CHAPTER 1

INTRODUCTION

Background to the Committee

1.1 As a result of concerns raised by Senator Newman about the adverse impact on individuals who had undertaken whistleblowing activities in the national interest, the Senate Select Committee on Public Interest Whistleblowing (SSCPIW) was established on 2 September 1993. The Committee also considered the Whistleblowers Protection Bill 1993 following its referral by the Senate in October 1993. This was a private Senator's Bill which had been introduced by Senator Chamarette. On 30 August 1994, the Committee tabled its report. The report, *In the Public Interest*, was the culmination of a wide-ranging inquiry into whistleblowing in both the public and private sectors.

1.2 The Committee's recommendations centred around three major areas of concern: first, the need to change attitudes towards whistleblowing activities and the public interest benefits derived by those activities within public and private sector organisations and the community generally; secondly, the need for the establishment or enhancement of internal reporting systems and procedures that deal specifically with whistleblowers and their disclosure of wrongdoing; and thirdly, the need for an independent body (the Public Interest Disclosures Agency) to undertake or oversee the investigation of disclosures of wrongdoing and the protection of whistleblowers and the subjects of whistleblowing in the federal arena. The Committee also recommended that as there were a number of apparently unresolved whistleblower cases in Queensland, that the Queensland Government establish an independent investigation into the unresolved cases within its jurisdiction.

1.3 The Chair of the Committee forwarded the report to all State Premiers and Territory Chief Ministers, requesting them to consider the recommendations of the report and particularly the need for complementary State and federal legislation. The Premier of Queensland, Mr Wayne Goss, responded at length, indicating that comprehensive whistleblower protection legislation would be introduced into the Queensland Parliament in the October sittings 1994. The *Whistleblowers Protection Act 1994* (Qld) was assented to on 1 December 1994. The Premier did not support the Committee's recommendation for an independent investigation into the cases referred to by the Committee, and stated that the more significant cases had been considered by independent review bodies. He also indicated that the whistleblowers protection legislation would extend protections of public officers who make disclosures and that the Criminal Justice Commission (CJC) would be able to investigate alleged reprisals taken against public officers for making disclosures to their own organisations as well as to external bodies such as the CJC. The Premier's response was tabled in the Senate on 19 October 1994 by Senator Newman and has been included in the Committee's supplementary material.

1.4 An interim response to the report was tabled by the Commonwealth Government in the Senate on 29 November 1994. A further response tabled on 22 August 1995 indicated that a final response was expected to be tabled in the spring sittings of 1995. At the time of reporting no final response had been tabled. The Committee understands the complexity of the response required to the report. However, it would have been of considerable assistance to the

Committee's deliberations to have had knowledge of the Government's legislative intentions in response to the recommendations of the SSCPIW.

Establishment of the Committee

1.5 The Senate Select Committee on Unresolved Whistleblower Cases was established by resolution of the Senate, on the motion of Senator Parer, on 1 December 1994. The terms of reference were amended on 9 December 1994 to modify the scope of the Committee's inquiry. Under the amended terms of reference, the Committee's inquiry would not be limited to an inquiry into the unresolved Queensland whistleblower cases, but would also include so much of any of the unresolved cases arising from the previous report as the Committee considered necessary to be taken into account in framing proposed Commonwealth legislation on whistleblower protection.

1.6 On 7 December 1994, Senator Abetz was elected Chairman of the Committee. At the Committee's next meeting, 8 December 1994, the Committee resolved to reconsider the vote taken for the position of Committee Chairman and Senator Murphy was elected Chairman. On the same day, Senator Herron was elected unanimously Deputy Chairman of the Committee.

Conduct of the inquiry

Advices from the Clerk of the Senate

1.7 As many of the cases to be considered in the Committee's inquiry involved matters that fell within State government jurisdiction, advice was sought by Senator Murphy from the Clerk of the Senate as to the rights and/or powers of the Committee to demand documents in the control of a State government and to demand the appearance of persons who might refuse the Committee's invitation to appear before it.

