> It appears that it is common practice for both the private and public sector that scientific reports in particular have been doctored or censored, causing the decision making process to be flawed.[50]

8.58 The National Crime Authority (NCA) pinpointed three areas of difficulty in enacting a whistleblower protection scheme for the private sector. The NCA referred to the constitutional limitations on the Commonwealth Parliament's power, the cost factor in establishing and operating such a scheme and the nature and the powers of the investigating agency which might raise controversy. The NCA concluded that, although whistleblowing legislation should eventually be extended to cover sections of the private sector, such an extension should preferably follow a "wider community debate".[51] However, the NCA acknowledged that without such an extension, wrongdoing in the private sector which affects the public interest may continue undisclosed.

Accountability

8.59 The notion of accountability was a stated concern in many submissions. Accountability is an underlying theme of whistleblower protection legislation. But accountability from whom and to whom? It is common to acknowledge that accountability is a hallmark of the processes of democracy, and that within the public sector, accountability, ultimately to the people, is part of the constitutional cycle of responsibility. However, the Committee considers that accountability and constitutional responsibility does not end with the public sector. The responsibility of Government should not be seen as being so confined. Within its constitutional frame of reference government has a wider responsibility to the people to ensure that whistleblowing, as part of the democratic process, can surface wheresoever the public interest is threatened. To align the concept of responsible government with the concept of the public sector is to give democracy so narrow a focus as to undermine its existence.

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50 Queensland Conservation Council, Submission no. 66, p.3.

51 National Crime Authority, evidence p.437.

8.60 In particular, witnesses raised concerns about the lack of accountability by providers of government services in the private sector. The Committee was told that clients of these service providers were already less protected than clients of government service providers.

> As a taxpayer I am concerned that my taxes are being spent increasingly in a sector that does not have adequate accountability controls.[52]

8.61 The Committee is concerned that the concept of accountability be given an extended meaning, and that it be generally accepted that the concept extends further than the mere furnishing of details about the use of power or public funds and resources.

Private sector employment provisions

8.62 Although John McMillan made a number of proposals concerning a whistleblower protection scheme, he expressed doubts as to how far his suggestions could be applied to the private sector. McMillan considered that:

> Essentially, the problem that arises in the private sector is that there is limited common law or statutory protection for employees. A standard feature of most employment contracts is that an employee's service is terminable at will - for any reason, for no reason, or for the wrong reason".[53]

8.63 Given the lack of adequate protection of employment in the private sector, McMillan questioned the appropriateness of attempting to "reformulate that employment relationship in the specific context of whistleblower protection, bearing in mind the difficulties ... of distinguishing between whistleblowing and other work place

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52 J. Dickenson, Submission no. 26, p.1.

53 John McMillan, evidence p.268. Although McMillan noted the possible introduction of concepts such as natural justice and termination for cause, which are part of public sector employment.

disagreements [and concluded that] maybe the issue warrants a more general analysis".[54]

Public and private sector legislative coverage

8.64 The majority of those who addressed the issue considered that whistleblower protection legislation should be given as wide a coverage as is constitutionally possible, across both the public and private sectors. Submissions frequently described appropriate coverage in terms similar to:

> All Government departments, agencies, instrumentalities, public servants (serving and former members), members of the public, members of the judiciary, members of the Parliament and any person, organisation, or other body.[55]

8.65 The Committee received evidence from some organisations who were opposed to the introduction of legislation to protect whistleblowers in either the public or private sectors. The Business Council of Australia did not believe that the absence of such legislation unduly inhibits the disclosure of information that is broadly in the public interest. In fact, the conflict of secrecy versus public interest experienced by public servants when deciding to blow the whistle "ensures that only matters of real public interest are disclosed as the sanctions are too severe for the disclosure of less important matters".[56] If public servants decide to become whistleblowers, they must accept the consequences of their actions including discrimination if they are found out. The Business Council of Australia was of the opinion that the introduction of such legislation would undermine the trust between employer and employee.

8.66 The Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia (the Accountancy Bodies) jointly

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54 ibid.

