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The Secretariat
Senate Committee Inquiry
in reference to:
Public Interest Disclosure Bill 2001
Parliament House
Canberra ACT 2600

20 September 2001

S U B M I S S I O N

PUBLIC INTEREST

DISCLOSURE BILL 2001

This Bill with specific amendment could be the long awaited statute to promote and protect the valuable resource of public interest whistleblowing.

The collective whistleblower experience is,that without acceptable 'proper authorities' (S.9), this draft Bill will be unproductive , specious , and its purposive thrust a failure.

Those nominated 'proper authorities' in this Bill are unequivocally unsuitable.

It is difficult to see from the whistleblower perspective and experience , how the propounders of this Bill with an abundance of good intent, could make such a mistake.

It is the need for very cautious nomination of 'proper authorities' upon which the success of this legislation depends.

As it stands,potential whistleblowers are at unacceptable risk of ill treatment and frustration from the Public Service Merit Protection Commissioner in particular, or from any other public service authority.

The pre-emptive selection of these 'proper authorities' suggests a lack of prescience,and a reasonable presumption that there has been pressure or influence from the Attorney Generals Department. This department has a long overt history of being antipathetic to whistleblowing and curiously acts as the adversary in litigation against individuals who 'blow the whistle' and then propelled into our uneven court system.

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The Attorney Generals Department is the principal protector of the 'public service ethic', i.e. an unremitting and misplaced loyalty between senior public service administrators , and, when deemed necessary, it is placed over and above all else including the public good and national interest.
This impecatory 'understanding' represents the antithesis of accountability.

ref.: See evidence of high profile apprehension and recognition of the existance of the 'public service ethic' by Dr. H.C. Coombs, Chairman of the 1975 Royal Commission into Aust. Government Administration opropos - the case study of W.F.Toomer .
Dr. Coombs said (quote) "...the Commissioners' examination of the case has been sufficient to convince me that an independent inquiry is necessary to ensue that justice is done to Mr. Toomer. I do not support the recommendation that the establishment of such an inquiry should be at the discretion of the public service". (unquote)

It appears now that history is not only about to be repeated, but enshrined in statute law.

Facilitation of criminality and malfeasance.

Examples exist of facilitation and protection by the Attorney Generals Department in the above areas and for the Committees' awareness it would be helpful to familiarize itself with the well known case of - Skrijel V Mengler, Cook & Victorian Government now before the Supreme Court of Vic. No. 5446 of 1993.

(The reason for inclusion of this matter in this submission is to alert the Committee as to the weight which can be given to advice from the Attorney Generals Department in this subject of whistle-blowing in the public interest.)

In brief, the Skrijel case relates to a brave and concerned whistle blowing citizen who reported illegal heroin importation and as a result,he and his family were subjected to prolonged and heinous institutionalized attritions by government authorities.

Mr. Skrijel is now faced with his adversaries being the Common-wealth and state Attorney Generals Departments. These are the very authorities from which he should have been confidant of receiving support and protection.
The same situation has applied to other whistleblowers.

N.B.: Also see reference to the unheeded warnings by Justice Athol Moffitt of criminal infiltration into our institutions - (ISBN 0 207 15291 8) and also the Costigan Commission findings re.A.G.Dept. involvement in prostitution & 'Bottom' Harbour deals in WA.

The present Merit Protection Commissioner is Mr. Alan Doolan formally of the Merit Protection & Review Agency (MPRA) and one of the organizers of the disgraceful administrative conduct perpetrated by the MPRA in stark breach of the APS code of conduct.
The Director at the time of one of the repugnant performances of the MPRA was Ms. A. Forward. These extremes of administrative conduct were afforded legal protection under S.80 of the MPRA Act and given false credibility by political involvement.

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I suggest that the Committee take further note of the unsuitability of the public service Merit Protection Commissioner by reference to unhelpful evidence given by member witnesses from the MPRA to the 1994 Senate Standing Committe on Public Interest Whistleblowing.

Recent experience in trying to effect S.33 of the Financial Management & Accountability Act with respect to 'act of grace' payment has shown that the metamorphosed MPRA has not changed the administrative immorality transferred now to the Merit Protection Commissioner.

Finally, if the huge whistleblower resource is to be seriously acknowledged as such through this Public Interest Disclosure Bill, the Committee needs to promote 'good faith' toward those whistleblowers who have suffered greatly from government duplicity in relation to past 'protective' legislation.

Therefore to redeem confidence and future co-operation there should be unlimited retrospectivity, and address the serious wrongs done in the past.

The recent Federal Court decision in re Toomer v Slipper V503 of 2000-Weinberg J, has shown very decisively that 'act of grace' payments for the most convincing whistleblower cases are now not available to such individuals.

That Federal Court decision relegated S.33 of the FMA Act and the Administrative Decisions(Judicial Review) Act to the ineffectual status of 'claytons statutes'

It is therefore of particular importance that this proposed Bill become effective through proposed amendment and retrospectivity.

William F. Toomer ..... 20 September 2001