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28 July 2008

House Standing Committee on Legal and Constitutional Affairs

Inquiry into whistleblowing protections within the Australian Government public sector

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Executive Summary

This submission argues that

- The Australian Federal government should introduce the US model of 'Qui Tam' legislation that financially rewards whistleblowers about major government or corporate fraud with a tribunal-determined proportion of the public funds recovered
- The Australian Federal government should create a legislative pathway for past and former public servants and other government officials, including staff at public hospitals to report concerns about fraud or maladministration direct and anonymously to the Commonwealth Ombudsman with legislative protection from unjust reprisals. The Ombudsman should have a website that informs the public (and the whistleblower(s)) of the number of public interest disclosures that have been made on a certain topic, but does not necessarily divulge the content of the disclosure.
- The Commonwealth Ombudsman should have legislative power to solicit further public interest disclosures from particular institutions where activities are deemed to have a high potential for public harm.
- The Commonwealth Ombudsman should have the power to recommend whistleblowers for Australia day honours if their public interest disclosure has lead to significant public benefit.
- Public interest disclosures direct to media (leaks of Cabinet documents to media) rather than to the Ombudsman are not to be protected disclosures under the legislation
- The governance documents of public service departments and public hospitals should mention public interest disclosure to the Commonwealth Ombudsman's office as an accepted governance mechanism that may be utilised once a certain level of internal management steps have been taken
- Public officials should be barred from taking up private sector employment in any area associated with the responsibility as a

public official for an extended period of years after leaving public sector employment.

- Policies such as Qui Tam (proportional reward of recovered monies to the whistleblower) to encourage whistleblowers to come forward are likely to result substantial savings to the Commonwealth, the prosecution of individuals and organizations currently involved in defrauding the Commonwealth, and deliver improved health outcomes to the Australian population. In addition to the money recovered it is likely that there will also be significant savings in future periods as greater concern about the risk of detection results in a reduction in the number and sophistication of attempts to defraud the Commonwealth.

This Submission in Relation to Terms of Reference

Terms of Reference

The Committee is to consider and report on a preferred model for legislation to protect public interest disclosures (whistleblowing) within the Australian Government public sector. The Committee's report should address aspects of its preferred model, covering:

1. the categories of people who could make protected disclosures:
   a. these could include:
      i. persons who are currently or were formerly employees in the Australian Government general government sector*, whether or not employed under the Public Service Act 1999,
      ii. contractors and consultants who are currently or were formerly engaged by the Australian Government;
      iii. persons who are currently or were formerly engaged under the Members of Parliament (Staff) Act 1984, whether as employees or consultants; and
   b. the Committee may wish to address additional issues in relation to protection of disclosures by persons located outside Australia, whether in the course of their duties in the general government sector or otherwise;
2. the types of disclosures that should be protected:

a. these could include allegations of the following activities in the public sector: 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; and

b. the Committee should consider:
   i. whether protection should be afforded to persons who disclose confidential information for the dominant purpose of airing disagreements about particular government policies, causing embarrassment to the Government, or personal benefit; and
   ii. whether grievances over internal staffing matters should generally be addressed through separate mechanisms;

3. the conditions that should apply to a person making a disclosure, including:

a. whether a threshold of seriousness should be required for allegations to be protected, and/or other qualifications (for example, an honest and reasonable belief that the allegation is of a kind referred to in paragraph 2(a)); and

b. whether penalties and sanctions should apply to whistleblowers who:
   i. in the course of making a public interest disclosure, materially fail to comply with the procedures under which disclosures are to be made; or
   ii. knowingly or recklessly make false allegations;

4. the scope of statutory protection that should be available, which could include:

a. protection against victimisation, discrimination, discipline or an employment sanction, with civil or equitable remedies including compensation for any breaches of this protection;

b. immunity from criminal liability and from liability for civil penalties; and

c. immunity from civil law suits such as defamation and breach of confidence;

5. procedures in relation to protected disclosures, which could include:

a. how information should be disclosed for disclosure to be protected: options would include disclosure through avenues within a whistleblower's agency, disclosure to existing or new integrity agencies, or a mix of the two;

b. the obligations of public sector agencies in handling disclosures;

c. the responsibilities of integrity agencies (for example, in monitoring the system and providing training and education); and

d. whether disclosure to a third party could be appropriate in circumstances where all available mechanisms for raising a matter within Government have been exhausted;

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

7. such other matters as the Committee considers appropriate.

