

CHAPTER 4: WHISTLEBLOWING IN DFAT

Whistleblowing

4.1 As noted in the Introduction, a major factor in the decision to initiate this inquiry was a perception in some quarters that there might be serious problems with management practices in DFAT. This perception was influenced by, among other things, various public criticisms of the management of DFAT and private approaches to some senators. Much of this activity in turn appears to have been the direct or indirect result of actions by a small group of former and serving officers of DFAT who identified themselves to the Committee as the DFAT Reform Group. One of the Group had earlier acted in the name of the Officers' Revolutionary Council. The DFAT Reform Group described itself in terms that could make it a whistleblowing organisation (Evidence, p. 467).

4.2 Whistleblowing is a commonly-used term for the reporting, from within an organisation, of impropriety or maladministration on the part of that organisation or of individuals in it who are endowed with some form of power or responsibility. The fact that the persons best placed to report improper behaviour will frequently be vulnerable to retaliation from those whose behaviour they report has led to interest in measures for the protection of whistleblowers. It is widely recognised, however, that what purports to be whistleblowing can be a cover for frivolous, malicious or culpably inaccurate claims. Also, sincere and well-intentioned whistleblowers can make genuine mistakes. In all such cases, the individuals and organisations subject to whistleblowing may be more in need of protection than the self-appointed whistleblowers.

4.3 The ideal administrative system would contain mechanisms to encourage the exposure of real impropriety or maladministration while minimising the likelihood of and the possible damage from malicious, reckless or false reports. The Committee concluded that the system currently applying in the Australian Public Service falls short of the ideal. The protection available to genuine whistleblowers is inadequate and there are few mechanisms for rectifying systemic faults identifiable from whistleblowers' reports. At the same time, malicious or wrong-headed allegations, which can lead to unjustified suffering on the part of individuals who are wrongly accused and unnecessary expense to the public and damage to government agencies, are not deterred. DFAT's experience with whistleblowing in the last decade illustrates all these deficiencies.

4.4 This Chapter concentrates on specific claims about DFAT's management made directly to the Committee by the DFAT Reform Group and on the Group's status as a whistleblower. The discussion is introduced by a brief account of an earlier whistleblowing episode in DFAT. The Committee has also chosen to draw on DFAT's experience to support some comments on whistleblowing in general and these are set out in the next Chapter.

Act 1: The early 1980s

4.5 The current episode echoes and may have been influenced by an earlier series of events which entered the public arena with a question without notice in the Senate on 25 February 1982. Senator Cyril Primmer asked Senator Margaret Guilfoyle, the Minister representing the Minister for Foreign Affairs in the Senate, about alleged embezzlement at certain overseas posts. The Minister took the question on notice and the Minister for Foreign Affairs, Tony Street MP, later wrote to Senator Primmer stating that the Department of Foreign Affairs (DFA) was not aware of any embezzlement or other financial impropriety (Senate Hansard 22.4.82, p. 1442). Shortly afterwards, a diplomat with twenty years experience in the Department wrote to Mr Street alleging improper financial dealings by another DFA officer who had been the ambassador at a post at which the diplomat had served for two years as counsellor several years earlier¹. The allegations concerned incidents which were said to have occurred between 1960 and 1978 and some of them appeared to relate to one of the matters raised by Senator Primmer. Writing separately to DFA at the same time, the diplomat claimed to have raised the matters within the Department some months earlier and to have then expressed concern that "everything would (again) be covered up and retribution (again) visited upon me and other officers involved". The diplomat assured DFA that he had no knowledge of how Senator Primmer had received his information (Senate Hansard 9.9.82, p. 839).

4.6 Mr Street passed the diplomat's letter to him, together with documents supplied with it, to the Minister for Finance and asked that qualified officers of her department review them. A team headed by a senior officer of the Department of Finance subsequently investigated the claims by reviewing DFA files and interviewing the diplomat, the ambassador and other DFA officers.