55 Australian Federal Police, evidence p.83.

56 Business Council of Australia, Submission no. 23, page 1.

submitted that "the public interest is more likely to be advanced by whistleblowing when it relates to conduct in the public sector rather than the private sector".[57] The Accountancy Bodies suggested that whilst "accountability" and "good governance" are matters of importance in the private sector, there are more appropriate means by which they can be achieved such as shareholder action and intervention by regulatory bodies such as the Australian Securities Commission.[58] Nonetheless, the Accounting Bodies preferred that whistleblower protection legislation, if enacted, should be given the widest possible application in both sectors. They were convinced, and the Committee agrees, that "one regulatory system can be put in place to deal with all instances of public interest whistleblowing".[59]

8.67 The Committee considers that, with mutual cooperation between the Commonwealth, the States and industry groups, whistleblower protection can be a reform on a national level.

Government Business Enterprises

8.68 The Committee notes that Government Business Enterprises are increasingly falling between the public and private sectors. In many cases the 'government' emphasis to these enterprises has diminished or is non-existent. Scrutiny and accountability has been reduced or lost through the hiving-off of commercial activities. The ability of Parliament to exercise its proper role of scrutiny has been considerably weakened, although the convention of ultimate ministerial responsibility remains. This problem was identified in 1989 by the F&PA Committee[60] and has deteriorated during the intervening years. The Committee agrees with the F&PA Committee that such enterprises should be no less accountable than a statutory

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57 ASCPA and ICAA, Submission no. 71, p.3.

58 ibid. See Institute of Internal Auditors - Australia, evidence pp.865-6, who also argued against the introduction of legislation citing seven other means to the same end.

59 ASCPA and ICAA, Submission no. 71, p.5.

60 Senate Standing Committee on Finance and Public Administration, Report on Government Companies and their Reporting Requirements, November 1989, pp.15-17.

authority. GBE's should therefore be covered by the whistleblower protection legislation.

8.69 **The Committee recommends that the Public Interest Disclosures Agency and the provisions of the supporting legislation be given the widest coverage constitutionally possible in both the public and private sector.**

8.70 **In recognition of the constitutional limitations of the Commonwealth Parliament to enact a comprehensive scheme to cover whistleblowers throughout the private sector, the Committee encourages States and/or relevant industry groups to provide avenues for the reporting and investigation of wrongdoing, in those areas where the Commonwealth Parliament cannot constitutionally act.**

Specific areas of public/private sector involvement

8.71 The Committee acknowledges that there are some areas in respect of which the Commonwealth Parliament cannot constitutionally legislate. In other areas, part coverage may be achieved. Notwithstanding the inability of the Parliament to comprehensively legislate with respect to certain areas, the Committee feels obliged to raise concerns brought to its attention regarding a number of areas. The Committee believes that, with the cooperation of the States, relevant industrial bodies and employer organisations, some, if not all of the deficiencies identified may be remedied. Based upon the weight of evidence received by the Committee, particular attention has been paid to the following areas: Education, Health care and administration, Financial regulation and banking and Policing.

Education

8.72 The Committee acknowledges the importance of academic freedom, and the "self regulation" of the education industry in so far as this is practicable. However, the Committee has heard evidence that the self-determination existing within academia has, in some instances, resulted in sectors of academia operating as isolated pockets

of tyranny. By operating under a policy of self determination educational institutions are able to determine for themselves the allocation of the public funds granted to them. The evidence received seemed to reveal a philosophical hypocrisy or enigma underlying the higher education system. Whilst on the one hand, the notion of academic freedom justifies the policy of economic self determinism in relevant institutions, that very same policy is allegedly threatening intellectual freedom. As one witness commented:

> The traditional value of intellectual self regulation has collapsed in the face of economic determinism but the pretence to its continued relevance has given those who control academic institutions immense freedom from accountability.[61]

8.73 In some academic environments this has produced, in conjunction with other reasons, intellectual suppression or the suppression of intellectual dissent as it may in some instances be called. However, it must be noted that intellectual suppression and whistleblowing, whilst sharing some mutual concerns are not entirely interchangeable terms. Some forms of intellectual suppression may not constitute the activity of whistleblowing and vice versa. Clearly, however, the two concepts have much in common. Both are forms of dissent. Two main features of intellectual dissent have been described:

> First, a person or group, by their public statements, research, teaching or other activities, threatens the vested interests of elites in corporations, government, professions or some other area. Typically this is by threatening profits, bureaucratic power, prestige or public image, for example by providing support to alternative views or by exposing the less attractive sides of the powerful group.[62]

8.74 The second feature is broadly the response which, being the act of suppression, may take many forms. It is "an attempt by a powerful individual or group

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61 Shirley Philips, evidence p.649.

