



11 OCT 2001



**FOREIGN
AFFAIRS AND
TRADE**

26 September 2001

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

Dear Senator Mason

Thank you for your letters dated 6 September 2001 to Mr Downer and Mr Vaile requesting written submissions on the Public Interest Disclosure Bill 2001 ("Bill") for the purposes of the Senate Finance and Public Administration Legislation Committee's ("Committee") inquiry. I have been asked to reply on behalf of Mr Downer and Mr Vaile.

In your letters you call for written submissions for the purposes of the Committee's inquiry into the Bill to determine whether the Bill provides:

- a) credibility, that is would instil confidence in those who need to use it that their disclosures will receive proper consideration and investigation;
- b) procedures that facilitate the correction of identified cases of maladministration and/or misconduct; and
- c) appropriate public accountability reporting of processes commenced under the proposed legislation.

The Department's written submissions in relation to each of the above issues is outlined separately below.

a) Credibility, that is would instil confidence in those who need to use it that their disclosures will receive proper consideration and investigation

The Department of Foreign Affairs and Trade has been at the forefront of agencies in promoting a proactive policy on public interest disclosures in accordance with the Public Service Act 1999. This policy provides adequate recourse for employees to provide information to an authorised person about a breach or alleged breach of the APS Code of Conduct. The Department's current internal "whistle-blowing" process is well established and utilised by employees.

Although there are some aspects of the Bill that would enhance the effectiveness of the current "whistle-blowing" procedures under the Public Service Act 1999, there are a number of aspects in the Bill which will require further discussion and interpretation before the Department can provide a comprehensive view on the Bill. In particular, the following issues need further clarification:

- The Bill appears to allow members of the public to make public interest disclosures. This may cause practical and legal difficulties. In particular, it is unclear to what extent agencies would be able to provide protection to persons who make public interest disclosures from unlawful reprisals where those persons are members of the public rather than employees of the agency (clause 10(2)(c) of the Bill).
- The requirement for agencies to provide progress reports to persons who make public interest disclosures is problematic (clause 20(2) of the Bill). It may be inappropriate for progress reports detailing the matters outlined in clauses 20(3)(c) and (d) to be provided to such persons. Progress reports may undermine the integrity of the investigation being undertaken and/or may expose the agency to a claim for breach of privacy.
- There seems to be some ambiguity in what an "agent of the Commonwealth" means in the context of clause 7 of the Bill. This will need clarification.

b) Procedures that facilitate the correction of identified cases of maladministration and/or misconduct

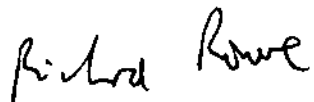
The Department has recently implemented a number of reforms in correcting maladministration and misconduct. As a consequence, there is a very effective and professional system of internal investigations into alleged breaches of the Code of Conduct already established in the Department which we consider to be best practice across the public service.

c) Appropriate public accountability reporting of processes commenced under the proposed legislation

The inclusion of the proposed reporting procedures would provide an additional degree of public accountability for action taken by agencies following public disclosures made relating to those agencies. Arguably, a similar result could be achieved by simply requiring Commonwealth agencies to provide this data as part of their annual reports.

The contact officer with whom the Committee Secretary, Helen Donaldson, can liaise in relation to this matter is Ian McConville, Director, Administrative and Domestic Law Section of the Legal Branch.

Yours sincerely

A handwritten signature in cursive script that reads "Richard Rowe".

Richard Rowe
Legal Adviser
Legal Branch