4.7 The investigation found that the ambassador had obtained benefits to which he was not entitled in two cases but that inadequate departmental systems were partly or mainly to blame. He had also employed his children at the post in a way which was legal but the exposure of which by the whistleblower led to the issuing of tighter guidelines. He had kept his representation allowance claims secret from staff at the post but was entitled to do so under the procedures then applying. The level and cost of his representational activity were not outside what DFA considered reasonable. He had signed certificates to the effect that particular records were kept in the prescribed manner and that internal control procedures were operating adequately when they were not, but the certificates were a formality taken lightly at many posts and dispensed with a few years later. The whistleblower had wrongly assumed that deductions made by the ambassador from his servants' pay were improper when the process by which they were made had in fact been approved by the Department. The investigators stated that there was no evidence to link the ambassador to the fraudulent conversion of a cheque at one of his previous posts and no reason to suspect his involvement. No basis was found to other minor claims made by the whistleblower.

¹This section is based entirely on Hansard and papers tabled in Parliament. Although the officers concerned are named in these public sources, the use of names in this account would add nothing to it.

4.8 The Department of Finance investigating team noted in the preamble to their report that their review had been limited to:

examination of alleged improper financial dealings on the part of the officer concerned, as arranged between the Ministers ... No attempt has been made to deal with wider issues of personal relationships at particular overseas posts or within the Department of Foreign Affairs generally, nor have broader issues of departmental administration been canvassed (Department of Finance 1982, p. iv).

The investigation concluded "on the evidence available, there is no basis for action against [the ambassador] by the Commonwealth in respect of the financial matters examined" (Department of Finance 1982, p. xxvi). The then Secretary to DFA referred the Finance report to the Australian Federal Police "particularly to see whether any other action of any kind was warranted" (HoR Hansard 26.8.82, p. 996).

4.9 The police investigation extended to a review of some DFA files and interviews of persons having direct knowledge of the case, including the whistleblower and persons identified by him as being his informants. The police concluded that the matters raised did not all come within the ambit of the criminal jurisdiction and that neither the whistleblower nor his informants possessed evidence in the strict sense which would support the allegations. The police reported that their inquiries revealed:

no evidence which would substantiate any of the allegations made by [the diplomat]. Indeed, there is insufficient evidence to demonstrate that [the ambassador] acted in an improper manner, let alone criminally (HoR Hansard 26.8.82, p. 996).

Neither the whistleblower nor Senator Primmer was satisfied with this outcome.

4.10 The whistleblower complained to the Ombudsman about several aspects of the police investigation and sought access to departmental files and records relevant to the case (Senate Hansard 16.11.82, 13.10.83). The Ombudsman's review provided little satisfaction to the whistleblower. While making it clear that he was entitled to complain and that the investigation had not revealed that he had acted otherwise than in accordance with a genuine sense of grievance, the Ombudsman found the whistleblower's complaints about the police investigation to be unsubstantiated (Ombudsman 1983, p.18). The Ombudsman commented:

the examples I have just cited are in my view compelling evidence, when taken with the complete lack of any evidence of criminal action, for the characterisation of the majority of his primary allegations as being in essence allegations of defective administration. In my view, the public interest would have been better served had they been treated as such from the outset (Ombudsman 1983, p. 10).

Response to the reviews

4.11 The whistleblower rejected the Ombudsman's findings and appears to have continued to press for action against what he perceived to have been criminal behaviour. Early in 1984, he was charged under the *Crimes Act* with offences related to the taking of documents out of the control of the Commonwealth or its officers (Waterford 1984). Two of the charges were eventually dismissed and the third dropped. The Acting Chief Magistrate of the ACT, in dismissing the first of the charges, commented "I find it very hard to get away from the feeling that this prosecution was conceived in prejudice and born in bias on the part of some officers of the Department of Foreign Affairs" (Senate Hansard 9.5.84, p. 1868; Campbell 1984). Costs were awarded against the Commonwealth and the Attorney-General's Department subsequently approved reimbursement of reasonable legal costs incurred by the whistleblower above the costs awarded by the court (Senate Hansard 24.10.84, p. 2409). The whistleblower remained a DFA/DFAT officer and subsequently received ambassadorial appointments.