62 Brian Martin, et al (eds),"Intellectual Suppression", Australian Case Histories, Analysis and Response, Angus and Robertson, Australia, 1986:p.1.

to stop or to penalise the person or activity found objectionable"[63] This may involve denying funds or work opportunities, blocking appointments, tenure, promotion, courses, publication and blacklisting and harassment. The subtlety of the organisational response to whistleblowers, noted in Chapter 5, is also common to cases of intellectual suppression. Reference has been made to 'direct' suppression (as already described) and 'indirect' suppression which takes the form of implied or overt threat of sanctions or because of a general climate of fear or pressures for conformity.[64]

8.75 The overlap between intellectual suppression and whistleblowing may occur when pressure is exerted to alter or falsify academic research or reports, or where suppression of material is the result of abuse of power or departmental corruption or maladministration. When people are not willing to submit to suppression, their response may be to blow the whistle. As Dr Brian Martin described "a whistleblower making a complaint is simply using one strategy against suppression".[65]

8.76 Intellectual suppression occurs in virtually all parts of society, although most research has centred on academic or scientific institutions. The Committee recognises that intellectual suppression within Australia is an important and unresolved issue the coverage of which goes beyond the scope of this Committee.

8.77 At a time when attention is focussed on the concept of accountability there are ample reasons to examine the accountability mechanisms of academic institutions. According to one witness:

> The legislative bias in public accountability could not have a better expression than in the idea of 'trust for the ethical scholar'. Scholars are

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63 ibid., p.2.

64 ibid., pp.1-2. See also suppression of academic freedom in Australian higher education institutions, National Tertiary Education Industry Union, evidence pp.612-17.

65 Dr Brian Martin, evidence p.822.

> no more ethical than anyone else. It is an intellectual fraud that is being perpetrated on the community as millions of dollars are handed to these autonomous institutions to deliver the economic goods for governments with no questions asked about the means they use to do it.[66]

Clearly, academic institutions are in receipt of large amounts of public monies. Again, the question "Who minds the minders?" is relevant.

8.78 The Committee recognises that economic self determination may ultimately lead to isolation in work environments. This is particularly where administrative managers are free from effective public accountability measures. The Committee empathises with the plight of those in academia, who, striving for intellectual growth and achievement, or for improving teaching conditions and the methods of imparting knowledge to their students, risk serious interruption to their careers by exposing administrative or academic wrongdoing. Shirley Phillips suggested that this social construct of freedom from accountability produced an environment where "naive or courageous academics try to protect the intellectual credibility of their research and teaching instead of their careers - especially when they come into conflict with the wishes, demands and self-interest of colleagues who are further up the administrative hierarchy".[67]

8.79 The Committee is concerned to ensure that, regardless of the legislative coverage of the proposed whistleblower protection scheme, academic institutions aim to review their ethical accountability structures. If economic self-determinism is a policy which in practice, is a catalyst for corruption or the perpetration of maladministration then that policy should be re-examined.

8.80 The Committee finds sentiments such as those expressed by Professor Kim Sawyer, as disturbing. Professor Sawyer, reflecting on his own experience stated:

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66 Shirley Phillips, evidence p.653.

67 ibid., p.649.

> ... I have lost all confidence in the institutions and traditions of this country. I regard the education system as corrupted, corrupted by the entrepreneurs of education that Professor Stephen Fitzgerald recently so appropriately described as carpetbaggers and golddiggers. Corrupted also by the failure of the governing bodies of universities to accept any real accountability or public responsibility. Corrupted also by an education bureaucracy that cannot define nor implement a regulatory process in a deregulated environment. And finally corrupted by a system that apparently perceives the Vice Chancellors of our universities to be above the law.[68]

8.81 The Committee acknowledges that improving the lot of whistleblowers in the education system, will also require that academic and education institutions should re-examine their internal legislation and by-rules. Such re-examination should be undertaken with a view to removing those rules which serve to inhibit a staff member from serving the public interest and disclosing particular classes of information.

8.82 Peter Jesser stated that "when morality is legitimated by expediency ... efficiency tends [to] become a surrogate for ethical decisions and choices".[69] He was referring to another type of corrupt behaviour which occurs in educational institutions - the arbitrary assessment of students. Clearly there is an enormous range of issues within the education sphere that may constitute "wrongdoing" and which should be reported for the public interest.