*As defined in the Australian Bureau of Statistics publication Australian System of Government Finance Statistics: Concepts, Sources, Methods, 2003 p.256.

Categories of people who could make protected disclosures

A survey of the most highly regarded public officials (including public servants, doctors, nurses, teachers, administrators and researchers), is likely to reveal that a large proportion still affirm their chief career motivation to be the incorporation in their personality and organisation of a foundational social or professional virtue such as truth, justice, equality or a closely related altruistic and humanitarian goal. Yet, there are now many institutional constraints that seem to cut across such a virtue-based career approach. An increasing proportion of government officials, for example, are now required to work closely with privately-funded institutions that necessarily have as a primary purpose, and fiduciary obligation according to corporate law, the maximisation of shareholder profit. Scientific researchers in public-funded institutions likewise are finding that a significant proportion of their work is required by legislation or funding body guidelines to be carried out under linkage grants or licensing and royalty agreements with private industry. Many public officials and researchers may (unless carefully scrutinised) after leaving office acquire stock portfolios and shares or board of directors positions, closely related to their public work or be offered lucrative private sector employment after ceasing their public work. Such roles come wrapped in commercial-in-confidence protections for data, as well as prohibitions on insider trading, contractual limitations on press or other public disclosure and more subtle constraints related to career pathways being heavily influenced by the capacity to appear valuable to industry.

Nonetheless, governments in many developed nations continue to acknowledge that public interest disclosures by individual public officials are a valuable source of information about inadequacies, misconduct and illegalities taking place in government, health and scientific organizations. This chiefly is evidenced by an increasing

number of so-called 'whistleblower' protection bills and Acts designed to buffer such individuals against unjust reprisals.[1] Such laws, often somewhat in advance of professional opinion and institutional culture, offer legislative protection for reasonable allegations of whistleblowers made in good faith and in the public interest concerning a substantial and imminent threat to the public good. [2]

The type of scientific misconduct that may be the source of a whistleblower's defining action ranges from the illegal and negligent, to unethical and inappropriate.[3] Upon 'blowing the whistle' many public officials face being cast as a pariah, a 'trouble maker' who has betrayed their organisation and / or their colleagues.[4] Whistleblowing in many contemporary public institutions also is likely to be characterised as an act of disloyalty with potentially disastrous consequences with the individual, colleagues, department/organisation and government.

There is now considerable anecdotal evidence of the power of large organisations to place substantial financial and psychological burdens on whistleblowers.[5] The perceived likelihood of reprisals or retaliation occurring (often in the guise of performance reviews) has been found to be a strong determinant of whether employees and colleagues will report wrongdoing.[6] Likewise important is the widespread belief that those who report corruption or misconduct are likely to suffer for it.[7] People are more likely to report wrongdoing if they believe it will result in few personal costs.[8] Exposing deception or misconduct in scientific research manifestly is for the public good, yet this often is countered, regardless of what legal protections are technically available, by the fear of receiving deleterious treatment, retribution or even the end of a chosen career and income security for a family.[9]

There is little, in terms of institutional governance guidelines, on how to best implement or fund the legislative protections afforded to whistleblowers. Few academic institutions seem interested in teaching

whistleblowing seriously in any formal sense, for example as an accepted (if last resort) component of governance structures.[10]

Types of disclosures that should be protected

There can be little doubt that in a society respecting the rule of law, citizens should have the capacity to expose without fear of unjust reprisal 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. Particularly important is the disclosure of wastage or fraud on public monies on a large scale or government or organisational activities with a high risk of endangering the health or security of persons.

Medicare fraud, for example, is estimated to cost the Australian Government billions of dollars per annum. While estimates of fraud are inherently difficult, and inaccurate, it is likely that the Health Insurance Commission's (HIC) estimate of $130 million is highly conservative. Fraud, like most white collar crime, is a victimless crime. This does not mean that fraud imposes no costs on others but simply that the costs are spread out over a large number of shareholders, taxpayers and corporations. The absence of an identifiable victim makes fraud much more difficult to detect and prosecute than other forms of theft.