4.12 Senator Primmer continued to cite this case together with several others to illustrate what he saw as extensive corruption at senior levels in DFA, cover-ups of that corruption and persecution of honest officers who had challenged it. His transition from the Opposition to the Government back benches in 1983 had no apparent effect on the intensity of his feelings about the management of DFA. On more than one occasion, he described senior officers of DFA as "professional liars" and on 25 May 1983 he told the Senate:

I will not rest ... while the people of Australia continue to be "represented" by a Department of Foreign Affairs run by a small group of people who could not be trusted with the petty cash, and who would sell their grandmothers, let alone the East Timorese, to get a promotion (Senate Hansard 25.5.83, p. 861).

4.13 Senator Primmer retired from the Senate in June 1985 but his dispute with DFA reappeared briefly in the Senate Hansard in 1986 when the texts of two letters signed by him on 2 October 1986 were included in notices of motion given by the then Leader of the Opposition, Senator Fred Chaney. The first letter completely and unreservedly apologised to a former Secretary to DFA, Peter Henderson, for a statement made by Senator Primmer in the course of a radio program broadcast on the ABC in 1982. The apology acknowledged that Senator Primmer had been misinformed in relation to the comments he had made about Mr Henderson in the program and that none of the statements were true (Senate Hansard 15.10.86, p. 1270). The second withdrew "without reservation or qualification all accusations, allegations or innuendos" made by Senator Primmer at any time "within or outside Parliament" against the ambassador who had been the subject of the whistleblower's complaints. The letter unreservedly accepted the findings of the various inquiries into allegations against the ambassador and apologised to "those other persons in Government service" whom Senator Primmer had criticised in the course of his accusations against the ambassador (Senate Hansard 15.10.86 p. 1270). Subsequent debate on this matter raised suggestions that the apologies were made as an alternative to defending defamation actions and were "given under substantial personal

and financial pressure against a person who would not otherwise have apologised" (Senate Hansard 16.10.86, p. 1396).

Results of the episode

4.14 The results of this whistleblowing episode were more adverse than beneficial. Ministers in both the Fraser and Hawke Governments commented on damage to morale in DFA and to the Department's reputation resulting from the persistent and intense public criticism. The expense to the public of the various responses to the criticism must also have been considerable. Foreign Minister Bill Hayden estimated in May 1983 that costs to that date would be "somewhere near a six figure amount" (HoR Hansard 26.5.83, p. 1045). Individuals involved on both sides of the dispute clearly found it extremely hurtful. The former Secretary to DFA, Peter Henderson, who had been a target of some of Senator Primmer's allegations (but not directly of the whistleblower, at least in the allegations subject to external review), devoted a chapter of his memoirs to the episode and commented:

People sought to reassure me in various ways, some saying that no one who knew me personally would believe what Primmer had been alleging, others saying that I was too sensitive to what was said in Parliament and that I shouldn't worry so much about it: after all it was only Parliament and no one took too much notice of a backbench Senator with a bee in his bonnet. None of that was much real comfort, and for the first time in my life I began to have some sneaking sympathy for Lady Macbeth's inability to rid herself of the smell, even though in her case she had inflicted it upon herself. I began to feel that the mud that had been thrown at me in a metaphysical sense was there on my face for all to see whenever I appeared (Henderson 1986a, p. 177).