8.83 The National Tertiary Education Industry Union whilst acknowledging the constitutional barriers to bringing universities directly under legislation, strongly urged that some means be developed so that the requirements, processes, procedures and structures of any whistleblower protection legislation apply to universities.[70] **The Committee recommends that legislation extend to academic institutions, where it can,**

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68 Professor K. Sawyer, evidence p.629.

69 Peter Jesser, Submission no. 20, p.4.

70 National Tertiary Education Industry Union, evidence p.619.

and, regardless of legislative initiatives, the Committee encourages institutions to accept dissent as integral to the pursuit of knowledge.

Health care and administration

8.84 The Committee acknowledges the vital contribution to society made by the health care industry and the workers within. Because of the nature of the work performed by the health care industry, the Committee was concerned to receive evidence about the suppression of information relating to malpractice and maladministration.

8.85 There is a public expectation that the ethical standards of this industry and associated professions, should be proportional to the onerous responsibilities which it must perform. Regrettably, the Committee has received evidence of situations where the ethical standards within the health care industry have not met expectations. The health care industry has been described as an industry where:

> a strict hierarchal and interdependently tied population accept an orthodoxy which is more rigid than most other professions. This may mean that whistleblowing is seen as akin to treason, and carries the extra stigma, if criticism is made public, of inducing fear in the general population about standards of care. Consequently, whistleblowing carries a higher penalty for health care providers.[71]

8.86 The Committee encourages the disclosure of information in the public interest which may lead to a wider debate about the health care industry. As a general observation, it seems to be the case that it is often the disclosure of such information which prompts significant reforms. However, whilst the Committee encourages disclosures of wrongdoing in the public interest, the Committee is concerned that the confidentiality of patient's personal information be preserved. The Committee considers such confidentiality is vital and should be protected. The Health Insurance Commission stated that:

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71 Paul Maher, Submission no. 25, p.1.

> The Commission places onerous obligations of confidentiality upon its staff. It would not wish whistleblowing legislation to be a back-door avenue for release of personal information otherwise subject to protection".[72]

8.87 The Australian Nursing Federation (ANF) drew the Committee's attention to the precarious position of nurses. No one could dispute the valuable work of this profession as they perform "hands on" care and treatment of patients. Nurses are required to work as members of a health care team, and yet, as anecdotal evidence invariably suggests, it is presumed by the heads of the team that they will remain compliant and silent, no matter what wrongdoing they may see. The ANF indicated that:

> Nurses are privy to endless abuses of ethics, privacy, confidentiality, safety and human rights. They are witness to, and sometimes actually requested or required by their employers to participate in fraud (euphemistically known as Medifraud).[73]

8.88 The workers in the health care industry are constrained from making public interest disclosures by the complexity of the environment in which they work. Their loyalty as team members, and their constant interaction with a multitude of health care providers from different origins accentuate this complexity. The ANF recommended that whistleblowing protection legislation should include all health, welfare and community services, their clientele and their staff. The ANF emphasised the necessity for including nursing homes and hostels for the aged and disabled.[74]

8.89 The Human Rights Commissioner, Brian Burdekin, used the experience from the National Inquiry into the Human Rights of People with Mental Illness to confirm the problems faced by nurses and others employed by health administrations around Australia in raising matters of concern. Mr Burdekin referred to the significant

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72 Health Insurance Commission, evidence p.1266.

73 Australian Nursing Federation, evidence p.470.

74 ibid., p.472.

number of nurses who would only give evidence and submissions in camera or in such a way that it did not identify the authors. The reason stated was fear of reprisal by employers or colleagues, and in particular for their future employment, if they spoke out publicly about deficiencies and abuses within the organisations for which they worked.[75] Mr Burdekin also noted that the people at the bottom of the hierarchical system in terms of power - the patients and the carers - were the people who genuinely felt themselves to be in considerable danger if they gave evidence.

8.90 However, it was not just nurses, but also psychiatrists and allied health professionals, who feared speaking out publicly and giving evidence because of what they feared to be a very real risk of retribution. Because of the "climate of apprehension concerning perceived disloyalty by employees to their organisation, whether public or private", the Commissioner believed in the necessity of enhanced whistleblower protection mechanisms with as wide a legislative coverage as possible. In particular he was concerned about the coverage of institutions which are not operated by the federal government and those which do not operate as part of the public health system.[76]

8.91 The Constitutional limitations on the Commonwealth Parliament's legislative ability necessitate action and initiatives to be undertaken by many sections of the health care industry. The Committee recognises that some sections of the health care industry have mechanisms for addressing concerns. The Australian Medical Association's Code of Ethics states as part of the professional conduct requirements of the doctor and the profession:

> Report to the appropriate body of peers any conduct by a colleague which may be considered unethical or unprofessional.[77]

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75 Human Rights Commissioner, evidence p.7 and Submission no. 82, pp.9-10.

