4

The types of disclosures that should be protected

Introduction

4.1 As perceptions of wrongdoing can vary from individual to individual, it is important to establish clear standards about what sort of official misconduct threatens the integrity of public institutions. People may be motivated to make a disclosure by a range of factors.

4.2 This chapter considers possible model legislative provisions for the types of wrongdoing that should be covered by new public interest disclosure legislation and other factors that may be relevant in determining whether a disclosure is protected.

4.3 In considering the types of disclosures that should be protected, the chapter first reviews the evidence in relation to the suggested categories of wrongdoing referred to in the terms of reference for the inquiry.

4.4 The second part of the chapter considers the extent to which the motivation for making a disclosure should be relevant to whether the disclosure should attract protection.

4.5 The third part of this chapter examines whether grievances over internal staffing matters should be addressed through new public interest disclosure legislation. Finally, this chapter addresses the question of whose misconduct should form the basis of a protected disclosure.

4.6 The related issue of whether a threshold of seriousness should apply to misconduct for the disclosure to be afforded protection is addressed in

the following chapter on the conditions that should apply to a person making a disclosure.

Possible categories of disclosable conduct

4.7 A number of contributors to the inquiry argued that categories of official misconduct should not be too prescriptive in legislation. For example, the Secretary to the Attorney-General's Department suggested that legalistic definitions of conduct within the scope of legislation be avoided. It was considered that disclosable conduct should be classified in an 'open-ended' manner that would require judgement by the persons who make approaches, by their supervisors, by their chief executive officers and, ultimately, by the relevant oversight agency.[1]

4.8 The Community and Public Sector Union was of the view that:

> … the legislation should be clear within its scope and should not seek by reference to describe the sorts of behaviours that are subject to a disclosure ... the current Commonwealth regime … provides protections … (but) requires a degree of characterisation and knowledge—legal and otherwise, which is often beyond the scope of many lawyers let alone the normal public servant working within the Commonwealth [2]

4.9 Evidence received by the Committee was generally supportive of coverage extending to the conduct described in the Committee's term of reference 2(a), which lists 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.

4.10 In its submission to the inquiry the Commonwealth Scientific and Industrial Research Organisation (CSIRO) cited the Australian Code for the Responsible Conduct of Research 2007 in reference to scientific misconduct. According to the Code:

> Research misconduct includes fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting the results of research, and failure to declare or manage a serious conflict of

1 Mr Wilkins AO, *Transcript of Evidence*, 27 November 2008, p 13.

2 Mr Jones, *Transcript of Evidence*, 9 September 2008, p 8.

> interest. It includes avoidable failure to follow research proposals as approved by a research ethics committee, particularly where this failure may result in unreasonable risk or harm to humans, animals or the environment. It also includes the wilful concealment or facilitation of research misconduct by others.[3]

4.11 A distinction could be made between misconduct in undertaking scientific research and misconduct in terms of how the findings of the research are used. The misuse of research findings could be treated as other forms of misconduct in the provision of information and advice to government. Scientific misconduct, it was suggested, is a special category of wrongdoing because of its importance to community wellbeing, its high degree of technicality, and level of sensitivity (for example, in relation to stem cell research).[4]

4.12 The CSIRO is a non-APS statutory authority established by the *Science and Industry Research Act 1949*. Scientific misconduct does not currently form part of the CSIRO Code of Conduct although it is covered in the CSIRO Misconduct Policy and 'scientific fraud' is a reportable matter under the CSIRO Whistleblower Policy.[5]

4.13 The Staff Association of the CSIRO told the Committee that while CSIRO should be covered in a new whistleblower scheme, scientific conduct should be controlled within the current institutional framework.[6]

4.14 Of greater concern to the CSIRO Staff Association was the need to address official misconduct concerning the misuse of contracts, the increasing secrecy involved with industry collaborations and the protection of scientists who speak out about misleading development and commercialisation of their patents.[7]

4.15 It was submitted by the Australian Public Service Commission that only widespread or systemic forms of misconduct should be the subject of new public interest disclosure legislation. Such an example would be the Australian Wheat Board Bribery Scandal.[8]

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3 Commonwealth Scientific and Industrial Research Organisation, *Submission no. 71*, p. 4.
4 Commonwealth Scientific and Industrial Research Organisation, *Submission no. 71*, p. 6.
5 Commonwealth Scientific and Industrial Research Organisation, *Submission no. 71*, p. 7.
6 Dr Borgas, *Transcript of Evidence*, 21 August 2008, p. 67.
7 Dr Borgas, *Transcript of Evidence*, 21 August 2008, pp. 68–72.
8 Australian Public Service Commission, *Submission no. 44*, p. 9.