Common forms of fraud investigated by the HIC typically relate to misrepresentations of item numbers under the Medicare system or the lodgement of spurious of claims for Federal reimbursement under the Pharmaceutical Benefits Scheme.[11] These frauds are perpetrated despite the risk of substantial penalties. Section 128A of the Health Insurance Act 1973, for example, provides a strict liability offence (even for employees or agents) of making a false statement without knowledge and, under s128B, making such a statement with intent carries a maximum penalty of a $10,000 fine, five years' imprisonment, or both. An offence under s. 29D of the Crimes Act

1914 of defrauding the Commonwealth, involves a maximum $100,000 fine, ten years' imprisonment, or both.

The HIC's Annual Report for 1997-98 indicated that a total of 2,812 complaints of alleged fraud and inappropriate practice were recorded on its National Information Register; whilst $7.6 million in benefits paid incorrectly were recovered or were in the process of being recovered from providers and the public. During the year 1996–97, 28 cases of public fraud against Medicare were referred to the Director of Public Prosecutions, and three referred to the Australian Federal Police.[12]

At the same time, government and corporate organisations to function efficiently must have the capacity to deal with staff dissatisfaction in house. Legislative protection should not be afforded to persons who disclose confidential information for the dominant purpose of airing disagreements about particular government policies, causing embarrassment to the Government, or personal benefit. Grievances over internal staffing matters should generally be addressed through separate mechanisms

The conditions that should apply to a person making a disclosure

An illustrative case about such conditions is the recent decision of an extremely reactionary United States Supreme Court, in *Garcetti et al. v. Ceballos* 547 U.S. (2006) (hereinafter *Garcetti*), contains valuable lessons about the way in which the whistleblowing could, in the hands of a somewhat more enlightened Australian judiciary, or ombudsman service be linked with legal reasoning to provide a firm conceptual foundation for institutional support of whistleblowers.

The respondent, Ceballos, was a public official. He alerted his superiors to what he considered to be serious misconduct within his area of professional responsibility. These concerns were not acted upon. In subsequent legal proceedings Ceballos faced retaliation and

claimed his First and Fourteenth Amendment rights were violated. The Supreme Court held that:

"*When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.*"[13]

The Majority further controversially indicated that

"[r]estricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen."[14]

For the Majority justices by not allowing First Amendment protection to public sector employees they are merely reflecting "the exercise of employer control over what the employer itself has commissioned or created."[15]

This decision does not completely rule out whistleblowing for public employees. Rather whistleblowing is relegated to "internal policies and procedures that are receptive to employee criticism."[16] That is, of course, if such procedures actually exist within an institution. The majority indicated that it is in the best interests of the employer to have such internal mechanisms as it will curtail any adverse publicity surrounding the source of the whistleblowers claims.[17] Yet the majority neglects to contemplate the issue, raised by Stevens J in his dissenting opinion, where an employer or supervisor does not want the whistleblowers claims to be heard at all.[18]

Whistle blowing, by its very nature, generally is an external manifestation of poor internal procedures through which potentially unethical, dangerous, unprofessional, unsafe or illegal behaviour may be reported and dealt with. A timely recent example of this has concerned the US Food and Drug Administration (FDA), where whistleblowers such as Dr David Graham have indicated that FDA scientists have been discouraged by supervisors from raising questions about drug safety and sometimes have been prevented from sharing their concern with FDA advisory committees.[19]

The Majority, in the final part of its judgment, emphasises that the exposure of "governmental inefficiency and misconduct is a matter of considerable significance."[20] They then indicate that, despite not having any constitutional protection for this exposure of inefficiency and misconduct, there is a "powerful network ...[of] whistle-blower protection laws..." available for those who expose wrongdoing.[21]

The decision of the Majority seems to imply that the legislative whistleblower protections are adequate. Yet in many instances the legislation provides only limited protective force.[22] Unjust reprisals are routinely dressed up as performance reviews and badly trained staff managers often with inadequate personal security or confidence for their job, feel that dismissing a whistleblower is a problem-resolution strategy that is most convenient.