1.8 The Clerk advised Senator Murphy as follows:

> There are no explicit limitations on these powers to require the attendance of witnesses, the giving of evidence and the production of documents. There are probably, however, two relevant implicit limitations on the powers.
>
> First, the powers may be confined to inquiries into subjects in respect of which the Commonwealth Parliament has the power to legislate ...
>
> Secondly, it could well be held that the inquiry powers of the Senate do not extend to members of state parliaments and officers of state governments. There is no authority for this proposition, and the matter has not been litigated, but the High Court could arrive at such a conclusion by reference to the federal nature of the Constitution and the doctrine that the Commonwealth may not impose a requirement inimical to the integrity of the states ...
>
> Whatever the legal situation, it is a parliamentary rule, and a rule of the Senate, that the inquiry powers are not exercised in respect of members of the House of Representatives (standing order 178), and as a matter of first principle the same rule extends to members of state and territory parliaments ...

> If a Senate committee issues a subpoena requiring the attendance of witnesses, the giving of evidence or the production of documents and is met with a refusal, the committee has no power to take any further action, but can only report the matter to the Senate. It is then for the Senate to determine whether it should treat the refusal as a contempt and seek to impose any penalty ...
>
> My advice to all Senate committees is that they should observe the parliamentary rule and the past practice and not seek to summon members of state or territory parliaments or state or territory officers, or to require them to give evidence or to produce documents. Such persons should be invited to appear or submit documents if a committee desires to take evidence from them, and any invitation to state or territory officers should be directed to the relevant state or territory minister. In the event of an invitation being declined, a committee should not take the matter any further.

1.9 Senator Murphy also sought the Clerk's advice as to the Committee's powers to make orders with respect to the cases that it considered in the course of its inquiry. The Clerk's advice was as follows:

> The Committee has no power to order that compensation be paid to persons, to order a judicial inquiry into particular cases or to provide assistance to persons other than making findings in their favour. The Committee can only recommend such steps. The Senate itself, acting alone, would not be able to take any of those steps, as they would require legislation or action by the executive government.

The advices by the Clerk were provided to the Committee by Senator Murphy and are reproduced in full at Appendix 1.

Submissions

1.10 The Committee invited a number of interested people to make submissions and advertised the inquiry in the *Australian* and the *Courier Mail* on 19 December 1994. A closing date for submissions was set at 27 January 1995. However, the Committee agreed to receive additional submissions throughout the course of the inquiry. The Committee received 140 submissions, supplementary submissions and written responses to evidence. A list of submissions and other written material received by the Committee and whose publication it authorised is at Appendix 2.

1.11 Submissions were received from organisations and individuals who had made representations to the previous Select Committee and from individuals identifying new cases. As its terms of reference from the Senate related to cases arising from the previous Select Committee, the Committee resolved to limit the taking of oral evidence to those cases. Nevertheless, a number of individuals who had provided submissions to the SSCPIW also provided submissions to this Committee. Unfortunately, the Committee was not able to consider the submissions in the detail it would have liked to in order to give the level of consideration warranted by each submission. The Committee also welcomed submissions from other organisations and individuals, however, for the light they might shed on whistleblower

problems generally and as pointers towards the issues to be considered in the drafting of proposed Commonwealth whistleblower protection legislation.

1.12 Aside from the two cases specifically mentioned in the Committee's terms of reference (the shredding of the Heiner documents raised by Mr Kevin Lindeberg and the alleged protection of a senior police officer raised by Mr Gordon Harris), the Committee heard evidence relating to the cases of the following people: Mr Peter Jesser, Mr Jack King, Mr Jim Leggate, Mr Greg McMahon, Mr Robin Rothe, former Sale Councillors, Associate Professor Kim Sawyer, Mr Bill Toomer, and Mr Bill Zingelmann.

1.13 The Committee determined that, rather than undertake detailed investigations of any particular cases, it would focus on matters of contention that arose from such cases which would assist in making recommendations for the framing of proposed Commonwealth legislation on whistleblower protection.

Public hearings

1.14 The Committee held public hearings as follows: Brisbane - 23 February 1995; Brisbane - 24 February 1995; Melbourne - 15 March 1995; Brisbane - 16 March 1995; Brisbane - 5 May 1995; and Canberra - 29 May 1995. Where possible at its hearings in Brisbane, the Committee endeavoured to ensure procedural fairness by allowing witnesses a generous amount of time to give evidence. The CJC was then invited to respond to the submissions and comments made in evidence. At the conclusion of each bracket of evidence, each witness was given the opportunity to provide a final comment and the CJC was permitted to address any additional matters.