Case study The Australian Wheat Board

Background

In 1995, the United Nations Security Council adopted Resolution 986, establishing the Oil-for-Food Programme. This program permitted Iraq to sell oil under UN-approved contracts, with the proceeds being paid into an account controlled by the United Nations and used to buy foodstuffs.

By November 2000, Iraq was breaching sanctions and ultimately generated billions of dollars in revenues. The illicit revenues were collected through kickback payments on the UN-approved contracts.

The Australian Wheat Board (AWB) circumvented the UN sanctions by failing to disclose its true contractual arrangements with the Iraqi Grain Board. AWB inflated the price of its wheat sales and recouped its kickbacks from the account controlled by the United Nations.

In his Report of Inquiry into Australian companies in relation to the UN Oil-for-Food Programme, Commissioner Cole observed that the failure by Australian companies, or their officers, to act in a manner consistent with UN sanctions should be regarded as serious criminal conduct. That conduct may cause harm to Australia's national interest as it affects our trading reputation and international standing.

Discussion

Conduct by a corporation or official that affects the national interest is a public interest matter. This includes conduct contrary to obligations that arise from Security Council resolutions and from treaties.

The United Nations Convention against Corruption obliges Australia to provide protection for whistleblowers. The OECD Anti-Bribery Convention criminalises bribery of foreign or local public officials. In 2006, the Anti-Bribery Working Group reported that Australia had 'a low level of whistle blower protection in the public sector'.[9]

Public Interest Disclosure legislation extends to matters that affect Australia's international obligations and responsibilities, including the conduct of corporations.

4.16 The Attorney-General's Department drew the Committee's attention to the requirement for Australian officials to monitor corporate compliance with Australia's international obligations, including those related to misconduct in bribery and corruption.[10]

4.17 The Community and Public Sector Union suggested the legislation focus on illegal activity, corrupt conduct, misuse or waste of public funds, maladministration, danger to public health or safety and danger to the environment.[11]

4.18 Associate Professor Thomas Faunce emphasised the seriousness of fraud by describing the costs and difficulty of addressing Medicare fraud:

> 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

9 *Australia - phase 2: report on implementation of the OECD anti-bribery convention* 16 January 2006, OECD, Paris, p. 31.

10 Attorney-General's Department, *Submission no. 14*, pp 5,6.

11 Community and Public Sector Union, *Submission no. 8a*, pp. 2-3.

> 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.[12]

4.19 In 1994, the Senate Select Committee on Public Interest Whistleblowing recommended the following types of disclosures be included in a public interest disclosure framework:

- illegality, infringement of the law, fraudulent or corrupt conduct;
- substantial misconduct, mismanagement or maladministration, gross or substantial waste of public funds or resources; and
- endangering public health or safety, danger to the environment.[13]

4.20 The WWTW project identified seven categories of perceived wrongdoing for the purpose of its analysis. Those categories were misconduct for gain, conflict of interest, improper or unprofessional behaviour, defective administration, waste or mismanagement of resources, perverting justice or accountability and personnel or workplace grievances. [14]

4.21 The Australian Standard for Whistleblower Protection Programs for Entities 8004 – 2003 covers the following types of misconduct:

> Conduct by a person or persons connected with an entity which, in the view of a whistleblower acting in good faith, is—
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> (a) dishonest;
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> (b) fraudulent;
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> (c) corrupt;
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> (d) illegal (including theft, drug sale/use, violence or threatened violence and criminal damage against property);
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> (e) in breach of Commonwealth or state legislation or local authority by-laws (e.g. Trade Practices Act or Income Tax Assessment Act);

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12 Associate Professor Faunce, *Submission no. 4*, p. 9.

13 Senate Select Committee on Public Interest Whistleblowing, 1994, *In the public interest*, p. 163.

14 Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: enhancing the theory and practice of internal witness management in public sector organisations*, Australia and New Zealand School of Government, p xxi.