76 ibid., evidence p.10 and submission pp. 12 and 16.

77 Australian Medical Association Code of Ethics, July 1992.

8.92 **The Committee recommends that, where constitutionally possible, the Commonwealth Parliament should legislate to provide whistleblower protection for disclosures made about the health care industry. The Committee acknowledges the public interest nature of the work of all sections of the health care industry, and welcomes initiatives at/in work places within the industry to encourage and protect those who make disclosures in the public interest.**

Financial regulation and banking

8.93 Strong representations were made to the Committee about the need for reform in the banking industry and in particular, the need for bank employees to be covered by whistleblower protection legislation. Banks occupy a position of trust to the large numbers of depositors whom they represent. Again, as in the health care industry, the onerous responsibilities of banks precipitate high public expectation about the ethics and work practices within banking organisations.

8.94 The Committee understands the importance of reputation when employees seek mobility within the banking industry. It was noted by the Committee that whistleblowers within the industry have been few and far between, yet in recent years a number of banks have experienced "spectacular failures".[78] The Committee was concerned that prospective whistleblowers in the banking industry have no where to confide their concerns.

8.95 A representative from the Reserve Bank of Australia told the Committee that, in discharging its function as prudential supervisor of banks, the Reserve Bank has very rarely received a whistleblower type complaint which relates to that function. In response to the Chair's query as to whether potential whistleblowers regard the Reserve Bank as the appropriate body to go to, Mr L.J. Austin, an Assistant Governor of the Reserve Bank, commented:

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78 Evidence p.1310, per Senator Chamarette.

> If there was a concern about some management practice that was happening that could lead to a threat to the viability of the bank, it would be quite appropriate for a person to come and talk to us about that. If it was a case where the viability of the bank was not going to be threatened and yet somebody felt that the bank was being run in a manner which was not as efficient as could have been the case, possibly they would not see that as something that they should raise with us.[79]

8.96 Opposing inferences may be drawn from the fact that the Reserve Bank has only "rarely" received whistleblower complaints. As became apparent from comments between the Chair and Mr Austin, either whistleblowers do not regard the Reserve Bank as an appropriate body to approach with concerns or do not regard it as their duty to disclose their concerns, or as Mr Austin said, alternatively they did not have particular concerns.[80]

8.97 The Committee is of the view that there needs to be a safe avenue for whistleblowers within the banking industry. As in all other industries, an internal reporting system or mechanism needs to be in place so that allegations of wrongdoing which affect the public interest can be reported without the whistleblower having to fear retaliation and reprisal from the employer organisation. The functions and powers of the Reserve Bank as prescribed under the Banking Act 1959 and the Reserve Bank Act 1959 do not presently include such matters as would make the Reserve Bank the appropriate body to receive such disclosures in many circumstances. The Reserve Bank is primarily responsible for the protection of depositors and for the prudential supervision of banks, not for the protection of public confidence in the banking industry.[81]

8.98 Whilst giving evidence to the Committee, Mr Austin was asked to comment generally on the role and function of the Reserve Bank. Mr Austin stated:

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79 Evidence p.1312.

80 Evidence p.1313 per Senator Newman and Mr Austin.

81 Evidence p.1309 per Mr Austin.

> According to the Banking Act, we have specific responsibility to protect the depositors with the banks and a more general responsibility to supervise the prudential operations of the banks. We do that by putting in place a range of standards which the banks are required to follow.
>
> Probably the most fundamental is the capital ratio that we apply to banks. Capital is a buffer to absorb any losses that a bank might have before the depositors face any loss. Banks are businesses like any other businesses and they may well record a loss in the operation of their business. If that happens, it is our task to see that it does not affect the depositors.[82]

8.99 The Committee considers that the Reserve Bank should be empowered to receive and investigate public interest disclosures. Notwithstanding other avenues which may become available within the banking industry, the Reserve Bank should officially be an appropriate organisation to which whistleblowers can report wrongdoing in the industry.