4.15 The intense concern with whether or not particular individuals had behaved improperly or illegally largely overshadowed a more important issue briefly alluded to by the Ombudsman: the general standard of administration in DFA. Strong indications in some of the reviews that the Department's administrative systems were deficient were scarcely followed up, if at all. Several matters which should have been seen as warning signals were mentioned in the Department of Finance review. For example: there were no rules on the employment of relatives of heads of mission at posts; DFA's central administration had neither understood nor applied a prescribed income test on applications for reunion fares; it was considered acceptable for officers to handle payments to and deductions from the pay of their servants with little in the way of a proper accounting system; there was no system for at-post checking of head of mission representation allowance claims. In most of these and in other matters, the absence of provable criminality or improper conduct was taken as ending the matter and the opportunity for a thoroughgoing review of DFA's administrative systems was missed.

4.16 With no obvious tightening of DFA's management systems as a result of the episode, there was scope for a perception that the systems were generally lax and that many officers took advantage of that to commit minor frauds or otherwise to obtain benefits to which they were not entitled. The strength, apparent sincerity, and persistence

with which a few persons expressed the view that such things had occurred in particular cases helped to encourage a wider impression that there had been a successful cover-up of malpractice or maladministration.

4.17 Ample information was tabled in Parliament to discount the conspiracy theories. Senator Gareth Evans, representing the Minister for Foreign Affairs in the Senate, commented in 1983:

we are confronted with the situation that if there is a conspiracy or cover-up it has been one of the more successful ones in the history of public administration because so far it has succeeded in fooling the Australian Federal Police, the Department of Finance, the Ombudsman, probably the Public Service Board, the previous Government and maybe one Minister in the present Government (Senate Hansard 26.5.83, p. 864).

But, although the voluminous documentation of the various inquiries provides convincing support for the conclusions on the specific matters reviewed in the separate investigations in the early 1980s, those documents are extensive, complex and not readily accessible to those without a specialised interest.

4.18 Perhaps for this reason, conspiracy theories persist and one submission to this Committee from a member of the public arguing the need for and merits of whistleblowing in DFAT and defending the new generation of whistleblowers in the Department commented:

I am informed that there have been other whistleblowers in the DFAT. All have received summary justice at the hands of certain senior officers who believed that they could cover up the matters raised by getting rid of the accuser. I am informed that one whistleblower who had been victimised took his case to the High Court and won. He was reinstated in the Department, but only after the High Court action. I am informed that he was given an overseas ambassadorship as a sop (Evidence, p. S1352).

It is not surprising that a comparison should have been drawn between two spectacular examples of apparent whistleblowing in DFAT within a decade, especially since the complainants in each episode raised similar sorts of matters.

Act 2: The Officers' Revolutionary Council/DFAT Reform Group

4.19 The second major apparent whistleblowing episode to affect DFAT in recent years began in 1989. In late November of that year Shane Carroll, a relatively junior DFAT officer from the former consular and administrative stream who had worked in the Department for about 20 years, raised with senior departmental management and with a representative of his union several matters which he said should be investigated (Papers tabled 26.6.92). During the following five months, however, Mr Carroll failed to

supply details of his allegations or any supporting documentation to the Department, despite being instructed to do so.

4.20 On 30 April 1990, inspired, he says, by an Anzac Day address by the Chaplain of the Royal Military College, Mr Carroll wrote to the Public Service Commissioner criticising a named senior officer in DFAT and the Department's management in general. Copies of the letter were circulated within the Department on 2 May 1990 and on 4 May 1990 Mr Carroll issued a public statement announcing the existence of an "Officers' Revolutionary Council" (ORC) with membership drawn from long-serving and retired officers and with the following aims:

- " . cessation of policies and practices that waste taxpayers' money;
- . SES managers to be suitably qualified and possess demonstrated management experience and ability;
- . implementation of fully-transparent staff sensitive personnel and staffing policies;
- . implementation of job families and JSC promotion procedures for ASO 7, 8 and SES levels;
- . commitment to abolish corruption, nepotism and cronyism;
- . actual adherence to Industrial Democracy guidelines;
- . Over the past twenty years or so at least eighteen officers have been advised by SES officers to seek psychiatric counselling because of their 'attitudinal problems'. This is to cease.
- . A review by an outside authority/body of the Department's human and financial management policies" (Submission 43, attachment to Chapter 2).