(f) unethical (either representing a breach of the entity's code of conduct or generally);

(g) other serious improper conduct;

(h) an unsafe work-practice; or

(i) any other conduct which may cause financial or non-financial loss to the entity or be otherwise detrimental to the interests of the entity.

An entity may also wish to consider including in its definition of reportable conduct such conduct as gross mismanagement, serious and substantial waste or repeated instances of breach of administrative procedures.

4.22 The Murray Bill included the following provision relating to 'improper conduct':

improper conduct means a breach or attempted breach of the standards of conduct that would be expected of a public official by reasonable persons with knowledge of the duties, powers and authority of the position, and includes but is not limited to:

(a) conduct that involves, or that is engaged in for the purpose of, a public official abusing his or her office as a public official;

(b) conduct of a person (whether or not a public official) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public official's or a public body's functions; or

(c) conduct of a public official that amounts to the performance of any of his or her functions as a public official dishonestly or with inappropriate partiality;

(d) conduct of a public official, a former public official or a public body that amounts to a breach of public trust;

(e) conduct of a public official, a former public official or a public body that amounts to the misuse of information or material acquired in the course of the performance of his, her or its functions as such (whether for the benefit of that person or body or otherwise);

(f) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice;

> (g) conduct that, having regard to the duties and powers of a public official, is engaged in for the purpose of corruption of any other kind;
>
> (h) a conspiracy or attempt to engage in conduct referred to in paragraphs (a) to (g).

The motive for making a disclosure

4.23 Most contributors to the inquiry viewed the motive in making a disclosure as irrelevant in assessing whether a disclosure should qualify for protection and investigating the substance of the issue disclosed.[15] Commissioner Pritchard of the NSW Police Integrity Commission commented:

> You would tie yourself in knots if you tried to decipher whether there is a hidden agenda. You have to treat them at face value.[16]

4.24 The former Australian Public Service Commissioner, Mr Andrew Podger put forward his strong view that the motives of the person making a disclosure should not be a factor in determining whether a disclosure is protected, as this would be against the public interest:

> I firmly believe that the motives of the person making the disclosure should not be taken into account in the legislative provisions. Not only would this be unmanageable but it could also be counterproductive: some wrongdoing may significantly impact both public interest, and the interests of the person making the disclosure.[17]

4.25 The Office of the Public Sector Standards Commissioner (OPSSC), Western Australia, observed:

> A person's motives for disclosure may be self-serving, but their disclosure may nevertheless contain information that meets the definition of a disclosure that should be protected and further investigated.[18]

4.26 The Commonwealth Ombudsman advanced a number of reasons both in principle and practice, why the motive of the whistleblower should not be taken into account when receiving a public interest disclosure:

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15 For example see, Professor Francis, *Transcript of Evidence*, 21 August 2008, pp. 39, 40, Dr Zirnsak, *Transcript of Evidence*, 21 August 2008, p. 82.

16 Commissioner Pritchard, *Transcript of Evidence*, 27 October 2008, p 74.

17 Mr Podger, *Submission no. 55*, p. 3.

18 Office of the Public Sector Standards Commissioner, *Submission no. 39*, p. 4.

- accurately assessing a person's motivation is rarely a straightforward matter, as motivations can be mixed, ambiguous and difficult to prioritise;
- it would allow an agency excessive latitude to pick and choose which disclosures to act upon;
- it would be threatening to a person making a disclosure to know that an agency could filter disclosures in this manner, especially if the person loses the protection afforded by the statute when a disclosure is assessed as falling outside the statute; and
- it is contrary to the spirit of a public interest disclosure statute to discourage disclosures: the objective of the statute is that wrongdoing should be dealt with, regardless of the motivation of the person making the disclosure.[19]

Disagreement with government policies

4.27 Under the Westminster system of parliamentary accountability, Ministers are collectively responsible to Parliament for the decisions of cabinet and their implementation. They are individually responsible to Parliament for their own conduct and the general conduct of their departments. It would therefore be inappropriate for a public servant or oversight agency to become involved in investigations of disputes over policy choices and matters of parliamentary accountability.

4.28 A public service employee is prohibited from engaging in public debate about government policy except in limited circumstances. Public Service Regulation 2.1(3) prohibits the disclosure of information by an employee which the employee obtains or generates in connection with their employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.