Further, the type of free speech by the whistleblower addressing the official wrongdoing may well fall outside the protected definition of whistle blowing particularly in a nation like Australia with a woefully inadequate Federal constitution that allows only minimal protections of individuals against all governments in crucial areas such as acquisitions of property, freedom of speech, freedom of association, right to fair trial and so forth.[23]

There is also the legitimate and timely concern that the "combined variants of statutory whistle-blower definitions and protections add up to a [complex] patchwork, not a showing that worries may be remitted to legislatures for relief."[24] These diverse and disparate protections indicate that a whistleblower will get different protection for the same disclosure, based solely on "the local, state or federal jurisdictions that happen to employ them."[25]

The majority decision inadequately recognises the intricacies and importance of whistleblowers and the disclosures they make.[26] For Justice Breyer, the speech at issue in *Garcetti* was that of "professional speech" and such speech is subject to the "independent regulation by the canons of the profession."[27] And that often those canons provide an obligation to speak in certain instances, as such

"the government's own interest in forbidding that speech is diminished."[28] As Justice Breyer so eloquently quoted:

"[P]rofessionals must always qualify their loyalty and commitment to the vertical hierarchy of an organisation by their horizontal commitment to general professional norms and standards."[29]

Interestingly, Justice Souter focused on the potential deleterious effect the majority decision may have on academic freedom in public colleges and universities, where teachers necessarily speak and write "pursuant to official duties."[30] The Majority explicitly refused to rule on whether the constitutional ruling in *Garcetti* would have the same effect on speech relating to scholarship or teaching.[31] Ultimately, by taking a less rigid approach, the Minority justices (Breyer, Souter, Ginsburg and Stevens JJ) respected the value of whistleblowers and, at the same time, ensured the efficient function of government.

Importantly, in response to this uncompromising attack on whistleblowers and the constitutional protection afforded to them, the United States Congress has introduced the *Whistleblower Protection Enhancement Act of 2007* H.R. 985.[32] This bill, introduced by Reps. Waxman, Platts, Van Hollen, and Davis on 12 February 2007, seeks to reaffirm the protections for all whistleblowers and to reduce the effect of the Supreme Court's *Garcetti* decision on federal workers less than six months after the decision was handed down.[33] Recently, the House Oversight and Government Reform Committee approved, by a unanimous 28-0 vote, to approve this landmark legislation to overhaul the law protecting government whistleblowers.[34]

Scope of statutory protection that should be available

Whistleblowers can play an important role in the detection of medical fraud.[35] A system exists in the US that encourages whistleblowers to come forward by providing them with a financial reward which is proportionate to the damage done to the US Government. A similar

system has recently been proposed to detect insider trading and cartel behaviour in Australia.[36]

Qui Tam is a truncated version of the Latin phrase "*Qui tam pro domino rege quam pro se ipso,*" which translates to English as, "Who sues on behalf of the King, as well as for himself." Since the medieval period, Qui Tam provisions have allowed citizens to act as "private attorneys general" in bringing civil actions against those who violate the law. Under such provisions government's pay a reward or bounty to individuals to provide an incentives for them to provide information.

The existence of rewards is common both in Australia and internationally when law enforcement agencies are seeking information to assist inquiries into a specific crime. In the US, rewards are paid to individuals who provide assistance in the detection and prosecution of white collar crime under the *Qui Tam* provisions of the False Claim Act (FCA) (see Bucy, 2002), internal revenue laws (IRS 1983) and the Securities Exchange Act (USSSEC, 2003).[37]

Under the *Qui Tam* provisions, individuals providing information which leads to a successful prosecution for fraud against the government collect a percentage of the money recovered. According to Bucy (2002):

> *'...more than any other private justice actions or for that matter, more than most legal actions, the FCA's structure seeks to change social values. Perhaps not by design, but in fact, the FCA elevates the value of protecting the government, or larger community, over the value of loyalty to those close at hand.* (Bucy, 2002, p. 54)

The role of incentives in regulation is discussed in Grabosky (1995). He states that:

> *Incentives may be necessary to enlist the assistance of the general public when regulatory powers and compliance capacities are inadequate to attain regulatory objectives* (Grabosky, 1995, p. 263).