4.21 Departmental file notes of conversations and meetings between Mr Carroll and various senior officers on 2 and 3 May 1990 indicate that he attempted to link the possibility of the cessation of activities by the ORC with his being promoted, paid higher duties allowance and/or transferred to the Australian International Development Assistance Bureau (AIDAB), although Mr Carroll disputes the accuracy of parts of those notes. The notes also indicate that Mr Carroll refused to supply evidence to support his claims of malpractice, citing his lack of faith in the Department's will or capacity to deal with it properly (Papers tabled 26.6.92). On 24 August 1992 the Committee sought Mr Carroll's comments on the DFAT file notes but had received no reply by 10 December 1992.

4.22 Copies of further correspondence signed by Mr Carroll and making serious allegations about named officers of DFAT were circulated within the Department later in May 1990 (Submission 20ZA). In the months that followed, Mr Carroll wrote to various individuals and authorities reporting instances of what he saw as malpractice,

some of which had occurred many years earlier (Auditor-General 1990a, p. 1). This correspondence also achieved general circulation within DFAT as did unsigned documents issued in the name of the ORC making serious allegations about DFAT management and named or identifiable officers.

4.23 The Department appointed a senior officer to investigate the claims made by Mr Carroll and the ORC. Publicity associated with the investigation produced further allegations from other sources and 77 allegations were eventually reviewed, 61 of which were attributed to either Mr Carroll or the ORC (Unpublished table supplied by DFAT). All 77 claims were subsequently investigated or reviewed by DFAT and the AFP. Fifty-three were also dealt with in a special report by the Australian National Audit Office (ANAO) (Evidence, p. S44; Auditor-General 1990a, pp. 2, 39-40).

4.24 Many of the claims were found to be unsubstantiated. A few were substantiated wholly or, more commonly, in part but none of the investigations found sufficient evidence to justify criminal or Public Service Act charges. However, the ANAO report did identify serious systemic management deficiencies in several areas associated with the Carroll/ORC claims. Systemic problems were detected in the management of debts and advances to staff, disciplinary cases, and fraud control. Other specific problems were reported in areas in which the ANAO concluded that adequate procedures were generally in place. These areas included education assistance and corporate credit cards. Although noting systemic and specific deficiencies, the Auditor-General reported that DFAT had responded to the allegations of malpractice promptly and, with minor exceptions, effectively (Auditor-General 1990a, pp. vii, 3). The internal DFAT investigation also disclosed serious problems with the management of official cars, including the problem raised by the ORC which had prompted the investigation.

4.25 The ANAO field work was completed in August 1990 and its report was tabled in the Senate on 17 December 1990. On 18 September 1990 DFAT laid seven charges against Mr Carroll under the disciplinary provisions of the Public Service Act. Three of the charges related to the circulation within the Canberra offices of DFAT between 30 April and 24 May 1990 of material critical of DFAT management and individual officers, one to the circulation of a cable to overseas posts on 3 August 1990 urging a protest against management actions, and three to demands, said to have been made on 2 and 3 May 1990, for promotion or payment of higher duties allowance and a transfer to AIDAB. In January 1991 an eighth charge was laid against Mr Carroll relating to falsification, on or about 3 July 1990, of an authorisation on a cable to be sent to overseas posts and he was suspended from duty pending the hearing of that charge (DFAT Summary of disciplinary actions).

