

PARLIAMENT OF AUSTRALIA



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



Dear Ms Donaldson

Thank you for your letter of 28 September 2001 requesting a submission on the *Public Interest Disclosure Bill 2001*.

The *Parliamentary Service Act 1999* (the Act), which essentially mirrors the *Public Service Act 1999*, articulates the Parliamentary Service Values and establishes a statutory Code of Conduct. The Code of Conduct is the mechanism for managing misconduct and is underpinned by:

- a Parliamentary Service Commissioner's Direction on basic procedures for determining breaches of the Code;
- procedures issued by the Secretary of each parliamentary department for determining breaches by employees; and
- Parliamentary Service guidelines, *Managing Breaches of the Code of Conduct*.

Basic provisions for handling whistleblower reports are included in the determinations. The determinations also envisage that Secretaries will issue departmental procedures for the handling of whistleblowers' reports but specify that, in the absence of such procedures, reports must be investigated in a manner consistent with the Secretaries' procedures for determining breaches of the Code.

The relevant determination provisions are at Attachment A.

The Act and determinations provide specifically that Secretaries are bound by the Code of Conduct and the Values. The Act provides clear employer powers of Secretaries and has effect subject to the Workplace Relations Act.

The Act (s40) also provides for the statutory office of Parliamentary Service Commissioner and specifies that the Commissioner's functions include:

- to give advice to the Presiding Officers on the management policies and practices of the Parliamentary Service; and
- if requested by the Presiding Officers, to inquire into and report on matters relating to the Parliamentary Service that are specified in the request.

The Commissioner is required to make an annual report to the Parliament.

The Parliamentary Service Merit Protection Commissioner also has relevant functions, set out in s48.

Thus, the Act and determinations provide a clear framework for dealing with misconduct at all levels in the Parliamentary Service.

The framework includes protection, under s16 of the Act, for Parliamentary Service employees who make whistleblowers' reports. Section 16 is at Attachment B.

Public interest disclosures made by people who are not employees are not dealt with specifically in the Act and determinations. However, under the framework described above, any report made to an appropriate authority (eg, a Secretary, a Presiding Officer, the Parliamentary Service Commissioner or the Parliamentary Service Merit Protection Commissioner) would need to be dealt with appropriately and in a manner consistent with the procedures for dealing with alleged breaches of the Code of Conduct.

While the Act and subordinate legislation do not provide protection for non-employees who make public interest disclosures, victimisation or discrimination against such people by employees (including Secretaries) would be a clear breach of the Code of Conduct and would be dealt with accordingly.

I have not considered the draft Public Interest Disclosure Bill in detail. However, in relation to the matters on which you have sought comment, my general comments follow.

Credibility

The present Parliamentary Service Act provisions enable disclosures to be made to appropriate authorities and provide reasonable protection for whoever makes such disclosures. While the proposed Bill contains more detail than the Act, it is questionable whether the Bill would achieve more than the provisions already established under the Act.

Effective procedures Accountability processes

The primary mechanism in the Bill for facilitating correction of identified cases of maladministration is the reporting requirements. Again, it is not clear that discrete legislation would necessarily be more effective than the requirements for reporting under the Parliamentary Service Act, including the Parliamentary Service Commissioner's report-making power.

I hope that these comments are helpful and would be happy to provide officers to attend a public hearing.

Yours sincerely



J.W. Templeton
Secretary

22 November 2001