1.15 In the course of the inquiry, a number of persons in Queensland declined the Committee's invitation to appear and give evidence. The Committee did not pursue the matter of the appearance of government officers who were under instruction not to give evidence to the Committee. However, the Committee decided to summons two persons, Mr John Huey and Mr Cal Farrah, involved in the matters raised by Mr Harris. A summons was served on Mr Huey and he appeared before the Committee on 5 May 1995. However, the Committee was unable to serve the summons on Mr Farrah and it did not pursue this matter further.

1.16 At this point, the Committee notes that a number of persons appeared to have had difficulty in grasping the meaning of evidence in the parliamentary committee context. Committees regard all oral and written submissions to them as 'evidence', irrespective of the legal standing of the persons presenting the submissions and make their own judgment as to the merit, accuracy and veracity of the 'evidence' so presented. As many witnesses chose to have legal support present when they gave evidence, the Committee agreed to allow legal representatives to address it directly, as witnesses in their own right.

1.17 A list of witnesses who gave evidence at the hearings is at Appendix 3.

Commonwealth and State jurisdiction

1.18 As the Committee's terms of reference specifically mentioned two cases from Queensland (the shredding of the Heiner documents and the alleged protection of a senior police officer) and directed the Committee to have regard to the role and conduct of the CJC

and of present and former officers of the CJC, the Committee wrote to the Premier of Queensland, Mr Wayne Goss, and the CJC, inviting them to make submissions to the inquiry.

1.19 On 21 February 1995, the then Queensland Attorney-General, Mr Dean Wells, on behalf of the Government, made a brief statement to the Queensland Parliament and tabled a more detailed statement concerning the Government's position in relation to the inquiry. The statements indicated that the Queensland Government opposed the inquiry in principle, for a number of reasons: the matters raised in parts (a) and (b) of the terms of reference had already been extensively investigated and no wrongdoing had been found; the matters related to the internal affairs of Queensland, and concerned 'alleged offences under Queensland law, and decisions made by State agencies and officials who are accountable to the Queensland Parliament, not the Senate'; considerable costs had already been incurred in investigating the cases; and Queensland had enacted comprehensive whistleblower protection legislation and the CJC was the proper authority for investigating complaints by whistleblowers about official misconduct in Queensland. It concluded that it would be inappropriate to provide any assistance to the inquiry by officers of the executive government in their official capacity; however this did not extend to the CJC which would be expected to determine its own response to the inquiry as an independent authority. [1]

1.20 The statement also included a resume of certain facts concerning the major Queensland cases referred to in the Committee's terms of reference and documents pertaining to the shredding of the Heiner documents. The documents consisted of four advices from the Crown Solicitor in January and February 1990 concerning the inquiry by Mr Noel Heiner into the John Oxley Youth Centre and confidentiality of certain documents related to that inquiry. The Committee notes that three of those advices had not previously been publicly released. Mr Wells' statement was provided to the Committee by the Office of the Premier and is published as part of the Committee's supplementary material.

1.21 The Committee acknowledges that, despite expressing its protest regarding the inquiry, the Queensland Government has been directly and indirectly of considerable assistance to the Committee during the course of the inquiry through the provision of documentation.

1.22 The CJC responded that, while it was willing to cooperate with the Committee in its inquiry, it could only do so to the extent to which it was lawfully entitled, that is, if the Committee 'makes requirements of the Commission which conflict with any duty imposed by positive law upon the Commission, then the Committee would be acting outside the Constitution and therefore acting ultra vires'.[2] The CJC noted that duties imposed by principles such as legal privilege, public interest immunity, receipt of information in confidence and specific provisions of the *Criminal Justice Act 1989* (Qld) and other legislation enjoining secrecy might limit the scope of its submission to the Committee. Despite this, the Committee acknowledges the considerable input provided by the CJC throughout the inquiry.