The United States has a long tradition of *qui tam* legislation. After obtaining independence, of the twelve penal statutes that the Continental Congress enacted, ten contained *Qui Tam* provisions. President Abraham Lincoln sponsored the *False Claims Act* (FCA) in 1863, citing the numerous fraudulent suppliers who sold the Union

Army faulty war supplies during the Civil War. The statute permitted a whistleblower to collect fifty percent of the damages obtained in a *qui tam* action.

In 1986, Senator Grassley sponsored amendments to the FCA by which an offence could be established upon proof of only deliberate ignorance or reckless disregard for the truth of information submitted to claim public monies. The amendments also increased the damages claimable. Those found to have defrauded the government would pay three times the actual loss the government incurred. *Qui tam* whistleblowers became entitled to between fifteen and twenty percent of the damages recovered when the government participated in the litigation and between twenty-five and thirty percent when the government declined to join suit. In addition, the reforms mandated that the defendant pay a successful *qui tam* whistleblower's attorney's fees, and protected whistleblowers from unjust reprisals retaliation by their employers.

By 2000, the FCA, and especially its *Qui Tam* provisions, had become the single most successful tool in the US government's fight against fraud and healthcare fraud in particular. Whistleblowers pursued more than 3000 successful *Qui Tam* claims, and courts had awarded over $3 billion dollars in damages.

The US Justice Department recently confirmed that it recouped $2.1 billion under the *False Claims Act* 1986 (US) in 2003. Of that total, $1.48 billion ($980 million in 2002) derived from suits initiated by whistle-blowers and $1.7 billion ($1.2 billion in 2002) came from corporations in the healthcare industry. The hospital chain HCA settled a case for $631 million in June 2003 arising from allegations of false Medicare claims and kickbacks to physicians.[38]

An analysis by Taxpayers Against Fraud found that funds collected in 2002 and 2003 had boosted the federal government's recovery rate over the last five years to a minimum of $13 for every $1 spent in enforcement. Without the healthcare whistleblowers Federal agencies are unable to discover fraud effectively.

As another example, Walgreen Co. recently agreed to pay $35 million to settle claims with the U.S. Justice Department that from 2001 to 2005, it improperly switched patients to different versions of the prescriptions drugs Ranitidine, Fluoxetine and Eldepryl in order to increase its reimbursement from Medicaid. Walgreens settlement will resolve a whistleblower action filed in 2003 by Bernard Listiza, a licensed pharmacist in Washington, D.C. The federal share of the settlement is approximately $18.6 million. Forty-six states, including Wisconsin, and Puerto Rico will share approximately $16.4 million under separate settlement agreements. Bernard Lisitza, the whistleblower, will receive approximately $5 million as his share of the federal and state settlements.

Procedures in relation to protected disclosures

Guidelines produced by the University of Melbourne (one of Australia's premier scientific research institutions) provide a valuable case study of how the requirements of whistleblower protection legislation may be effectively incorporated into institutional policy. The purposes of *Whistleblowers Protection Act 2001 (Vic.)* (the Act) are: (1) to encourage and facilitate disclosures of improper conduct by public officers and public bodies (2) to provide protection for persons who make those disclosures, as well as for persons who may suffer reprisals in relation to those disclosures; and (3) to provide for the matters disclosed to be properly investigated and dealt with.

The Act establishes four criminal offences which incur substantial penalties: to take or threaten to take reprisals against a whistleblower, to breach confidentiality, to obstruct the Ombudsman, to knowingly provide false information.

'Improper conduct' is defined under the Act as conduct that is corrupt, or creates: a substantial mismanagement of public resources, a substantial risk to public health, or a substantial risk to the environment, all being serious enough that if proven would constitute a criminal offence or reasonable grounds for dismissal. Public interest

disclosures must be made by individuals (that can be anonymously), with reasonable supporting evidence, to the organization where the conduct complained of took place. The Act makes it a criminal offence to reveal the identity of a whistleblower or to take detrimental action in reprisal against a whistleblower.

The University of Melbourne policy states that that institution is fully committed to the aims and objectives of the Act (this stance is not so commonplace as reason would suggest). It neither tolerates improper conduct by University staff and Council members, nor the taking of reprisals against those who come forward to disclose such conduct. It fully implements section 68 of the Act, which requires that public bodies are required to establish detailed procedures to facilitate the making of disclosures, for protecting whistleblowers and for investigating disclosures.

