Tink MP
Member for North Sydney

Dai Le MP
Member for Fowler

Rebekha Sharkie MP
Member for Mayo

Zali Steggall OAM MP
Member for Warringah

Dr Helen Haines MP
Member for Indi

Senator David Pocock
Senator for Australian Capital Territory

Zoe Daniel MP
Member for Goldstein

Senator Tammy Tyrrell
Senator for Tasmania

Kate Chaney MP
Member for Curtin

Dr Monique Ryan MP
Member for Kooyong