Access to confidential documents

1.23 During its inquiry, the Committee was provided with access to two relevant documents which were not in the public domain. The first document, a confidential opinion of the

1 Queensland Attorney-General's statement, 21.2.95, p. 4.

2 Correspondence, CJC, 23.12.94.

Queensland Director of Prosecutions dated 27 August 1990, related to the case of Mr Gordon Harris involving the alleged protection of a senior police officer. Only certain sections of this opinion had been made available to Mr Harris, who claimed that the opinion in its entirety was crucial to his case. In his statement to the Queensland Parliament of 21 February 1995, Mr Wells restated the Queensland Government's view that it did not believe that it was necessary for the opinion to be given further release. However, he indicated that the Government had agreed that if the Committee wished to examine the opinion for itself, it could do so on a confidential basis.[3] The Committee accepted the Government's offer and examined the document in Brisbane. The Committee's views relating to the Director's opinion are expressed in Chapter 6.

1.24 The second document concerned the case of Mr Bill Toomer. In both submissions to the Committee and in oral evidence, references were made to the Merit Protection and Review Agency's (MPRA) February 1991 report to the Minister Assisting the Prime Minister for Public Service Matters of an inquiry in relation to Mr Toomer. The report had been made available to the Select Committee on Public Interest Whistleblowing and the present Committee also sought access. The request for access was referred to the Assistant Minister for Industrial Relations, Mr Gary Johns, MP, in his capacity as Minister Assisting the Prime Minister for Public Service Matters. Mr Johns acceded to the Committee's request and made a copy of the report available to the Committee for its private deliberations.

Responses to evidence

1.25 Although the Committee indicated that it was not its intention to reinvestigate individual cases, case histories were used in both submissions and oral evidence to illustrate comments directed at the terms of reference. The submissions in many cases were very detailed and in oral evidence, the Committee allowed witnesses to range widely in the use of case histories to illustrate points. Comments concerning persons, organisations and events were received.

1.26 In dealing with comments which could be regarded as reflecting adversely on the person or persons mentioned, the Committee, in accordance with the Senate privileges resolutions, provided those persons with the opportunity to respond to the evidence. Where differing views on matters mentioned in evidence were received or where matters required clarification, the Committee wrote to those involved inviting them to respond. The responses to adverse comments and responses to general comments which the Committee agreed to publish are to be found in the volumes of submissions and documents tabled with this report and are listed with other submissions in Appendix 2.

Matters of privilege

1.27 The Select Committee on Public Interest Whistleblowing received a submission and heard evidence from Mr Alwyn Johnson. As a result, the Public Interest Whistleblowing Committee sought responses from those persons named in Mr Johnson's evidence.[4] In

3 Attorney-General's statement, 21.2.95, p. 10.

4 Mr Johnson's submissions and the responses thereto were published by the SSCPIW in Volume 1 of it *Submissions and Other Written Material Authorised to be Published.*

February 1995, Mr Johnson wrote to this Committee alleging that the Public Interest Whistleblowing Committee had been 'wilfully and mischievously misled' in those responses. The Committee agreed that the matter might be appropriate for the Committee of Privileges to inquire into and directed the Chairman to write to the President of the Senate under standing order 81 asking that he give a determination to give precedence to the motion to refer the matter to the Committee of Privileges. The Senate was informed of the President's determination on 9 March 1995 and the motion to refer the matter to the Committee of Privileges was passed on 21 March 1995.

1.28 In evidence before the Committee in Brisbane on 16 March 1995, Mr Peter Jesser, a senior lecturer in the Department of Human Resource Management and Employment Relations, Faculty of Business, the University of Southern Queensland, Toowoomba, alleged that he had been intimidated and threatened with a penalty for giving evidence to the Committee. Following the public hearing, the Committee sought responses from those persons mentioned by Mr Jesser. The Committee received a submission from the University of Southern Queensland and from the University's Department of Human Resource Management and Employment Relations. In April, Mr Jesser repeated the allegations of intimidation and forwarded further details in submissions to the Committee. The Committee then sought more detailed responses to the allegations of intimidation from the persons named by Mr Jesser. The Committee concluded that consideration of the material before it disclosed that Mr Jesser may have been subjected to intimidation and threatened with penalty in respect of his evidence to the Committee.

