



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

**Reference: Whistleblowing protections within the Australian government public
sector**

THURSDAY, 25 SEPTEMBER 2008

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Thursday, 25 September 2008

Members: Mr Dreyfus (*Chair*), Mr Slipper (*Deputy Chairman*), Mr Andrews, Mr Butler, Mr Georgiou, Mr Melham, Mrs Mirabella, Ms Neal, Mr Neumann and Mr Perrett

Members in attendance: Mr Andrews, Mr Dreyfus, Mr Georgiou, Mr Melham, Ms Neal, Mr Neumann, Mr Perrett, Mr Slipper

Terms of reference for the inquiry:

To inquire into and report on:

A preferred model for legislation to protect public interest disclosures (whistleblowing) within the Australian Government public sector. The Committee's report should address aspects of its preferred model, covering:

1. the categories of people who could make protected disclosures:
 - a. these could include:
 - i. persons who are currently or were formerly employees in the Australian Government general government sector*, whether or not employed under the Public Service Act 1999,
 - ii. contractors and consultants who are currently or were formerly engaged by the Australian Government;
 - iii. persons who are currently or were formerly engaged under the Members of Parliament (Staff) Act 1984, whether as employees or consultants; and
 - b. the Committee may wish to address additional issues in relation to protection of disclosures by persons located outside Australia, whether in the course of their duties in the general government sector or otherwise;
2. the types of disclosures that should be protected:
 - a. these could include allegations of the following activities in the public sector: illegal activity, corruption, official misconduct involving a significant public interest matter, maladministration, breach of public trust, scientific misconduct, wastage of public funds, dangers to public health and safety, and dangers to the environment; and
 - b. the Committee should consider:
 - i. whether protection should be afforded to persons who disclose confidential information for the dominant purpose of airing disagreements about particular government policies, causing embarrassment to the Government, or personal benefit; and
 - ii. whether grievances over internal staffing matters should generally be addressed through separate mechanisms;
3. the conditions that should apply to a person making a disclosure, including:
 - a. whether a threshold of seriousness should be required for allegations to be protected, and/or other qualifications (for example, an honest and reasonable belief that the allegation is of a kind referred to in paragraph 2(a)); and
 - b. whether penalties and sanctions should apply to whistleblowers who:
 - i. in the course of making a public interest disclosure, materially fail to comply with the procedures under which disclosures are to be made; or
 - ii. knowingly or recklessly make false allegations;
4. the scope of statutory protection that should be available, which could include:
 - a. protection against victimisation, discrimination, discipline or an employment sanction, with civil or equitable remedies including compensation for any breaches of this protection;
 - b. immunity from criminal liability and from liability for civil penalties; and
 - c. immunity from civil law suits such as defamation and breach of confidence;
5. procedures in relation to protected disclosures, which could include:
 - a. how information should be disclosed for disclosure to be protected: options would include disclosure through avenues within a whistleblower's agency, disclosure to existing or new integrity agencies, or a mix of the two;

- b. the obligations of public sector agencies in handling disclosures;
 - c. the responsibilities of integrity agencies (for example, in monitoring the system and providing training and education); and
 - d. whether disclosure to a third party could be appropriate in circumstances where all available mechanisms for raising a matter within Government have been exhausted;
- 6. the relationship between the Committee's preferred model and existing Commonwealth laws; and
 - 7. such other matters as the Committee considers appropriate.
- * As defined in the Australian Bureau of Statistics publication Australian System of Government Finance Statistics: Concepts, Sources, Methods, 2003 p.256.

WITNESSES

**BRIGGS, Ms Lynelle, Australian Public Service Commissioner, Australian Public Service
Commission1**

GODWIN, Ms Annwyn, Merit Protection Commissioner, Australian Public Service Commission.....1

TACY, Ms Lynne, Deputy Public Service Commissioner, Australian Public Service Commission1

Committee met at 9.31 am**BRIGGS, Ms Lynelle, Australian Public Service Commissioner, Australian Public Service Commission****GODWIN, Ms Annwyn, Merit Protection Commissioner, Australian Public Service Commission****TACY, Ms Lynne, Deputy Public Service Commissioner, Australian Public Service Commission**

CHAIR (Mr Dreyfus)—I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs. This is the sixth public hearing for the committee's inquiry into whistleblowing protections in the Australian government public sector. I am sure our discussions will be very informative. I welcome witnesses from the Australian Public Service Commission. Although the committee does not require you to speak under oath, these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I note for the record that we have a very comprehensive submission from you. Do you wish to make a brief introductory statement before we proceed to questions?