The University's policy states that these procedures are to be used only when a student, member of staff or member of the public wishes to make a disclosure about improper conduct or about detrimental action taken against a whistleblower, and seeks the protections afforded by the Act. A senior member of the University staff is by policy designated to take and assess protected disclosures (disclosures may also be made directly to an extra-institutional ombudsman). Another is designated to determine public interest disclosures; appoint a welfare manager and oversee University investigations.

If the disclosure is deemed a public interest disclosure, the Co-ordinator is required to notify the whistleblower and refer the disclosure to the Ombudsman within 14 days for confirmation. The Protected Disclosure Co-ordinator is then required to appoint a Welfare Manager who will provide for the immediate welfare and protection needs of the whistleblower, advise the whistleblower of their legal rights, listen and respond immediately to any concerns about reprisals for making a disclosure and keep notes of all meetings and actions.[39]

Such policies achieve a tight meshing with the public interest aims of the relevant whistleblower protection legislation. One wonders why it is not more routinely possible to see such procedures developed within the context of clinical governance guidelines for Hospitals, or staff guidelines for health technology safety and quality regulatory agencies.

The Australian Federal government should create a legislative pathway for past and former public servants and other government officials, including staff at public hospitals to report concerns about fraud or maladministration direct and anonymously to the Commonwealth Ombudsman with legislative protection from unjust reprisals. The Ombudsman should have a website that informs the public (and the whistleblower(s)) of the number of public interest disclosures that have been made on a certain topic, but does not necessarily divulge the content of the disclosure.

The Commonwealth Ombudsman should have legislative power to solicit further public interest disclosures from particular institutions where activities are deemed to have a high potential for public harm.

The governance documents of public service departments and public hospitals should mention public interest disclosure to the Commonwealth Ombudsman's office as an accepted governance mechanism that may be utilised once a certain level of internal management steps have been taken

The relationship between the Committee's preferred model and existing Commonwealth laws

Given the experience in the US it is possible to develop an implement a rewards based system to encourage those with information on the existence of government or corporate fraud to provide that information to regulators, particularly an impartial body such as the Cth ombudsman.

In the late 1980s it was argued that a rewards based system was neither adequate, nor effective on the grounds that such incentives reduce the credibility of evidence put forward by the prosecution, suggesting that they are 'incompatible with accepted principles and practices within Australian society'[40]. While it is possible that the provision of incentives may reduce the credibility with which a jury views information provided by an informant, such a factor must be considered in the context of the almost complete absence of evidence which is currently available to those seeking to enforce the law.

Given the difficulties faced in detecting and prosecuting government and corporate fraud in Australia, and the substantial costs associated with the continued failure to detect such fraud, it appears that incentives are well suited to aid in the achievement of regulatory objectives.

In addition to providing further incentives for whistleblowers to come forward the provision of financial rewards to some whistleblowers, as proposed above, would help to further protect whistleblowers. Financial rewards would both help to compensate whistleblowers for any loss of earnings associated with their actions and send an important public signal that the actions of the whistleblower are of value to the community.

The opportunity cost of undetected and unpunished fraud is significant. If fraud is not curtailed, it will be paid for by those enrolled in the program in the form of future benefit cuts and by working-age people in the form of higher taxes. Fraud will also be paid for by honest physicians, hospitals, and other health care providers whose rates will be further cut to help control the cost of the program. Each of these parties—seniors, taxpaying workers, and health care providers—has a financial stake in curtailing health care fraud.

Policies to encourage whistleblowers to come forward are likely to result substantial savings to the Commonwealth, the prosecution of individuals and organizations currently involved in defrauding the

Commonwealth, and deliver improved health outcomes to the Australian population. In addition to the money recovered it is likely that there will also be significant savings in future periods as greater concern about the risk of detection results in a reduction in the number and sophistication of attempts to defraud the Commonwealth.

