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5 September 2001

The Secretary
Senate Finance and Public Administration
Legislation Committee
SG 60
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

INITIAL SUBMISSION TO THE INQUIRY INTO THE PUBLIC INTEREST DISCLOSURE BILL 2001

The Public Interest Disclosure Bill 2001 is not up to the task of protecting those public officials who seek to protect the public interest by disclosing improper conduct.

2. The Bill is an admirable undertaking, and to the credit of its author, but unfortunately it is a false prophet which will fail to protect those it is designed to protect. It will engender a false sense of security, initially, but eventually word of its list of casualities will deter those public officials putting their heads into view.

3. Whistleblower protection is an admirable ideal, effective protection can be provided, but the proposed Bill is wide of the mark. The difficulty legislators face in designing such a Bill is that the problem is invariably viewed from the outside, not from the inside. To view the problem from the inside, the legislator needs to have been perched on an informative platform for a considerable period of time, as well as being a victim of workplace discrimination, although the current language uses the word "bullying".

4. A quick reading of the Bill shows it suffers from naivety. Examples include:

(i). Section 14(1) leaves it open for a proper authority to opt out of acting on a disclosure if it so desires;

(ii).Section 16 provides that a proper authority "shall investigate a public interest disclosure" if certain requirements are met, but the Bill does not provide a mechanism to enforce that process;

(iii).Section 18 fails to give cognisance to the real world. In the majority of cases where S.18 would properly apply, a proper authority would not have information which in its opinion would bring the disclosure within the umbrella of S.18. Additionally efforts by that authority to obtain the necessary information would also alert that other agency referred to in S.18;

(iv).Section 19 leaves it open for a proper authority to form its own opinion that a public interest disclosure has been revealed, and for a proper authority to determine what is a necessary and reasonable action;

(v). Section 20 provides for a progress report, but there is no mechanism to enforce provision of the S.20 report;

(vi).Part 4 Division 1 provides no enforcement mechanism;

(vii).Section 26 offers little, if any, extra liability over common law;

(viii).Section 27 action may be the death knell to the career of a whistleblower and therefore not seen as an available option.

5. The Bill has a minor flaw - it charges, with corrective responsibility, that area of public administration which has hitherto been charged with the same task, yet that same management failed to protect its staff whilst at the same time fostered conduct adverse to the public interest.

6. Reprisals may be overt, as reported by De Maria and Jan (1994), but they can also be of an insidious nature, examples being manufacture of adverse material which is passed by word of mouth to different levels and areas of an organisation, and reports which do not openly state an opinion but which by shrewd selection of words lead a reader to form an adverse opinion of the subject person.

7. In the second reading of the Bill reference was made to the Public Service Commissioner and to the Public Service Merit Protection Commissioner as "proper authorities" in preference to the Auditor General and the Ombudsman. The (Commonwealth) Ombudsman (unlike the Queensland Office) is substantially shut out of the process at the present time, and enlargement of its powers would be unlikely to effectively address the task at hand. The Auditor General would be an unsuitable choice. Additionally the Public Service Commissioner and the Public Service Merit Protection Commissioner are not of the same world as the whistleblower, and would therefore not be up to the task. The evidence is there.

8. Whistleblowing arises out of maladministration, and maladministration grows from the top down, so why charge the administration with investigating its own defects, asking Caesar to investigate Caesar.

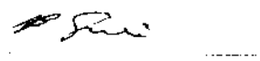
9. There is the need for a new independent body, with an investigative focus, staffed not by legal practitoners, but directed by personnel specialists, who have the right experience, with those powers necessary for dealing with the tasks at hand, with in-house legal expertise, adequate human and other resources, answering only to the Prime Minister.

10. As a person with over 30 years Commonwealth employment, finishing in 1991, around 17 years in the personnel function, with service as an in-house staff counsellor, as a workplace discrimination victim, I believe I can justly claim an understanding of the structure required to address the problem under consideration.

11. There is insufficient time between receipt of the relevant documentation, received today, and 21 September 2001, for me to do justice to a submission.

12. This initial submission will be posted now. A supplementary submission, a comprehensive submission, will be forwarded as soon as it is finished.

Yours faithfully



(Barry F Grice)