Ms Briggs—Yes, I do. Firstly, I would like to thank the committee for the opportunity to appear at this hearing. My remarks this morning will largely build on the Public Service Commission's written submission to the committee.

The option of whistleblowing is a legitimate and necessary form of action within a strong democracy. It enables serious fraud, corruption and major and systemic failings in government administration to be exposed. It is therefore a valuable safeguard in protecting the public interest, particularly the integrity, transparency and accountability of the public sector. A comprehensive whistleblowing scheme should encourage officials and others to identify legitimate concerns and should provide for their protection in doing so.

For the record, I would like to make clear to the committee that the government already has provisions to protect whistleblowers in the Public Service Act. This is the only Commonwealth legislation that provides disclosure protection. These provisions were a significant move by the parliament in 1999. I was not sure how familiar the committee was with the provisions, so I have covered them in our submission to you.

The commission believes that the current system works reasonably well but that there are a number of enhancements that could be made to deliver a more effective whistleblowing system. Importantly, the system applies only to agencies that are covered by the Public Service Act—which is over half of all agencies or about two-thirds of Commonwealth government employees. We support the extension of whistleblowing protections to cover non-APS Commonwealth employees, contractors and consultants, current and former MOP staff, as well as current and former members of parliament, through amendment to the Public Service Act.

The current Public Service Act provisions provide whistleblower protections for any allegation of a breach of the APS Code of Conduct. This means that our whistleblowing

procedures can encompass a whole spectrum of activities, ranging from inappropriate behaviour to major public sector interest issues. Most of the whistleblowing cases that come across our desks, though, are from APS employees complaining about personal employment related grievances or concerns expressed by members of the public about the conduct of individual APS employees, rather than matters of significant public interest. This shows there is some misunderstanding of what the current whistleblower system is meant to do.

It is my view that it is possible to fix the current provisions with considered drafting and that it is preferable to build on the good foundation provided by these provisions, rather than totally reinvent a new system. One of the key things we need to get right in any redrafting is to clearly identify the boundaries for whistleblowing protection and processes for directing people to the right place. In practice, it can be difficult to know where to draw the line between what is a personal grievance or inappropriate behaviour and what falls under public interest disclosure that requires whistleblowing protection. What is considered whistleblowing in one agency may be viewed differently in another. It is not helped by the existing legislation, which has contributed to this confusion for agencies in the way the processes they are required to have in place for whistleblowing interact with those dealing with allegations of breaches of the code of conduct more generally and the protections that apply in both cases. Sorting out this grey area requires the right skills and judgement.

Some submissions to this inquiry have suggested casting a broad net to cover all these activities so that any allegation of wrongdoing would be protected. By doing this, it would result in every allegation being formally investigated under a whistleblowing scheme. Elevating all grievances to such a status is not a desirable outcome, nor would it be an efficient one. It would not contribute to the quick and effective handling of such issues at the immediate workplace level. It could also lead to a mushrooming of vexatious and malicious claims across the government sector, which would not be the intended outcome from any new arrangements.

A more sensible approach would have individual grievances being dealt with under existing code of conduct investigation provisions by agencies, and more systemic or widespread misconduct falling under a public interest disclosure scheme. It would then be more logical for more serious allegations to be made to and investigated by more senior agency staff or an authorised, independent body with the expertise to exercise appropriate judgement and discretion. Indeed, an effective whistleblowing scheme should enable matters of a serious nature to be reported to an independent officer—outside the agency concerned—who has the discretion to investigate very serious matters expeditiously and to protect the anonymity of the whistleblower where appropriate.

