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Dr Anna Dacre  
Committee Secretary  
Inquiry into whistleblowing protections within the Australian Government  
House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email [committee.reps@aph.gov.au](mailto:committee.reps@aph.gov.au)

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13 AUG 2008  
BY: LACA

8 August 2008

Dear Dr Dacre,

**Inquiry into whistleblowing protections within the Australian Government –  
submission by Australian Institute of Professional Investigators**

The Australian Institute of Professional Investigators (“AIIPI”) welcomes the opportunity to make the following submission in relation to the current review of whistleblowing protections within the Australian Government (referred to in this submission as “the inquiry”).

**About the Australian Institute of Professional Investigators (“AIIPI”)**

AIIPI is a professional body formed in 1996 with representation in every major Australian capital. It aims to be the premier organisation representing professional investigators across the country in both government and private sectors. Our membership includes: private enquiry agents, corporate investigators, forensic accountants, lawyers, serving police officers and other government sector investigators. More information as to the objectives and structure of AIIPI can be found on our website at [www.aipi.asn.au](http://www.aipi.asn.au)

AIIPI is fully supportive of the review of whistleblowing protections within the Australian Government and is pleased to make the following submission.

**General submission**

The AIIPI has carefully reviewed the Terms of Reference and submits the following material for your consideration in developing legislation to protect public interest disclosures (commonly referred to as “whistleblowing”) within the Australian Government public sector.

Our fundamental submission is that Australian Standard AS8004-2003 *Whistleblower Protection Systems for Entities* (referred to in this submission as “AS 8004”) should be considered for incorporating into federal whistleblower protection legislation.

Having made that general submission, we also make the following specific comments.

## Specific submission

**In our view, the categories of persons who can avail themselves of protection under a legislative regime should include not only those within government agencies but also those who engage with it.** Several well respected surveys provide support for these propositions including the American Certified Fraud Examiners (ACFE) "Report to the Nation 2006" and KPMG "Fraud Survey 2006".

The reportable conduct types align, with appropriate changes in language, to AS 8004 at Clause 1.4.6.

In our submission, the language of Terms of Reference 2, 3 and 4 places too much emphasis on information fulfilling prescribed criteria rather than encouraging persons to report information which can be screened later. We believe that the legislation should actively encourage people to come forward if they hold a legitimate concern about what they believe to be reportable conduct.

On that basis we submit:-

- (i) **The reportable conduct conditions should not be so stringent to discourage reporting of information.** We note that AS8004 (at Clause 2.3.10) provides guidance in relation to false reporting by a person purporting to be a whistleblower. The success of a whistleblower protection program is reliant on all information being investigated. This has stood the test of time and has acted as an effective means of encouraging information and deterrence against providing false information.
- (ii) **Whistleblowers should be able to remain anonymous if they wish.** In some whistleblower related legislation, there is a requirement that a person must declare his or her identify before availing themselves of protection.<sup>1</sup> In at least the first instance and then if either his or her identity is compromised or established, or the information becomes an important element of a larger allegation as a result of which he or she needs protection, the whistleblower should not be precluded from protection because they did disclose his or her identity at the time of disclosure.

In relation to Term of Reference 5, we believe there may be too great an emphasis on internal reporting. This opens up possible claims of a lack of independence and transparency and suggestions of concealment of information. It also potentially restricts the flow of information.

**Our preferred complementary external model would be for a private agency as opposed to another government integrity agency as an alternative reporting mechanism.** Some people have, unfortunately, an inherent distrust of their employer and government. This approach would provide the balance needed for optimal levels of reporting.

**The only comment we make between the relationship of Committee's preferred model and existing Commonwealth laws is that it should take a national approach**

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<sup>1</sup> For example Section 1317AA of the Corporations Act 2001 as amended by the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 wherein a whistleblower is required to disclose his or her name at the time of the disclosure to avail him or herself of protection under the Act.

**and look to remove the complexities created by the present different State legislation.**

If you require any further information regarding this submission, please contact the undersigned on 03 9038 3151 or by mail directed to the above address.

Yours faithfully

Dean Newlan  
*President*  
*Australian Institute of Professional Investigators*