



MERIT PROTECTION COMMISSIONER



9 November 2001

Ms Helen Donaldson
Secretary
Finance and Public Administration
Legislation Committee
Parliament House
Canberra ACT 2600

Dear Ms Donaldson

PUBLIC INTEREST DISCLOSURE BILL 2001

Thank you for your letter of 22 October 2001, providing me with a copy of Mr William Toomer's submission to the Finance and Public Administration Legislation Committee's inquiry into the Public Interest Disclosure Bill 2001. Thank you, also, for the opportunity to respond to Mr Toomer's adverse comments about me.

I reject Mr Toomer's adverse comments and I provide the following information for consideration by the Committee.

Firstly, Mr Toomer suggests that ".....potential whistleblowers are at unacceptable risk of ill treatment and frustration from the Public Service Merit Protection Commissioner in particular,.....".

As Merit Protection Commissioner I have, among other functions, responsibilities to inquire into whistleblower reports and review actions that are alleged by APS employees to be victimisation or harassment. At all times I seek to perform all my functions in a way which conforms with the APS Code of Conduct and upholds the APS Values.

Secondly, Mr Toomer refers to my previous employment. He states that "The present Merit Protection Commissioner is Mr. Alan Doolan formally (sic) 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." Mr Toomer is referring to my role in the inquiry conducted by the MPRA at the request of the then Government into Mr Toomer's allegations of victimisation and harassment.

The facts are that in 1989 I was seconded to the staff of the MPRA to head a team undertaking investigatory work on behalf of the MPRA. In that task I was under the direction of the members of the MPRA, who were five office holders appointed by the Governor-General. My role in the inquiry was an administrative one. I researched



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the available evidence, provided advice and made submissions to the MPRA and drafted various papers and the final report. In this task I was assisted by a number of other public servants.

Mr Toomer was dissatisfied with the conclusions reached by the MPRA as a result of its extensive inquiry. Since completion of the inquiry he has been critical of the manner of its conduct. This is despite the fact that, given the range of matters that Mr Toomer sought to raise for investigation by the inquiry, there were two meetings between him and his advisers and representatives of the MPRA, at which the process was discussed. The first, at which he agreed the matters which would form the focus of the MPRA's attention and endorsed the methodology proposed for the conduct of the inquiry, was in July 1989. At the second, in August 1990, he again indicated acceptance of the process. When the MPRA had considered sufficient material to draft tentative conclusions they were provided to Mr Toomer for comment. He was invited to an oral hearing, conducted by three of the statutory office holders who were members of the MPRA, in order to allow him to provide further evidence and argument, which the MPRA could take into account in finalising its views. Mr Toomer withdrew from the inquiry in the second day of the oral hearing.

In my view, the processes adopted by the MPRA in the conduct of the inquiry were fair and designed to ensure that Mr Toomer was given the maximum opportunity to present his case to the MPRA. I do not agree that the processes could fairly be described as "disgraceful administrative conduct" or that they represented "extremes of administrative conduct".

Thirdly, Mr Toomer refers to "unhelpful evidence given by member witnesses from the MPRA to the 1994 Senate Standing (sic) Committee (sic) on Public Interest Whistleblowing."

In 1994 I, as a then member of the staff of the MPRA, along with the Director of the MPRA, Ms Ann Forward, and two other members of the staff of the MPRA, gave oral evidence before the Senate Select Committee on Public Interest Whistleblowing. This oral evidence was given following the making of a written submission by the MPRA to the Committee. That submission and the oral evidence were intended to assist the Committee in addressing its terms of reference. In its report the Committee did express concern about the evidence given by representatives of the MPRA, but went on to recommend, "that the MPRA be the primary organisation for investigating complaints of victimisation and harassment of public sector whistleblowers, but with enhanced powers to receive complaints specifically from whistleblowers and to make recommendations and orders for restitution....." (para 9.62 *In the Public Interest*). In addition, the Committee accepted a number of points made by the MPRA in its submissions to the inquiry.

Fourthly, Mr Toomer makes reference to his recent case in the Federal Court whereby he sought judicial review of a decision of the Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, denying him an 'act of grace' payment under section 33 of the *Financial Management and Accountability Act 1997*. He says that this episode "....has shown that the metamorphosed MPRA has not changed the administrative immorality transferred now to the Merit Protection Commissioner."

The facts are that in January 2000 I was contacted by an officer of the Department of Finance and Administration. In the course of her consideration of Mr Toomer's application for an 'act of grace' payment, the officer sought information relating to Mr Toomer's request for compensation and, in particular:

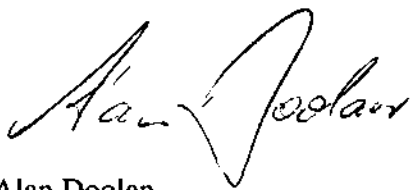
- “* a general overview of the MPRA's role in the matters outlined in Mr Toomer's letter (to the Minister for Finance and Administration);
- * any opinion or comment (I) may wish to provide regarding any of the allegations in Mr Toomer's letter;
- * (my) opinion as to whether (I) would support the Commonwealth having any further role in reviewing these matters particularly from the point of view of providing compensation.”

My response stated that I had headed the inquiry team investigating Mr Toomer's allegations under the direction of the MPRA. I set out a summary of the facts of Mr Toomer's ongoing quest for compensation, described the inquiry undertaken by the MPRA and quoted some of the MPRA's conclusions. I stated to the Department of Finance and Administration that Mr Toomer's letter provided no new evidence relating to the matters investigated by the MPRA and that, consistent with the findings of the MPRA which had been accepted by the Government, I could see no useful purpose in the Commonwealth conducting any further review of Mr Toomer's allegations.

I believe that I have at all times acted fairly towards Mr Toomer and have conducted myself, both as an employee of the MPRA and subsequently as occupant of the statutory office of Merit Protection Commissioner, both ethically and professionally.

Should the Committee wish to pursue any of these matters, I would be happy to provide further information.

Yours sincerely



Alan Doolan