4.29 Public Service Regulation 2.1(4) prohibits the disclosure of information by an employee which the employee obtains or generates in connection with their employment if the information was, or is to be, communicated in confidence within the government or was received in confidence by the government from a person or persons outside the government. The prohibition applies whether or not the disclosure would found an action for breach of confidence.

19 Commonwealth Ombudsman, *Submission no. 31*, p. 6.

4.30 The *Freedom of Information Act 1982* provides for a general right of access to information with limitations. One area where the release of information is generally held to be against the public interest is the discussion, within government, of options that were not settled and that recommend or outline courses of action that were not ultimately taken.[20] The reason for this is the potential for confusion or to mislead the public. Disclosures of that type would be unlikely to make a valuable contribution to the public debate and have the potential to undermine the public integrity of the Government's decision making process by not fairly disclosing reasons for the final position reached.[21]

4.31 Many contributors to the inquiry considered that protection should not be extended to people who disclose official information because they disagree with government policy.[22]

4.32 The Member for Fremantle, Ms Melissa Parke MP, noted that:

> 'whistleblowing' can serve as the term of choice to characterise an individual's principled dissent over government or organisational policy: this activity, directed as it is at 'high policy' rather than 'wrongdoing', has not been protected as whistleblowing activity in Australia, other OECD countries, or the UN Secretariat.[23]

4.33 The NSW Council for Civil Liberties drew a line between whistleblowing and access to public information:

> Widespread debate about policy options is an important part of the democratic process. Freedom of information laws should ensure that information about the options is made public. That however is not the concern of whistleblower protection.[24]

4.34 The Community and Public Sector Union added the caveat that claims to a disagreement over policy should not be used to ignore wrongdoing as defined in public interest disclosure legislation just because there is an associated policy issue.[25]

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20 See, for example, Part IV of the *Freedom of Information Act 1982*.

21 *McKinnon v Secretary, Department of Treasury* (2006) 228 CLR 423, 456.

22 For example, see Australian Public Service Commission, *Submission no. 44*, p. 10

23 Ms Melissa Parke MP, *Submission no 51*, p. 6.

24 NSW Council for Civil Liberties, *Submission no. 17*, p 3.

25 Community and Public Sector Union, *Submission no. 8a*, p 3.

Disclosure of confidential government information

4.35 Professor McKinnon of the Australian Press Council observed that, in some cases, it has been difficult to draw the line between leaking government information and the making of a public interest-type disclosure.[26] The Committee draws distinctions between the unauthorised disclosure of government information, a lawful disclosure, such as when government information is obtained under the Freedom of Information Act and third party disclosures, which are discussed in Chapter 8.

4.36 Commonly, a leak occurs when a person wishes to advance a personal interest or cause embarrassment to government. Associate Professor McKnight drew the Committee's attention to:

> the contradiction which is apparent to the public and to journalists—that is, that ministers leak, and will continue to leak, confidential material to journalists, but when a similar action is taken by a junior public servant it can result in the loss of their job, of their peace of mind and their income.[27]

4.37 Most contributors to the inquiry accepted that protecting official information is a legitimate aspect of government, and that individuals should not be free to make unilateral decisions to disclose that information to the public. The Deputy NSW Ombudsman, for example, described circumstances when disclosure of information is, simply, inappropriate because a person is misinformed.[28]

> There are some bits of information held by government which should remain secret, either temporarily or permanently. There should not be any circumstances where that information is released, other than in particularly special circumstances. So you are not just looking at how to foster public interest disclosures and prevent unfounded defamatory statements; you are also looking at problems where you have a selective leak, a politically motivated leak.
>
> You have a difference between where you have the smoking gun memo, which on its face is all the proof you need that there is a problem, and circumstances where somebody has only a part of the picture and what they can see looks really bad. But they do not

26 Professor McKinnon, *Transcript of Evidence*, 27 October 2008, p 53.

27 Associate Professor McKnight, *Transcript of Evidence*, 27 October 2008, pp. 51-52.

28 Mr Wheeler, *Transcript of Evidence*, 9 September 2008, p. 37.

> know what the rest is and they might not even know that there is something more. By coming out too soon they may have caused incalculable damage to individuals or to the public interest.[29]

4.38 The National Secretary of the Community and Public Sector Union argued that leaking should not be protected due to its harmful impact on the relationship between the government and the public sector:

> I believe [leaking] fundamentally breaches the trust that is essential between an apolitical public service and the executive of the day. If the executive of the day believes that it cannot receive advice, indeed contrary advice, from the various agencies of state and be able to deliver upon that advice without fear that it is going to appear in the newspaper then it fundamentally breaks down the relationship between the Public Service and the executive and the capacity of the Public Service to give frank and fearless advice.[30]

4.39 By contrast, Whistleblowers Australia told the Committee that a person who leaks confidential information should be protected from civil or criminal liability and the official responses to people who leak confidential information are outrageous:

> The (Australian Public Service) commission goes so far as to want to remove protection for whistleblowers, presumably to allow them to be victimised, if they leak public interest information, even if the information serves the public interest. Frankly, that is outrageous and it is tantamount to malfeasance and misfeasance to suggest and recommend such a thing.[31]

4.40 Leaking, and the making of a public interest disclosure, can have similarities and relate to official wrongdoing. However, the conventional distinction is that leaking refers to the unauthorised release of official information outside the government.

29 Mr Wheeler, *Transcript of Evidence*, 9 September 2008, p. 37.

30 Mr Jones, *Transcript of Evidence*, 28 August 2008, p. 2.

31 Mr Bennett, *Transcript of Evidence*, 27 October 2008, p 33.

Case Study Mr Desmond Kelly: Leaking in the public interest?

Background

On 20 February 2004 an article appeared in the Herald Sun written by Michael Harvey and Gerard McManus with the headline *Cabinet's $500 million rebuff to veterans*. The government had decided not to follow a number of spending recommendations contained in the Clarke Review. The Herald Sun appeared to have had access to confidential documents, press releases and Ministerial speech notes. The article included a direct quotation from a draft ministerial statement attached to an email of 16 February 2004.

Later, it was alleged that Desmond Kelly, a staff member from the Melbourne office of the Department of Veterans Affairs (DVA), had leaked the material. The documents had been distributed throughout Australia by DVA email to about 300 employees. Mr Kelly was charged under section 70 of the *Crimes Act 1914* and found guilty of communicating the draft ministerial statement to an unauthorized person. The conviction was overturned on appeal because evidence leading to his conviction was circumstantial and large numbers of people had access to the documents and it was not certain beyond a reasonable doubt that it was Mr Kelly who leaked.[32]

Former Senator Murray argued that Mr Kelly's case was whistleblowing in the public interest.[33] Arguably, veterans' entitlements are matters that should be open to public scrutiny and debate. This follows the principle that, if all that a disclosure does is expose the government to public discussion and criticism, then that would not prevent publication of the matter if it is in the public interest to do so.[34]

Discussion

The law recognises the public interest in making government information available, but it is well established that executive government has the right to confidentiality in its decision-making. This includes confidentiality of the communications between the executive and the public service, which is one of the features of the Westminster system of ministerial responsibility.

There are competing views about what serves the public interest and each case turns on its own facts. The merits of the public interest in the DVA disclosure are debatable. In this case, the confidentiality of the communications between the executive and the public service was compromised and so too was trust in the public service. It appears that the substance of the leak did not reveal official misconduct by the government or the public service.

4.41 The implications and appropriateness of protecting disclosures that are made directly to the media are discussed further in Chapter 8.

Grievances and staffing matters

4.42 Currently, individual complaints about action taken in relation to appointment, the terms and conditions of employment, promotion or termination, the management of performance, or the payment of remuneration of an employee are matters covered under the *Workplace Relations Act 1996*.

4.43 Most submissions to the inquiry considered that disagreements about management decisions, complaints about employment decisions and bullying in the workplace are not matters of public interest. For example, the Chairperson of the Queensland Crime and Misconduct Commission, Mr Robert Needham, told the Committee:

32 *R v Kelly* (unreported, VSCA, Callaway and Redlich JJA and Coldrey AJA, 17 October 2006) para 34.

33 Hansard 10 August 2005, p. 51.

34 *Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39, 52.