I firmly believe that the Australian Public Service Commissioner is best placed to handle such reports and to make these fine judgements. It would be a natural extension of the commissioner's current role and expertise for the oversight of the new whistleblowing scheme to rest with the Public Service Commissioner. The commission already has a comprehensive background in handling sensitive and complex investigations and plays an integral role where employees make allegations about breaches of the APS Values and Code of Conduct as well as more serious issues that might fall under a new public interest disclosure scheme. As part of its existing work, the commission has a proven track record in research, monitoring, analysis and reporting against a range of public interest disclosure matters and has expertise in communicating new and ongoing arrangements for whistleblowing in the APS, as well as developing education material

and providing necessary training. Obviously, the commission's current investigative role would change and grow with an additional function, particularly building on its expertise in conducting reviews and ensuring procedural fairness.

In my submission, I stated that internal agency public interest disclosure procedures should always be followed in the first instance—that is, internal mechanisms should be exhausted before using an alternative avenue for reporting. I have been reflecting on this and the evidence before this committee and have come to the view that there should be provision for serious, public interest matters to come direct to me. I would then determine the most appropriate way for these reports to be addressed, as I do now for whistleblowing matters that are sent to me direct. Under this approach, I believe that, as an independent officer removed from the agency concerned, I should be able to instigate immediate action where warranted. I should also have the power to protect the identity of the whistleblower, who would be known to me but, in some circumstances, it would not be appropriate to disclose their identity to the agency. The current two-tiered arrangements would continue for grievances and inappropriate behaviour allegations, with agencies handling most allegations and me picking up those against agency heads.

If another existing agency were to take on the role, it could take a long while to work out the boundaries of what complaint goes to which agency. It could also potentially create a culture of forum shopping, with complainants approaching several agencies shopping for the best outcome. Providing a one-stop shop for all disclosures would also avoid the confusion amongst whistleblowers of having to deal with different agencies. Moreover, it would ensure a consistent approach across the Australian government public sector for the reporting and handling of public interest matters with a high threshold of seriousness.

There are currently a range of employment related processes that my office deals with under current arrangements, including reviews of employment and code of conduct investigations. These processes should remain with the commission as they are well established, they work well and people are familiar with them. It would only cause confusion if these processes were picked up by another agency. I believe it would also be inefficient and costly for a separate agency to be established for this purpose. We do not need to go down this road when we already have a system with a strong foundation that can be built on.

What would be protected? The aim of a new scheme should be to provide an avenue to report serious public interest breaches. By this I mean widespread or systemic misconduct that raise issues of public interest, such as fraud and corruption. Disclosures about other activities, such as maladministration or wastage of public funds, could also be included, although these activities do not fall neatly into a public interest test. In some instances, it can be difficult to prove that such activities are in the public interest rather than relating to personal grievances. Where there is doubt over whether an activity should be protected, the person authorised to receive a whistleblowing report should consider if there has been a serious and substantial failure of administration at the cost of the public interest. These are questions requiring careful judgements by experienced officers. The system needs to be flexible enough to deal with the wide range of issues which may arise and should have clear boundaries and directions, which we would provide.

It is also important to have a system in which agencies themselves can deal with these issues and manage their staff in a way that not only upholds the APS values but also provides a culture

which facilitates reporting of serious issues without adverse consequences. Agencies are often best placed to initially determine alleged wrongdoings within their own context, prior to passing allegations to another authority. This allows issues to be handled quickly and efficiently, which promotes confidence in the system. It also allows the agency the opportunity to determine whether the report is a genuine disclosure or should be more appropriately dealt with under other provisions.

We should not be unrealistic about what a new system will achieve. Any allegation, be it a personal grievance or public interest disclosure, can create animosity within the workplace. Care needs to be taken not to raise false expectations that a new system will prevent this from happening in 100 per cent of cases. Having said that, the overall standard of the new whistleblowing scheme should be first class, so that people have sufficient confidence in the system that they can be comfortable that the issues they raise will be dealt with appropriately. This would include the principle of procedural fairness always being followed and all available evidence being considered in each case. Realistically, though, this may not prevent people from feeling aggrieved if they do not get the outcome they are seeking, but it is the right answer nonetheless. Any new system would also need managers and agencies to do more to promote the notion of an employee's duty to report, within a climate of pro-disclosure. This goes to the heart of the issue of cultural change within agencies.

