

RECEIVED
09 SEP 2008

BY: LACA

DEPARTMENT OF JUSTICE

Submission No.	41
Date Received	mr

**SUBMISSION TO THE STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS**

**INQUIRY INTO WHISTLEBLOWERS PROTECTION WITHIN THE
AUSTRALIAN GOVERNMENT PUBLIC SECTOR**

1. Creation of the Whistleblowers Protection Act 2001 (WPA)

The WPA was part of a package of reforms introduced by the Bracks Labor Government to meet its 1999 pre-election commitment to promote open and accountable government. The Government, in its election platform, indicated it would implement whistleblowers legislation to protect informants, internal to government, who exposed corruption, misconduct or mismanagement.

Just prior to the 1999 election, amendments had been made to the *Police Regulation Act 1958* to implement a whistleblowers scheme in relation to the conduct of any police member. However, no other whistleblower legislation existed in Victoria. The *Ombudsman Act 1973* facilitated the making of public sector complaints concerning administrative decisions taken by government departments and public statutory bodies. But, while the Ombudsman Act empowered the Ombudsman to enquire into, investigate and make recommendations, it did not offer any legislative protection to a complainant who may otherwise have suffered loss and/or be subject to discriminatory or other injurious third party conduct.

The incoming Labor Government was aware of the shortcomings of the existing legislative regime and aware that other Australian jurisdictions had introduced legislation tailored to encourage whistleblowers to come forward and protect them from detrimental action. Consequently, the preparation of whistleblowers legislation became a priority and was passed in the Government's first term.

2. The drivers behind the current review of the WPA

There are a number of drivers behind the current review of the WPA including –

- experience with the operation of the WPA
- significant Australian academic research on public interest disclosure legislation
- calls for a review of the WPA.

Five years experience with the operation of the WPA

The WPA commenced operation on 1 January 2002. The Attorney-General agreed to a review of the WPA in early 2007. At that point, the WPA had been in operation for five years. The Victorian Ombudsman and Government have gained considerable experience with the operation of the legislation during that time and are in a good position to assess the strengths and weaknesses of the WPA.

Significant Australian academic work to draw upon

Dr AJ Brown's "Whistling While They Work" collaborative national research project into the management and protection of internal witnesses, including whistleblowers in the Australian public sector, offered considerable empirical research to assist with a review that is focussed on moving to a best practice model.

3. Process for the Current Review of the WPA

The review is being conducted by a small committee of representatives from the Department of Justice, the Department of Premier and Cabinet and Ombudsman Victoria (the IDC).

A copy of the terms of reference is attached. The terms of reference ask the IDC to consider –

- whether the WPA meets its objectives
- whether the objectives of the WPA should be expanded and how best to implement any new objectives in the WPA
- whether the WPA should be amended (or repealed and replaced) to ensure best practice in dealing with public interest disclosures.

The terms of reference were cast broad enough to allow the IDC to address the many practical issues raised by agencies that must apply the WPA as well as being able to draw on the recent research into best practice on whistleblower legislation.

The IDC prepared an issues/options paper for the purposes of consultation with a reference group with representatives from across all Government departments as well as key stakeholders: the Chief Commissioner of Police, the Director, Police Integrity, the Privacy Commissioner, the Chief Executive Officer, State Services Commissioner and the Auditor-General (the Government Reference Group). Public sector unions were also invited to form a separate reference group. The issues/options paper drew heavily from Dr Brown's research. The paper also drew on concerns raised as part of an intergovernmental forum on the WPA hosted by Ombudsman Victoria in 2006.

The IDC's issues/options paper was circulated to the Government Reference Group and public sector unions in October 2007 and sought written submissions. In November 2007, the IDC hosted forums with the Government Reference Group and public sector unions to go through the issues/options paper in more detail and discuss the issues it raised. Dr Brown was a guest at these forums. Submissions were received from a number of the members of the Government Reference Group as well as public sector unions.

The IDC has subsequently considered a summary of the issues raised in the submissions and agreed its position in relation to these issues. The IDC is in the process of finalising a detailed proposal to the Attorney-General that –

- seeks approval for a new framework for the WPA
- seeks instructions on further consultation, including public consultation.

4. When and how the review is likely to be progressed further and any implementation plans

Once the Attorney-General has considered and agreed to the proposed new framework the proposal for legislative reform and a consultation plan will be presented to Cabinet. It is anticipated that legislation to amend, or repeal and replace the WPA will be prepared in 2009.

REVIEW OF THE WHISTLEBLOWERS PROTECTION ACT 2001

TERMS OF REFERENCE

The Interdepartmental Committee (with representatives from Ombudsman Victoria, Department of Justice and Department of Premier and Cabinet) is requested to review the *Whistleblowers Protection Act 2001* (the Act) and in particular to consider –

- whether the Act meets its objectives;
- whether the objectives of the Act should be re-defined and how best to implement any new objectives in the Act; and
- whether the Act should be amended (or repealed and replaced) to ensure best practice in dealing with public interest disclosures.

In conducting the review the IDC is requested to consider –

- the research of Dr AJ Brown in the ARC funded *Whistling While They Work* project;
- the experience of the Ombudsman Victoria in applying the Act ;
- the experience of government departments and relevant statutory authorities in applying the Act; and
- any other relevant research available.

In conducting the review the IDC is also requested to consider the interplay between other relevant legislation including the -

- *Ombudsman Act 1973*;
- *Police Regulation Act 1958*;
- *Evidence Act 1958*;
- *Information Privacy Act 2000*;
- *Audit Act 1994*;
- *Public Administration Act 2004* (Part 4); and
- *Charter of Human Rights and Responsibilities 2006* (with particular focus on the right to privacy and reputation and the right to take part in public life).

The IDC is requested to provide advice to the Attorney-General on the matters referred to above.