> A staff member complaining to a manager two up that their immediate supervisor is bullying or harassing them should not come within the whistleblower regime. That is a managerial issue and it should be dealt with within that agency by a proper management response. If you elevate it to whistleblowing you are making a mountain out of a molehill and you end up with all sorts of fights over it.[35]

4.44 Individual grievances and staffing matters are important and should be brought to the attention of management but they are not within the purpose of the proposed legislation. According to Cynthia Kardell:

> It will be essential for the two systems to be separate and for the managers of the existing grievance or complaints handling systems in the federal sector to be educated about the fundamental distinction to be drawn between a public interest disclosure and a personal grievance or self interested complaint and why it matters that they get it right.[36]

4.45 Some contributors to the inquiry argued that because it can sometimes be difficult to separate personal grievances from matters of genuine public interest, personal grievances should not be excluded from a public interest disclosure system.

4.46 Dr Bowden argued that by excluding personal grievances management will be able to easily dismiss the legitimate concerns of their staff:

> … the whistleblowing system … must always allow personal complaints. If you do not, senior public servants will still be able to sideline complaints by classifying the issue as a personal issue, and it gets out of the system. You have to have personal complaints come into the system, even if they are not in the public interest.[37]

4.47 The Committee heard that internal staffing matters may arise as a form of retribution for whistleblowers as managers seek to protect their own self-interest once an allegation has been made. Dr Ahern argued:

> … under conditions in which it is impossible to serve two conflicting roles, people are more likely to lie, especially when there is reward for lying. In the context of whistleblowing, this would suggest that many managers would choose to protect their

35 Mr Needham, *Transcript of Evidence*, 9 September 2008, p. 16.

36 Ms Kardell, *Submission no. 65*, p. 8.

37 Dr Bowden, *Transcript of Evidence*, 27 October 2008, p. 24.

employing organization over supporting the whistleblower. This self interest has been amply demonstrated in the research literature.[38]

View of the Committee

4.48 Having regard to the evidence provided to the Committee and examples of types of protected disclosures used in other schemes, the Committee considers that provisions on disclosable conduct should be broadly defined and contain some flexibility. This is necessary to enable decision makers to exercise some judgement in considering additional matters based on the seriousness and relevance of the matter.

4.49 The issue of whether there should be a threshold of seriousness applying to a disclosure is discussed further in the next chapter. The types disclosures to be protected should be serious matters including, but not be limited to illegal activity, corruption, maladministration, breach of public trust, scientific misconduct, wastage of public funds, dangers to public health, dangers to public safety, dangers to the environment, official misconduct (including breaches of applicable codes of conduct), and adverse action against a person who makes a public interest disclosure under the legislation.

38 Dr Ahern, citing research by Grover and Hui, *Submission no. 56*, p. 3.

Recommendation 7

4.50 **The Committee recommends that the types of disclosures to be protected by the Public Interest Disclosure Bill include, but not be limited to serious matters related to:**

- **illegal activity;**
- **corruption;**
- **maladministration;**
- **breach of public trust;**
- **scientific misconduct;**
- **wastage of public funds;**
- **dangers to public health**
- **dangers to public safety;**
- **dangers to the environment;**
- **official misconduct (including breaches of applicable codes of conduct); and**
- **adverse action against a person who makes a public interest disclosure under the legislation.**

4.51 Given the range of matters to be protected in recommendation 7 includes breaches of applicable codes of conduct, current whistleblower provisions in s. 16 of the *Public Service Act 1999* and s. 16 of the *Parliamentary Service Act 1999* should be repealed.

Recommendation 8

4.52 **The Committee recommends that, on the enactment of a Public Interest Disclosure Bill, the Australian Government repeal current whistleblower provisions in s. 16 of the *Public Service Act 1999* and s. 16 of the *Parliamentary Service Act 1999*.**

4.53 In recognising that the purpose of new public interest disclosure legislation is to promote accountability and integrity in public administration by exposing and addressing wrongdoing, the motive of a person for making a disclosure should not, in itself, prevent that disclosure from being protected.

4.54 Decision makers should have regard to the purpose of the legislation when considering the merits of affording protection 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. The following chapter further discusses why, in those circumstances, protection should generally not apply if it is shown that disclosure was not made in good faith or through particular channels. It would not be the intention of the legislation to authorise the leaking of official information.

4.55 Grievances over internal staffing matters should generally be addressed through internal mechanisms separate to the public interest disclosure scheme.

Recommendation 9

4.56 **The Committee recommends that Public Interest Disclosure Bill provide that the motive of a person making a disclosure should not prevent the disclosure from being protected.**