The commission has a strong track record in providing guidance and assistance to agencies, including education, awareness and other learning and development activities that can bring about change. The commission currently provides a range of whistleblowing support to agencies—from commenting on draft agency whistleblowing policies to providing advice on complex code of conduct investigations. I believe this sort of support and guidance is crucial to making sure any new system works.

I do not think there should be a need for a public interest disclosure to be made to a third party, provided the two-stage process I mentioned earlier is followed properly. If internal agency processes fail, a whistleblower should be able to approach an external integrity agency which has sufficient authority to review and make decisions. I also consider that anybody covered by the new scheme should be able to come to me or my office to seek a review if internal agency processes are not working sufficiently. I believe that this system, with access to review processes, would be robust enough in itself not to need a third-party disclosure.

Finally, I believe it is timely for the Public Service Act to include a comprehensive whistleblower scheme, rather than just the protection that currently exists in the legislation. Such a scheme would set out the arrangements and detail of a new whistleblowing system, include notification arrangements, training and guidance, and provide for information about the scheme and its publicity. It is vital that people have a clear avenue for raising concerns of a whistleblowing nature, that they are encouraged to do so, and that appropriate mechanisms exist to investigate. We need to protect against wrongdoing, fraud and corruption and encourage employees in a responsible way to identify and report serious misconduct, in order to maintain the integrity of the public sector.

I am convinced that the statutory role of the Australian Public Service Commissioner as an independent person should have the power to exercise judgement to act on a whistleblower report as needed, including to quickly commence an investigation and to protect the

whistleblower's identity. The commission already has considerable expertise and standing in handling whistleblower allegations. The commission can also provide independent, professional and contextual understanding of the broad range of issues likely to be reported. With those introductory remarks, I welcome questions from the committee.

CHAIR—Thank you very much.

Mr PERRETT—My question goes to the public servants that are not covered—for example, the military. Who are the others?

Ms Briggs—All of those who are not covered under the Public Service Act.

Mr PERRETT—I am just not familiar with who they are. Is it the military and—

Ms Briggs—It is government business enterprises and various other groups like that.

Mr PERRETT—Do you think there would be any particular change in reporting procedures if they came under your umbrella? Are you suggesting that they be under your umbrella?

Ms Briggs—I think the scheme could be developed such that there would be consistent arrangements for whistleblower reporting in those areas as well as my own. I had not envisaged that we would run to the military, I have to say. They normally operate under different arrangements.

Mr PERRETT—So that is not your suggestion?

Ms Briggs—No.

Mr PERRETT—It would be the Public Service Act—

Ms Briggs—The Public Service Act plus CAC Act agencies.

Mr GEORGIU—You put a lot of emphasis on motives. Who cares what their motives are?

Ms Briggs—In my office we review every allegation that comes to us and sometimes we see cases where the motive is not to get angry and improve the integrity of the system; it is to get even, because that might be an issue of personal animosity in the workplace.

Mr GEORGIU—But who cares?

CHAIR—Can I put the question a slightly different way? Ill will is likely to be a component or at least a partial component in very many disclosures and it will be mixed, potentially, with other motives. Why should ill will towards the person whose behaviour is being reported on be a disqualifying factor?

Ms Briggs—I do not think I was suggesting that in such black and white terms.

Ms NEAL—In her submission she says the opposite: that motives should not affect it.

Mr GEORGIU—You made the point that it would have to be motivated by public interest rather than animosity.

Ms Briggs—I did not understand your reflection. What I am saying is that in our experience we are not seeing come through the system as it stands now many cases of major failings of administration and so on. On a day-to-day basis we see a lot of concerns about practices in the workforce which involve ill will, grievances and so on, and our current provisions already pick those up.

Mr GEORGIU—I am staying with the question because this has been a recurring theme. The chairman may care to clarify my broken English, but we have had a recurring theme that people have to act out of public interest and public spirit and not be motivated by personal animosity, a desire to square off or dislike. My question is: why are their motives in any way important if the substance of what they are alleging is found to be correct?

Ms Briggs—If the substance they are alleging is found to be correct, that is absolutely right. The issue is the nature of the issue that is being raised rather than what their personal motivations might be. So, I am sorry.

