

CHAPTER ONE

INTRODUCTION

Establishment

1.1 The Senate Select Committee on Public Interest Whistleblowing was established by resolution of the Senate, on the motion of Senator Jocelyn Newman, on 2 September 1993. Senator Newman indicated to the Senate that she had been concerned at the number of people who described their experience of whistleblowing in the national interest, and whose careers and health had suffered as a result due to the apparent inadequacy of existing procedures in giving these people sufficient protection from harassment, intimidation or even sacking. However, it was not just these cases in the public sector, but also a case in the private sector - relating to problems affecting the viability of a Tasmanian bank and its subsequent removal of the whistleblower after his identity had been revealed - that led Senator Newman to move in the Senate for the establishment of the Select Committee.¹

1.2 On 27 October 1993, on the motion of Senator Newman as Chair of the Committee, the Senate referred to the Committee for inquiry and report the Whistleblowers Protection Bill 1993. This was a private senator's bill which had been introduced by Senator Chamarette on 5 October 1993.

Conduct of the Inquiry

1.3 The inquiry was advertised in major newspapers on 23 October 1993. In addition to this advertisement the Committee wrote to a range of interested people and organisations inviting them to make a submission. A closing date for submissions was set at 17 December 1993. However, the public hearings held in early 1994 generated wider interest in the inquiry. It was therefore agreed that submissions

1 Senate Hansard, 25 September 1993, pp.900-902.

would be received throughout the course of the inquiry to ensure that all interested people were given an opportunity to put their views before the Committee.

1.4 The Committee received 125 submissions and 12 supplementary submissions, in addition to a number of written responses to evidence and submissions. A list of submissions and other written material received by the Committee and which it authorised to be published is at Appendix 1. These submissions and other material have been published in separate volumes.

1.5 The Committee held public hearings as follows:

Canberra - 29 November 1993

Canberra - 30 November 1993

Adelaide - 27 January 1994

Melbourne - 28 January 1994

Sydney - 7 March 1994

Brisbane - 8 March 1994

Canberra - 25 March 1994

A list of witnesses who gave evidence at these hearings is at Appendix 2.

1.6 The Senate agreed to extend the time for the presentation of the Committee's report on 22 February 1994, and on 31 May 1994 until 31 August 1994.

Consideration of individual cases

1.7 From the outset of the inquiry the Committee felt it was necessary to emphasise that its terms of reference required it to inquire into whether whistleblowing should be the subject of Commonwealth legislation. The Committee was not empowered to determine the rights or wrongs of individual cases which may be attracted by such an inquiry. The Committee's function was to look to the future in respect of whistleblowing legislation, not to become an avenue for whistleblowers to

raise their cases in the expectation that specific action could be taken. Accordingly, when advertising the inquiry the Committee included the following comments:

Whilst the Committee appreciates that there exists evidence which relates to personal and specific instances of whistleblowing the Committee will be confining its inquiry to the Terms of Reference. The Committee will not be investigating or pursuing specific cases. The Committee will consider such evidence only to the extent that it may assist the Committee in its inquiry.

1.8 Most people who provided submissions understood these limitations in respect to specific cases, using their case histories to illustrate comments directed towards the terms of reference. Many indicated that it was their strongest wish that action should be taken to ensure that in the future whistleblowers were not subjected to the suffering which had been inflicted upon them. The Committee was generous in its application of this procedure relating to specific cases and agreed to receive as evidence most of the written material that was forwarded. Nevertheless, a few correspondents had material returned with an indication that it did not address or was not relevant to the terms of reference.

1.9 The requirements of the Senate's Privileges Resolutions² relating to adverse reflections were relevant in determining which submissions the Committee would authorise for publication. Consequently, a number of submissions were published together with responses to adverse reflections, whilst others were published in part or with material expunged. A few submissions were not published at the request of their author and in some cases detailed supporting documentation was returned to the author.

1.10 In relation to the individual cases outlined in submissions which were received, the Committee considered them as anecdotal evidence of assistance in its inquiry. The Committee did not attempt to determine whether the case history as

2 Parliamentary Privilege Resolutions - 25 February 1988, Standing Orders and Other Orders of the Senate, June 1993, pp.91-93.

outlined was accurate in all respects. This was not the function of the Committee and therefore, subject to the requirements of the Privileges Resolutions, it was not regarded as necessary to have the opposing party (or in many cases parties) provide their interpretation of the events.

1.11 The case histories were important to the Committee as they described the experiences of whistleblowers and the effects upon them at a personal level. They conveyed the perceptions and attitudes of whistleblowers, in particular towards various organisations involved with their case. Whether these perceptions could be argued as justifiably held was not as relevant to the Committee as the fact that these perceptions are held, and held very strongly.

1.12 The Committee received requests during the inquiry to recommend action be taken on individual cases to reopen investigations or hold further judicial or parliamentary inquiries. As indicated, it was not the Committee's function to make judgements as to the merits or otherwise of particular cases. Indeed, many cases involved organisations not within the Commonwealth's jurisdiction. Nevertheless, the Committee was concerned at the evidence it received in many cases which indicated apparent injustices may have occurred.

1.13 The Committee is unable to allow this situation to pass without comment. The Committee is pleased to note that some jurisdictions have provided a mechanism by which particular cases can be reviewed. The establishment of the NSW Royal Commission into the Police Service will provide an opportunity for further examination of some cases brought before the Committee. The South Australian Whistleblowers Protection Act provides for the investigation of wrongdoing which occurred before the commencement of the legislation. The Committee believes that any disclosure of wrongdoing which occurred within five years prior to the commencement of legislation, should be included in legislation by other States as they move towards the enactment of complementary legislation. All these measures are intended to assist whistleblowers, as would the implementation of the recommendations in this report at the Commonwealth level. However, the Committee remains concerned at the number

of apparently unresolved whistleblower cases in Queensland³ and therefore **the Committee recommends that the Queensland Government establish an independent investigation into these unresolved cases within its jurisdiction.**

Reference to existing reports

1.14 The Committee acknowledges that a number of reports and papers published in recent years have addressed the subject of whistleblowing, although in varying detail. These are referred to in Chapter 4. The Committee particularly notes the work produced by other parliamentary committees and the Electoral and Administrative Review Commission (Qld) in its Report on Protection of Whistleblowers, together with the transcripts and papers from conferences arranged by the Criminal Justice Commission (Qld) and the Royal Institute of Public Administration Australia (NSW).

1.15 The Committee has in parts of this report referred to the consideration of issues which have been fully dealt with in these reports and papers, rather than reproducing that detail in this report. Much of the evidence received by the Committee corroborated many of the conclusions and recommendations reached by the authors of this existing material. The Hansard transcripts of the evidence received at public hearings together with the submissions that the Committee authorised for publication were tabled in the Senate with this report. Copies of submissions and evidence can be obtained through the Department of the Senate.

3 See in particular evidence given in Brisbane by members of the Whistleblowers Action Group, evidence pp.1072-1131 and by Kevin Lindeberg and Des O'Neill, evidence pp.1132-1144. See also Submission nos. 18 - Teri Lambert, 20 - Peter Jesser, 40 - Gordon Harris, 43 - Tom Hardin, 64 - Des O'Neill, 74 - Kevin Lindeberg, 108 - Robert Osmak, 110 - Greg McMahon and 123 - Bill Zinglemann.