



MINISTER FOR DEFENCE

Leader of the House of Representatives

Senator Brett Mason
Chairman
Senate Finance and
Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

04 OCT 2001



Dear Senator Mason *Brett*

Thank you for your letter of 6 September 2001 in which you sought a written submission about the Public Interest Disclosure Bill 2001. I would make the following comments.

Defence has had an administratively based Whistleblower scheme in place since 24 July 1997. The scheme is intended to provide an effective mechanism for Australian Public Service (APS) employees and Australian Defence Force (ADF) members to disclose mismanagement or corruption in the department. The existing scheme is focussed specifically on fraud and probity issues. Civilians and ADF members are able to make complaints under the scheme.

It is the policy and practice of my department to examine all disclosures and allegations of misconduct, and, if warranted, to have them fully and properly investigated. The department conducts a preliminary assessment to determine whether a full investigation is warranted. The case manager may decline to investigate an allegation of misconduct where it is malicious, false, frivolous or vexatious or where the matter has already been the subject of proper examination. In some cases, the level of information provided may be so inadequate or incomplete as not to warrant further investigation. In others, a complaint may be redirected to a more appropriate authority. For example, it could be related to dissatisfaction over the way policy has been interpreted and is therefore outside the parameters of the Whistleblower scheme. In this case, the complainant would be referred to the appropriate complaint resolution mechanism, such as the Defence Complaints Resolution Agency for personnel-related matters.

Defence's experience with Whistleblowers has been mixed. Some Whistleblowers have provided useful information which has resulted in successful prosecutions in relation to allegations of fraud. But, some have clearly had their own agendas. For example, some have sought "Whistleblower" status to cover their own misconduct and contribution to inappropriate behaviour.

The *Public Service Act 1999* underpins the Whistleblower scheme for APS employees. Public Service Regulation 2.4 requires an Agency Head to establish procedures for dealing with a report made by an APS employee under section 16 of the Act. Section 16 of the Act deals with reports of breaches or alleged breaches of the Code of Conduct to the Public Service or Merit Protection Commissioner, an Agency Head or another person authorised for the purposes of the section. Section 16 also contains a prohibition against victimising an APS employee because that employee has reported a breach or alleged breach. In essence, Whistleblowing under the Act is about reporting breaches of the Code of Conduct to a person authorised by the Secretary to receive such reports and applying the legislative protection of the Act to APS employees who make such reports. Section 15 of the Act requires an Agency Head to establish procedures for determining whether an APS employee in the Agency has breached the Code of Conduct that is set out in section 13.

In Defence, the ability to maintain the confidentiality of the Whistleblower's identity is considered fundamental to the successful management of the Whistleblower and hence, the success of the overall program. Confidentiality and the assurance of protection from potential victimisation or harassment increase confidence in the program and reduce stress for the participants. The department has developed mechanisms to assist in the protection of the identity of the Whistleblower. For example, anyone seeking the strictest confidentiality is given a code number or name, and is referred to only by that number or name to ensure anonymity. Usually, the only people in the department who would know such a person's real identity are those who need-to-know to carry on the investigation.

The need-to-know principle is strictly applied in the management of Whistleblower cases. Precisely who needs to know varies from case to case. Often, people in a work area do not know an investigation is going on. Confidentiality is, therefore, a fundamental tenet that must be applied, not only to protect the identity of the Whistleblower, but also to protect the rights of those people accused of wrongdoing. Generally, the only information made available in a workplace is that necessary to assist investigators in their duties, and that necessary to ensure the continued functioning of the area.

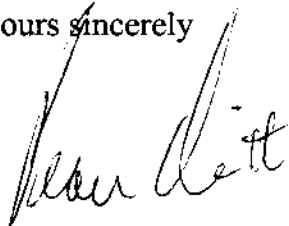
In Defence, it is recognised that Whistleblowers must be briefed that they have a mutual obligation to observe the principle of confidentiality. Discussion of an allegation with others who may subsequently be called on to assist with investigations may jeopardise those investigations. Evidence based on opinions formed as a result of gossip, rather than fact, could misdirect an investigation or lead to a person being treated unfairly, or both.

Whistleblower allegations are serious matters requiring careful examination. The public interest in Defence managing a Whistleblower scheme is in the fair and independent examination of allegations made by Whistleblowers, as well as in the efficient and effective use of resources. The disclosure of information to the media or to any other person who may be involved in any subsequent investigation may impair any investigation into the allegation prior to its being finalised. This could also lead to the reputations of innocent people being seriously damaged. Indeed, experience suggests that, in some instances, public disclosure has the potential to jeopardise ongoing investigations to such an extent that they cannot be continued or may not be concluded with a successful prosecution.

Against this background, we see no need for additional legislation. The Whistleblower provisions under the *Public Service Act 1999* already allow for disclosures to be made and investigated. In addition, the Act contains a prohibition against victimising Whistleblowers and, as mentioned above, that is practically achieved by maintaining the anonymity of the Whistleblower. Given this, it is difficult to see what a new layer of legislation would achieve other than additional complexity and cost.

My department's contact point for any matters related to this topic is the Inspector General of Defence, Mr Claude Neumann, telephone (02) 62664857.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Reith', written in a cursive style.

PETER REITH