Mr GEORGIU—That is not what the paper or your briefing communicate.

Ms Briggs—Okay.

Mr GEORGIU—Why should a level be systemic or widespread? Why can it not be a one-off significant issue?

Ms Briggs—It can certainly be a one-off significant issue. We are trying to establish what might be of the order of a significant whistleblowing activity, which is where we sense the problem with the current arrangements to be from our own experience. As our submission alludes, we had been thinking about these issues for some time and had been quite concerned that the cases that we were getting were largely about small-scale personnel matters, misdemeanours in the workplace, rather than the sorts of things that the public would consider a whistleblower might run to, such as serious issues of fraud or a major scandal in an agency.

Mr GEORGIU—I accept that but you described it as systemic and widespread but in fact they are just significant.

Ms Briggs—Sorry, I might not have been clear enough.

CHAIR—I saw that description in your submission of the type of matters that you have been getting under section 16 at the moment. Could I suggest and ask you to comment on the possibility that the reason why that is the type of complaint or the type of report that you have been receiving is possibly due to the limited protection that is provided at present.

Ms Briggs—I think it is also because of the hasty way the legislation was drafted. It is legislation that provides protection for whistleblowers, and that is about it.

CHAIR—But it is very limited protection.

Ms Briggs—It is limited in terms of my own actions as well. Under the act I can review agency heads. I do not have powers that extend beyond that unless there are exceptional circumstances around it. I would point out to the committee that I believe the current legislation is deficient and needs to be expanded to cover the sorts of things you are alluding to.

CHAIR—I am going to invite Mr Slipper to ask some questions because he may have to go to speak in the House.

Mr SLIPPER—You outlined the particular people under the Public Service Act who are currently covered by the limited whistleblower protection that is there, and you have suggested protection or a scheme to cover other groups—I think you said CAC agency people—do you think that there was a consideration of the possibility of including those people when the original scheme was brought in and for some reason those people were determined to be people who ought not to be given that protection, or do you think it was just a rushed act and not enough thought went into it?

Ms Briggs—I would be responding by second guessing, if I might be given room to do that. Because the Public Service Act is specifically designed to deal with APS employees, I think it was a necessary consequence of the particular drafting, that it would only cover people in the Australian Public Service. Now that might have been an insufficient development at the time, but it was what occurred at the time when the changes were made in the Senate, as I understand it.

Mr SLIPPER—You have suggested expanding to people under the CAC Act agencies. What are your views about including in a public interest disclosure scheme of, say, volunteers in public institutions or people in receipt of federal grants or people in state agencies who deliver federally funded programs? That would be going further again, wouldn't it?

Ms Briggs—It would be going further again.

Mr SLIPPER—Too far?

Ms Briggs—I suspect it is drawing a pretty long bow, particularly given that the states operate under their own particular arrangements, state by state or territory by territory.

Mr SLIPPER—But when they are administering federal programs—

Ms Briggs—The point you make is an important one, and it is an issue that is raised in different contexts—when agencies are administering funds in aged-care programs, for example, or in job search activities where the way the flow-through tends to work is that commissioning portfolios, including their contractual arrangements and particular requirements—I have got an open mind about that issue. I am not saying we should not or we should.

Mr SLIPPER—You mentioned that your organisation was best suited to oversee an expanded scheme. What extra staffing would you require to do this properly? If you have already given us that information, I apologise.

Ms Briggs—No, we have not. We did not think we were at that point. We have done a little bit of work on this. To some extent it is operating in the abstract, because we do not have the details of the scheme. We thought we should establish a new branch to provide specialist investigative services. That would be headed by an SES band 1. In total there would be eight extra staff involved, including that SES band 1, in the first couple of years of operation. After that, we would go back to about six staff. We think the cost would probably be about \$1.4 million in the first couple of years and then about \$1.1 million thereafter. The reason it is more in the first years is to accommodate two things: initial publicity associated with the scheme—which we think would have to be quite significant—but also you are establishing guidelines for the way the arrangements will work, and you will tend to get a hump in reporting when a new scheme is introduced.

Mr SLIPPER—Why do you say your organisation is more suited to this role than, say, the Ombudsman?

