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SYNOD OF VICTORIA AND TASMANIA

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Submission for Inquiry into whistleblowing protections within the Australian Government public sector

The Justice and International Mission Unit of the Synod of Victoria and Tasmania, Uniting Church in Australia welcomes this opportunity to make a submission to the Inquiry into whistleblowing protections within the Australian Government public sector.

The Justice and International Mission Unit supports meaningful protection for those who legitimately act as whistleblowers, where the person has attempted to raise matters such as illegal activity, corruption, official misconduct involving a matter of significant public interest, maladministration, breach of public trust, scientific misconduct, wastage of public funds, dangers to public health and safety and dangers to the environment through the official internal channels of redress and has received an obviously inadequate response within a reasonable timeframe. However, the Unit acknowledges that this must be balanced by measures to discourage those who seek to disclose confidential information for personal benefit or to embarrass a government out of political motives and to discourage the making of reckless or false allegations.

The Unit notes that the Australian Standard on *Whistleblowing Protection Programs for Entities* (AS8004-2003) recommends protection for whistleblowing of conduct broader than the types of disclosures covered in the Terms of Reference of the Inquiry. It would apply to any conduct that was dishonest, fraudulent, unethical or related to an unsafe work practice in addition to those listed in the inquiry terms of reference.

The Justice and International Mission Unit has taken a particular interest in this inquiry, due to its interest in combating corruption which is a factor in efforts to eradicate poverty globally. The Uniting Church in Australia at its Inaugural Assembly in 1977 stated that in response to the Christian gospel:

We pledge ourselves to seek the corrections of injustices wherever they occur. We will work for the eradication of poverty and racism in our society and beyond.

The 2007 annual meeting of representatives of the Synod of Victoria and Tasmania passed a resolution acknowledging "there is a need to address corruption within developing countries to work towards the eradication of poverty" and "some wealthy countries continue to maintain laws and practices that foster, reward and allow them to benefit from corruption in developing countries". The resolution commended the Australian Government for the steps it had taken to combat corruption globally and urged that a number of further measures be taken.

In March 2008, the Justice and International Mission Unit published a report on global corruption, *From Corruption to Good Governance*, which outlined Australia's performance in

tackling corruption and what further actions could be taken. The report was endorsed by TEAR Australia, the Christian World Service of the National Council of Churches in Australia and Transparency International Australia. The report noted the need for protection of whistleblowers to deal effectively with corrupt actions, such as the payment of bribes by Australian companies in developing countries.

In the area of protection for whistleblowers within the Australian Government public sector the report noted the findings and recommendations of the OECD Directorate for Financial and Enterprise Affairs assessment *Australia: Phase 2. Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 4 January 2006. The OECD assessment found that on issues of foreign bribery:

Other than awareness-raising measures undertaken by DFAT to encourage officials to report suspected breaches of the foreign bribery offence, in the form of a DFAT cable and DFAT news article, there does not appear to have been any awareness raising measures to encourage public officials outside of DFAT to report foreign bribery instances encountered in the course of their work. This could constitute a weakness of the Australian detection system, given that a number of public officials serving in Commonwealth public bodies or agencies are in contact with Australian companies operating abroad and are well-situated to discover instances of bribery of foreign public officials in the course of their work.

The OECD assessment then went on to state in specific reference to the need to improve whistleblower protection for those in the public sector that:

98. This apparent weakness of the Australian public service detection system raises further concern given the low level of whistleblower protection in the public sector. Section 16 of the Public Services Act 1999 protects Commonwealth public servants from victimisation and discrimination where they report breaches of the Code by an employee or employees to an authorised person within an Australian Public Service agency. The Australian authorities specify, in their Phase 2 responses, that such breaches would include failure to comply with Australian law when acting in the course of Australian public service employment. However, section 16 only provides protection where reporting is made to the Australian Public Service (APS) Commissioner, the Merit Protection Commissioner, or the Agency Head of the person making the disclosure (or to persons authorised by the fore-mentioned authorities). There are no specific provisions protecting whistleblowers where disclosures are made to law enforcement authorities.

99. The Australian authorities explain that victimisation of, or discrimination against, an APS employee by another APS employee for having reported suspected illegal activity to a law enforcement authority would be a breach of the APS Code of Conduct, and could result in disciplinary action under the APS Act. They also point out that although a recent evaluation conducted by the APS Commission into agency management of suspected breaches of the Code of Conduct found some confusion among employees about how the APS whistleblower scheme operates, a recent survey disclosed general satisfaction with the protections. Between 69 and 77 per cent of APS employees had a high or moderate level of confidence that they would not be victimised or harassed as a consequence of making a report that they suspected that another employee had seriously breached the Code of Conduct. In any case, there has been some criticism of the Commonwealth public sector whistleblowing protections. For instance, they were considered weak in a Transparency International Report of 2004. In addition, the Parliamentary Committee on Finance and Public Administration observed that the whistleblower scheme was deficient, notably in that: (a) it applies only to half of the federal public sector; (b) it does not cover disclosures by members of the public; and (c) reports can only be received by a

limited number of authorities, the APS Commissioner having no power to take remedial action. Although the Australian authorities have indicated that whistleblower protection provisions applicable to private sector employees would also protect Australian officials, it appears that this legislation is rather weak as well....

The OECD urged the Australian Government "to ensure effective whistleblower protection measures for Commonwealth officials and staff employed by Commonwealth agencies who report suspicions of foreign bribery, in order to encourage them to report such instances without fear of retaliatory action."

The Justice and International Mission Unit urges the Australian Government to introduce protections for whistleblowers in the public sector in line with the OECD assessment and recommendations. Specifically, that:

- the whistleblowing protection apply to disclosures to law enforcement authorities;
- they cover all members of the public service; and
- there is comprehensive protection against victimisation, discrimination, discipline, and employment sanctions for legitimate whistleblowing actions.

The Unit is aware that the Australian Government submitted a response to the *Australia: Phase 2. Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions* to the OECD in Paris in June 2008. The matters on whistleblowing protection may be addressed in that response, but the Unit has so far been unable to obtain a copy of the response, which has not been made public based on discussions with the Attorney General's Department. The Unit is in the process of writing to the Attorney General to seek a copy of the Australian Government response.

The Unit also notes the findings of the Griffith University report *Whistleblowing in the Australian Public Sector* draft report from October 2007 which stated that major legislative constraints in most jurisdictions when it came to whistleblowing included:

- A failure to provide legislative guidance on the circumstances when legal protection of whistleblowers might reasonably extend to public disclosures, in circumstances where it is impossible or has proved unsuccessful for officials to disclose to authorities; and
- A failure to provide agencies with an effective human resource management incentive to minimise harm experienced by whistleblowers, through realistic compensation mechanisms for those who report and whose career then suffers as a result.

The report argued that there was a need for the recognition of the vital role that supervisors at all management levels play as recipients of disclosure to be built into the legislative frameworks, as well as being recognised in the procedures of agencies.

The Unit urges the Australian Government to act on these recommendations that flow from the Griffith University draft report.

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