8.100 The evidence received by the Committee indicated that the community was becoming increasingly disturbed about internal management banking practices which occasionally threaten financial collapse. A prominent whistleblower from this industry recommended that whistleblower protection legislation cover:

> Employees of organisations either, public or private, engaged in activities that are of national significance or of major economic importance due to the involvement of large amounts of public or private money".[83]

Included in this, of course, was the banking system.[84]

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82 Mr L.J. Austin (RBA), evidence p.1309.

83 Alwyn Johnson, evidence p.528.

84 Other organisations listed for inclusion are - superannuation funds, management industry,, insurance companies, communications, energy, fuel storage, toxic waste disposal, health, national safety, transport, environmental concerns such as pollution of our air, soil and waterways.

8.101 The Australian Shareholders Association, preferred a non-legislative approach, such as the use of Corporate Senates and Stakeholder Councils.[85] However, the ASA believed that if legislation is to be introduced, it should cover "publicly listed companies, superannuation funds, unit trusts and any other body involving subscription of funds by the general public".[86]

8.102 It was generally asserted by submitters who addressed the issue of whistleblower protection in the banking and finance areas that, given the significance of the banking industry, not only to individual depositors but to the stability of the economy as a whole:

> ... the most recent examples of mismanagement within the banking sector in Australia should make whistleblowers protection in either a legislated or arms length self regulated format an issue of concerted state, federal and international interest in the interest of international financial stability.[87]

8.103 The Committee encourages initiatives within the banking industry itself to ensure that persons can disclose public interest concerns and that mechanisms exist for the proper investigation of such disclosures. The Committee supports any initiative within the industry for encouraging persons to come forward to express genuine concerns and for protecting the further employment of such persons. In this context the Committee discusses in Chapters 9 and 10 a role for industry ombudsmen and regulatory bodies in the protection and investigation of whistleblowers and their disclosures.

8.104 **The Committee recommends that, as in the education and health care spheres, the banking industry should be subject to whistleblowers protection legislation to the extent to which the Commonwealth Parliament is constitutionally able.**

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85 Australian Shareholders' Association, evidence p.457. See also Stakeholder Councils in Chapter 7.

86 ibid., p.458.

87 Bruce Hamilton, Submission no. 81, p.1.

The Committee further recommends that the Charter of the Reserve Bank of Australia be amended to empower the Reserve Bank to receive and investigate public interest disclosures relating to the banking industry.

Policing

8.105 Corruption in Australian policing systems has in recent years received a great deal of press coverage. It has been the subject of high-profile inquiries, such as the Fitzgerald Commission of Inquiry in Queensland and the focus numerous books and articles. And yet, notwithstanding reforms and strategies to reduce the incidence of corruption, the Committee received evidence, anecdotal and otherwise, about not only misdemeanours, but also more serious practices within police forces.

8.106 The Committee is concerned that the well documented 'code of silence' still operates to prevent police officers from being able to forthrightly, and without fear, report irregularities, and breaches of any degree of seriousness, to the appropriate authorities. The inquiries and reports into policing have invariably raised concerns about the "police culture".

8.107 The Fitzgerald Commission considered the notion of the "police culture" to be of such significance that it devoted an entire chapter to it in its report. The Commission noted that police officers collectively form a strongly-bonded separate social group which has a unique culture. Whilst this culture generally reflects the values of society, the presence of criminal members of the police force merely echo the society generally. This develops into a problem when the police culture exhibits features which do not reflect society, especially where that culture involves contravention of the law. The Commission wrote in scathing terms about the effects a corrupt police culture can have on a police force, in reference to the Queensland Police Force in the late 1980s.[88]

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88 Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Report), Queensland, 1989, p.200.

8.108 The Committee received evidence in relation to the current influence of police culture. It was suggested that in South Australia there had been a noticeable change over the past decade in the willingness, particularly of younger officers, to disclose wrongdoing by their follow officers.[89] This was attributed to the education now provided to recruits having a positive effect. Nevertheless there were still circumstances where officers were victimised by the code of silence or refusal to ride in patrols for reports at variance to those of their colleagues. The NSW Police Service has also moved to bring about cultural change, however concern was expressed at the commitment within the Service to bring about such change.[90] It has been written, and the Committee is in complete agreement, that:

> The creation of a more open and responsive culture in which officer's concerns about malpractice can be raised will help win back public confidence in the integrity of the police force.[91]

8.109 The Independent Commission Against Corruption recently reported on an investigation into the relationship between police and criminals. ICAC examined complaints about police by police and the internal mechanisms available to deal with such complaints and made some general observations and recommendations which are a valuable resource for the developing and implementation of a scheme to assist police whistleblowers. It also identified the "police culture" as a major obstacle preventing police officers reporting misconduct. Words such as "group mentality", "brotherhood syndrome", and "police ethos" are but a few expressions referring to the culture.[92]

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89 Peter Boyce (Police Complaints Authority) and Supt. Paul Schramm (SA Police), evidence pp.337, 345-6.