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[2] In Australia: Crimes Act 1900 (ACT), Criminal Code 2002 (ACT), Protective Disclosures Act 1994 (NSW), Whistleblowers Protection Act 1994 (QLD), Whistleblowers Protection Act 2001 (VIC), Whistleblowers Protection Act 1993 (SA). In the United Kingdom: Public Interest Disclosure Act 1998 (PIDA). In the United States: **Constitutional Protection-** Under the First and Fourteenth Amendments to the U.S. Constitution, state and local government officials are prohibited from retaliating against whistleblowers. **Environmental Laws-** Employee protection provisions of the Toxic Substances Control Act [15 U.S.C. 2622], the Superfund [42 U.S.C. 9610], the Water Pollution Control Act [33 U.S.C. 1367], the Solid Waste Disposal Act [42 U.S.C. 6971], the Clean Air Act [42 U.S.C. 7622], the Atomic Energy and Energy Reorganization Acts [42 U.S.C. 5851], and the Safe Drinking Water Act [42 U.S.C. 300j-9] , contain whistleblower provisions which protect employees who disclose potential violations of these environmental laws. **False Claims Act-** The whistleblower protection provision of the False Claims Act [33 U.S.C. 3730(h)] is extemely liberal and protects "any employee" who is discharged or discriminated against on the basis of assisting in the preparation of litigation or in filing an action under this Act. For further information please see: Hall, David and Davies, Steve (December, 1999) 'Corruption and whistle-blowing – a background note for TUAC,' available at: < http://www.psiru.org/reports/9912-U-U-Corrwhist.doc > [Accessed, 10 March 2007].

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[20] *Garcetti*, at 13, per Kennedy J, Roberts C.J., Scalia, Thomas and Alito JJ.
[21] *Garcetti*, at 13-14, per Kennedy J, Roberts C.J., Scalia, Thomas and Alito JJ.
[22] See: Edwards, D (2001) 'Personal Experiences: Whistleblower,' in Lock S, Wells F and Farthing M (eds.) (3rd Edition) *Fraud and Misconduct in Biomedical Research* (London: BMJ Publishing Group), pp. 207 – 215; and see: Rees LH (2001) 'Fraud and Misconduct in Medical Research: Prevention,' in Lock S, Wells F and Farthing M (eds.) (3rd Edition) *Fraud and Misconduct in Biomedical Research* (London: BMJ Publishing Group), pp. 225 – 243.
[23] For example, in the case of *Givhan*, where the teacher would not have qualified as a whistleblower as she was fired after a private conversation with the school principle: see *Garcetti*, at 14, per Souter J (dissenting).
[24] *Garcetti*, at 14, per Souter J (dissenting).
[25] *Garcetti*, at 15, per Souter J (dissenting).
[26] *Garcetti*, at 3, per Breyer J (dissenting).
[27] Ibid.
[28] Ibid.
[29] *Garcetti*, at 4, per Breyer J (dissenting).
[30] *Garcetti*, at 12, per Souter J (dissenting).
[31] *Garcetti*, at 13, per Kennedy J, Roberts C.J., Scalia, Thomas, and Alito JJ..
[32] For the full text of the bill, go to: < http://oversight.house.gov/story.asp?ID=1172 > Accessed 19 March 2007.
[33] Waxman, HA (2007) 'Bill Summary: The Whistleblower Protection Enhancement Act of 2007,' Committee on Oversight and Government Reform, Washington D.C. Available at: <http://oversight.house.gov/Documents/20070213145031-52587.pdf > Accessed 25 March 2007.
[34] See Ibid.
[35] TA Faunec and SN Bolsin "There Australian Whistle Blowing Sagas.Lessons for External and Internal regulation (2004) *Medical Journal of Australia*
[36] Chapman, B. and Denniss, R. The use of financial incentives to detect collusion and insider trading in Australia.
[37] The 1999-2002 figures were taken from the *Monetary Results* section of The Department of Health and Human Services and The Department of Justice. Health Care Fraud and Abuse Control Program Annual Reports for 1998-2002. The 2003 figure is an ESRI estimate
[38] The False Claims Act Legal Center, "Top 20 Cases" http://www.taf.org/top20.htm [accessed 17.9.04]
[39] University of Melbourne, Division of Human resources. *Whistleblower Protection Policy.* Available at: http://www.hr.unimelb.edu.au/advicesupport/whistleblowers. Accessed 12 June 2007.
[40] House of Representatives Standing Committee on Legal and Constitutional Affairs, 1989, 45