

Submission No.....	24
Date Received.....	A



Australian Government  
Australian Taxation Office

The Secretary  
House Standing Committee on Legal and Constitutional Affairs  
House of Representatives  
Parliament House Canberra ACT 2600

RECEIVED  
28 AUG 2008  
BY: LACA

**Inquiry into whistleblowing protections within the Australian Government  
public sector**

Dear Sir/Madam

I welcome the opportunity to provide input into this inquiry and to contribute to the development of a preferred model for future legislation in the area of employee reporting and protection.

The ATO has developed a number of internal policies in line with government legislation to enable the efficient and effective management of employee reporting of wrong doing.

Over the last few years we have participated extensively in the Whistling While They Work research project being conducted by Griffith University and have already considered some of the initial outcomes of their research.

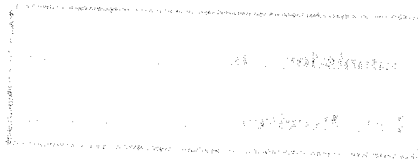
Detailed comments addressing the terms of reference are provided at Attachment 1.

In addition, we have provided a response to comments made by the Australian Services Union (ASU) about the Tax Office whistleblowing policy (at Attachment 2).

Yours faithfully

David Diment  
First Assistant Commissioner  
ATO People & Place

28 August 2008



## ATTACHMENT 1

### AUSTRALIAN TAXATION OFFICE (ATO)

#### SUBMISSION TO THE INQUIRY INTO WHISTLEBLOWING PROTECTIONS WITHIN THE AUSTRALIAN GOVERNMENT PUBLIC SECTOR

##### **1. the categories of people who could make protected disclosures**

1.1 The Australian Taxation Office (ATO) has no issue with the proposed categories of people who may make disclosures, including current and former employees in the Australian Government general government sector, contractors and consultants currently or formerly employed by the Australian Government, and persons current or formerly employed under the Members of Parliament Act. The ATO welcomes a broad definition here as it sees reports of wrong doing as helping to improve performance and to ensure the integrity of the organisation.

##### **2. the types of disclosures that should be protected**

2.1 The ATO agrees with the proposed types of disclosures to be protected, i.e. that they be limited to illegal activity, corruption, official misconduct involving a significant public interest matter, maladministration, breach of public trust, scientific misconduct, wastage of public funds, dangers to public health and safety, and dangers to the environment.

2.2 The ATO would support the exclusion of potentially very minor or questionable breaches of the code of conduct and/or reports which are essentially personal interest disclosures. In the ATO's view there have been a number of instances where attempts have been made to use these provisions as an alternative avenue to raise grievances, or as an attempt to divert attention from, or thwart, an existing Australian Public Service code of conduct process.

2.3 In its current policy on employee reporting and protection the ATO does not generally regard as whistleblowing:

- an employee complaint or grievance seeking a review of an administrative decision;
- a complaint or disagreement about government or Tax Office policy;
- any disclosure where the employee making the report is directly affected or linked to the conduct being reported; and
- when an employee's team leader identifies suspected misconduct during the course of normal business.

##### **3. the conditions that should apply to a person making a disclosure**

3.1 The ATO believes that employees should not make vexatious or frivolous accusations and agrees that a threshold of seriousness should be required for allegations to be protected, although it notes the practical difficulty of determining this threshold in all circumstances. It may be that some cases will require investigation to determine if the reporting is made in good faith.

3.2 We believe that employees who in the course of reporting wrong doing make an unlawful public interest disclosure should not be protected from criminal or disciplinary action.

#### **4. the scope of statutory protection that should be available**

4.1 The ATO is comfortable with the current scope of statutory protection available to employees who report wrongdoing in good faith, including protection against victimisation, discrimination, discipline or an employment sanction. Reported acts of victimisation or discrimination should be properly and independently investigated under current misconduct procedures or by criminal prosecution if appropriate.

4.2 We do not believe that employees should be protected from criminal or disciplinary action for any unlawful public disclosure of official information or if they knowingly make false or vexatious reports.

#### **5. procedures in relation to protected disclosures**

5.1 The ATO accepts that different circumstances apply in different agencies for the effective handling of public interest disclosures. In our experience, disclosures should be handled by persons or areas trained and authorised to do so, to ensure that such reports are handled sensitively, treated confidentially, and so that proper consideration is given to the possibility that the reporting employee may suffer victimisation or unlawful discrimination as a result of reporting. In the ATO employees who suspect misconduct may report to their SES officer, through a centralised mailbox (for emails), to our ATOCare area, or directly to our Integrity Assurance area.

5.2 The ATO believes it has an obligation to advise the employee reporting suspected misconduct whether or not action will be taken to determine if there has been a breach of the Code of Conduct by the area undertaking the enquiry. There is no obligation to advise the employee reporting suspected misconduct of the actual outcome of any subsequent investigations into the misconduct action.

5.3 The ATO believes it has an obligation to keep confidential the identity of employees reporting suspected fraud or misconduct as a 'need to know' basis where practicable; to consult them before their identity is disclosed in any legal process that may follow their reporting action; provide an assurance that reported acts of victimisation or discrimination will be properly and independently investigated.

5.4 The ATO considers that disclosure to a third party could be appropriate where all internal avenues have been exhausted.

5.5 The ATO welcomes the involvement of integrity agencies to provide advice and assurance regarding the effectiveness of internal systems and particularly in providing education and training.

#### **6. the relationship between the Committee's preferred model and existing Commonwealth laws**

6.1 The ATO has been participating in the extensive Whistling While They research project, led by Dr A J Brown from Griffith University. The ATO concurs with the research team's definition of whistleblowing (quoted in the Griffith University study, Whistleblowing - An Agenda for Legislative Reform is): "the disclosure by an organisation member (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action."

6.2 In his paper, 'Public Interest disclosure Laws in Australia: Towards the Next Generation' Dr Brown rated the effectiveness of the various disclosure Acts in the six States, the ACT and Commonwealth. The Queensland *Whistleblowers Protection Act 1994* was rated highest out of 100 at 64.3; the Commonwealth s.16 of the *Public Service Act 1999* the least effective at 31.0. The ATO believes these findings should inform the Committee's preferred model.

## **7. Such other matters as the Committee considers appropriate**

7.1 No other matters to be raised here.