90 Det.Sgt. Kim Cook, evidence pp.726-7.

91 "Speaking Up by sector, The Police", Public Concern at Work, London, 1993.

92 Independent Commission Against Corruption, Investigation into the Relationship Between Police and Criminals, Second Report, April 1994, p.58.

8.110 In the course of it's report the ICAC indicated that police officers must not only be encouraged by the Police Service to report misconduct, they must be supported by the Service for doing so. The importance of reporting misconduct was emphasised by ICAC:

> If a police officer engages in corrupt conduct then his or her workmates will often be the first to become aware of this. It is in the public interest for police misconduct to be reported. Abuses of office by police are damaging to society and bring the entire Police Service into disrepute. Reporting corrupt conduct will also be in the best interests of the individuals who report, because it increases the likelihood that they will work in a Police Service of which they can be proud.[93]

The active encouragement and support of complainants within the Police Service must include institutional protection against harassment and threats. The personal experiences of Sergeant Kim Cook as described by ICAC[94] and in evidence to the Committee demonstrate the need for such protection.

8.111 The New South Wales Police Service has developed an Internal Informers Policy to encourage and protect police whistleblowers. The policy provides for police officers to be reminded of their statutory obligation to report misconduct. The "internal informer" should report wrongdoing to the Commander, Professional Responsibility. The informer's interests are then identified prior to the commencement of any investigation. The internal informer will be referred to an "Informers Support Group", consisting of representatives from within the Police Service. The support group makes recommendations for the protection or otherwise of the internal informer, but the decision to take any action rests with the Commander. The internal informer nominates a "mentor"who should be prepared to aggressively pursue any issue on behalf of the internal informer. A case officer is assigned to each internal informer. The policy outlines the responsibilities of other members of the Police Service and Commanders to the internal informer and to informers generally.

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93 ibid., p.59.

94 ibid., p.60.

8.112 The NSW Police Internal Informers Policy was being used by the SA Police as a model to develop their own policy for the encouragement and support of police whistleblowers.[95] Under the SA Whistleblowers Protection Act, the police and the Police Complaints Authority are designated appropriate authorities to receive disclosures of relevant public interest information.

8.113 However, the Committee received evidence that the NSW Police Internal Informers policy was flawed and not working as intended.[96] ICAC noted that the policy was an 'important first step' which needed monitoring and evaluation against policy goals. If it was to be judged as successful there needed to be an increase in both the frequency and seriousness of internal complaints. ICAC warned that:

> the Police Service must ensure that the policy is implemented in a conscientious fashion. From what is known of the prevailing police ethos in this regard, considerable work will be needed to gain acceptance for the policy.[97]

8.114 In view of the evidence it received, the Committee welcomes the establishment of the Royal Commission into the NSW Police Service which will give particular attention to internal investigations and the internal informers policy. The Royal Commissioner has been directed under the Letters Patent to inquire into the operations of the New South Wales Police Service, with particular reference to matters including the activities of the Professional Responsibility and Internal Affairs Branches of the Police Service in dealing with any problems of corruption and internal investigations generally and the efficacy of the internal informers policy.[98] The Committee expects that the Royal Commission's findings will have relevance to all Australian police forces.

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95 Supt. Paul Schramm, evidence pp.333-4.

96 Det.Sgt. Kim Cook, evidence p.726.

97 ICAC, Second Report, p.65.

98 Letters Patent, Royal Commission into the New South Wales Police Service, dated 13 May 1994.

8.115 The Committee recommends that the Australian Federal Police be covered by the whistleblower protection legislation and, in noting the reporting inadequacies which exist in the State police forces, strongly urges reform in those areas. Given the seeming lack of success of police force reform to date, the Committee is of the view that additional action in the form of education initiatives and strategies needs to be directed at whistleblower protection in police forces together with the development of a policy to assist and encourage internal informers within all State police forces.