1.29 The Committee tabled a report on the matter in the Senate on 29 June 1995 and recommended to the Senate that the matter be referred to the Committee of Privileges. On the same day the Chairman wrote to the President of the Senate raising the matter under standing order 81 and asking that he give precedence to the motion to refer the matter to the Committee of Privileges. The Acting Deputy President made a statement to the Senate later that day on behalf of the President giving precedence to the motion. Notice of motion was then given and the motion was passed by the Senate on 30 June 1995. At the time of tabling of this report, the two references were still under consideration by the Committee of Privileges.

1.30 The relevant privilege resolutions agreed to by the Senate on 25 February 1988 and standing order 81 are reproduced at Appendix 4.

Consideration of individual cases

1.31 The Committee's terms of reference specifically named two cases to be considered by the Committee, the shredding of the Heiner documents and the alleged protection of a senior police officer. The terms of reference also directed the Committee to take into account any other unresolved cases arising from the previous inquiry which the Committee determined necessary to carry out its inquiry. The Committee therefore decided to consider a limited number of cases arising from the previous Select Committee's inquiry. Those cases were included in the inquiry as they canvassed a range of whistleblowing issues which the Committee believed could be of use in drafting proposals for Commonwealth whistleblower protection legislation and involved individuals and organisations from a number of different areas.

1.32 Among the submissions from other organisations and individuals which provided information on new cases were many from Queensland which raised matters involving the CJC, the Queensland Police Service, local government and the Queensland Corrective Services Commission (CSC). A number of these submissions referred to the CSC's exclusion from the CJC's jurisdiction. Although the Committee agreed that it would not be able to include these specific new cases within its inquiry, it does however note that the PCJC, in its three-yearly review of the CJC, recommended that the CSC be brought within CJC coverage.

1.33 The Committee also intended to consider the case of Mr Mick Skrijel. In September 1993, an independent consultant, Mr David Quick, QC, had been appointed by the Commonwealth to inquire into all aspects of the National Crime Authority's (NCA) dealings with Mr Skrijel and his family. Although due to report by December 1994, Mr Quick produced an interim report in August 1994 which was made available to interested parties for comment and a final report in April 1995. The final report was released by the Attorney-General in late May 1995.

1.34 The Committee agreed not to receive a submission from Mr Skrijel or consider details of his case whilst it was still under investigation by Mr Quick. The delay in finalising and releasing the Quick report was frustrating for Mr Skrijel in being unable to lodge a submission in time for the Committee to consider it.

1.35 The Committee believes that Mr Quick's final report has significant implications in relation to whistleblowing as a result of the alleged actions of a Commonwealth agency in its involvement with Mr Skrijel. In his report Mr Quick advised that:

> In my opinion, there is substantial evidence upon which it is reasonable to base a strong suspicion that evidence was fabricated in order to incriminate Mr Skrijel on serious criminal charges involving drugs and explosives ...
>
> Further investigation of the matter is likely to reveal whether or not the NCA has any legal or moral obligation to make recompense to Mr Skrijel in connection with the matter.[5]

1.36 This advice effectively alleged serious victimisation of a whistleblower involving the National Crime Authority. Mr Quick recommended:

> That a more formal investigation be carried out in relation to some of the allegations made by Mr Skrijel. Such investigations should not proceed until the civil proceedings of Mr Skrijel have been discontinued or finalised by other means ...
>
> That such investigations have coercive powers of investigation and be conducted under the Royal Commissions Act 1902.[6]

1.37 The Government's response has been to refer certain matters to the Victorian Deputy Ombudsman who has powers of investigation relating to police matters. These powers are

5 Report of Mr DM Quick, QC, to the Attorney-General and Minister for Justice with respect to dealing of the National Crime Authority with Mr Mehmed Skrijel and his family, 4 April 1995, p. 183.

6 ibid, p. 185.

discussed in Chapter 7 dealing with the case of the former Sale Councillors. Given the serious nature and implications of the advice and recommendations of Mr Quick, the Committee is concerned that positive action is taken and that the Commonwealth Government implements the recommendations.

Acknowledgements

1.38 The Committee thanks all those who made submissions or gave evidence to the inquiry. The Committee is particularly appreciative of the considerable time and effort involved in the preparation of such detailed submissions and responses to evidence by all concerned. Although the Committee only considered a limited number of cases, it welcomed the contribution made to its inquiry by all.