4.26 The eight charges were heard together by an inquiry officer appointed by the Secretary to DFAT under the authority of the Public Service Act. The inquiry officer, who was selected from a department other than DFAT, considered the documentary evidence and held three hearings at which Mr Carroll had legal representation. She found all eight charges proven and concluded that, had each charge been taken alone, five would have warranted demotion and three dismissal. The inquiry officer concluded that the behaviour disclosed in the eight charges constituted a "web of misconduct" in which Mr Carroll had "made threats about further activity adverse to management's interests

if you were not given the preferment you sought" and directed in respect of each charge that he be dismissed. Mr Carroll was entitled to appeal against the directions to the Merit Protection and Review Agency (MPRA) but chose instead to resign before his dismissal could take effect (Submission 20za).

4.27 Mr Carroll had earlier lodged grievances with the MPRA in relation to what he saw as discrimination against him in the latter period of his employment in DFAT when the Department was seeking to find a suitable position for him. The MPRA found that there was "no basis to conclude that there was unjustified discrimination" in relation to Mr Carroll's redeployment in the Department. However, the MPRA endorsed the findings of an internal DFAT investigation which had found that there had been some unsound personnel management in relation to a failure to find productive work for Mr Carroll during a period when efforts were being made to redeploy him and in relation to the advertising and filling of a position to which he could have been redeployed.

4.28 After his resignation Mr Carroll continued to circulate material he had written containing serious allegations about particular officers of DFAT and departmental management in general. This material was circulated on some occasions by Mr Carroll himself handing it to persons entering and leaving the Canberra office of DFAT. There are indications that media organisations received copies of some of the documents and some of the issues raised by Mr Carroll also became the subject of questions or comments in Parliament and in hearings of Senate estimates committees (Burgess 1992; Senate Hansard 24.5.90, p. 994; 9.5.91, p. 3049; Estimates Committee B, 14.5.90, pp. 6-19; 18.9.90, pp. 104-5). A further group of allegations made by Mr Carroll were investigated by the AFP which found that "no evidence of criminal behaviour has been disclosed [and] it is the opinion of the investigating police that Mr Carroll's allegations were based on hearsay and supposition" (Evidence p. S1182).

4.29 When this Committee's inquiry was announced in mid-1991, Mr Carroll indicated an interest in providing evidence to the Committee and, over a period of several months in 1992, he supplied in the name of the DFAT Reform Group a very lengthy written submission supported by copies of a small number of departmental and other documents. The submission proposed radical changes to Australia's traditional diplomatic and foreign policy structures and argued for the changes largely on the basis that there was systematic corruption within DFAT. The submission made a very large number of allegations of illegal or improper behaviour by many named or identifiable individuals. The Group's comments on the organisation of international relations are a legitimate expression of opinion and are discussed in Chapter 2. The specific allegations of malpractice and maladministration, although advanced in support of more general arguments on the management of foreign policy and diplomacy, can be separated from those arguments and are the subject of this Chapter.

4.30 The Committee was aware that many of the allegations had already been investigated and largely discounted by the AFP and the ANAO. It was conscious of the risk that its inquiry could be used as a device for harassing individuals and was determined not to permit such a misuse of the parliamentary committee system. It was also concerned that a Committee inquiry might not be the best means of achieving the primary investigation of criminal or improper behaviour. But the Committee

acknowledged that the DFAT Reform Group submission raised issues that were clearly of central importance to the management and operations of DFAT. The Committee therefore decided initially to have its staff review a sample of the Reform Group's specific claims.

4.31 Pending the outcome of the review, the Committee deferred a decision on whether to accept most of the sections of the submission containing specific allegations about identifiable persons and it applied the same policy to later submissions from the Group. The staff review of a sample of allegations was completed in June 1992 and the Committee published a summary of the review, excluding any details that could lead to the identification of individuals (reproduced in Appendix III). On 26 June 1992, the Committee held a public hearing at which representatives of the Reform Group gave evidence at length and Departmental representatives responded. In addition, the Committee accepted and published parts of the Reform Group submissions which make general criticisms of DFAT together with written responses by the Department (Evidence, pp. S940-1114).

4.32 The Committee's conclusions on the evidence it accepted in relation to the Reform Group claims are set out in the next Chapter.