Ms Briggs—That is a good question. I have a great deal of respect for the work that the Ombudsman does. I really do think that he adds significantly to the integrity of arrangements in the public sector. The reason I would be concerned by that is probably twofold. I think you need to think about the nature of the Ombudsman's current role, which is to receive complaints from citizens around the way they interact with the government in their dealings. It is very much around the way government systems interact within. The Ombudsman's legislation currently specifically precludes him dealing with personnel issues of the sort that we deal with. That is not by accident. That was a deliberate drafting arrangement so that the responsibilities of the different agencies would be clear and established. Finally, I think you have got to say that, within the context we operate in, we have got the current system and if you were to pull it apart and try to establish boundaries between various gradations of these misconducts, wrongdoings or whatever, I think we would struggle with that and I think that would cause other agencies and our staff a lot of trouble in knowing where to go.

Mr GEORGIU—That is precisely what you have suggested, that there needs to be a hierarchy and some things need to be excluded and others included, and you explicitly said that this is not about personnel issues.

Ms Briggs—I specifically said that the existing provisions of the Public Service Act should remain so that whistleblowing protections can exist around that. Where I have taken the discussion this morning is to say that I think it is appropriate that the commission has responsibility for this comprehensive system from go to whoa, basically, and from small to big.

CHAIR—On the point that Mr Slipper raised about whether the Ombudsman is an appropriate possible agency at which to locate responsibilities for public interest disclosure, your submission at page 17 advances two risks associated with using the Ombudsman for this role—the first being a suggestion that there may be confusion among APS employees and the second being a concern about 'detracting' resources and focus.

Ms Briggs—That must be a typo.

CHAIR—Perhaps it was meant to be 'diverting'. Why would it be confusing?

Ms Briggs—You would be surprised how difficult it is for large numbers of people to grasp in detail the fine arrangements of operations in any system. We see now in any of the activities we are involved in that we need to constantly provide information about how things are done. I absolutely believe that, if there was a cut in the stream of reporting within this area, we would have untold confusion. For example, I read in one of the submissions that, if there was an allegation of problems with the way the merit based system was operating, this could lead to a big whistleblowing investigation. I have to say that I think that is pretty silly.

This is the sort of work that merit protection commissioners have been doing for years—and I am sure Ms Godwin can tell you that, since she has been in the job, she has already been involved in this sort of activity. Regarding the reviews that come to her around employment decisions, she sees them, she detects trends and she sees where problems exist and then she talks to the agency about the issues and sometimes we will intervene and engage with them in recruitment arrangements which assist clearing up those problems.

Because of the nature of our operations, we regularly discuss issues that are occurring. Are they raising ethical or integrity issues? Do we need to do something of a systemic nature? Bullying and harassment is a good example of that. We have recorded over the years the trends that are occurring, we have provided good practice advice and we work with agencies one on one to try to deal with that. That is the sort of thing we do. Ms Godwin might want to pick up on that.

Ms Godwin—With the types of reviews that come through, we do the individual reviews and then we also sit back and look at the trends that are happening in a particular agency. I think that is where we really add value to the process. We do not look at them as one-off issues; we actually go back to the agencies and talk to them about any issues that we identify. It may be in a particular region or it might be a particular aspect of their collective agreement or personnel policy. There are a whole range of things that may come up. We then tailor approaches to assist them in dealing with those issues. So we try to go back to the source and cut things off at the pass, if you like, so those issues do not continue to come through in the future. That work has been really well received by agencies and by staff, who can see that issues are being tackled. As I said, I think that is an area where we really add value, but we do it in a way that addresses the specific issues of those agencies. So it is a tailored approach rather than a generic approach—although we clearly give guidelines and a generic approach as well.

A lot of our publications—and I am sure that you have had a look at them—actually pick up best practice approaches. So we are taking a very positive role with agencies to say, ‘This is how we can all learn across the public service. These are some of the issues that we deal with.’ We learn from each other and the things that other people are doing and pick out the positives. I think that that approach has a greater resonance with agencies than always focusing on the negative aspects. So we are trying to move the agenda forward in that way.

CHAIR—You and Ms Briggs have both outlined responses from your agency, which I am sure is commendable, but I was trying to focus on why it was suggested that it is confusing for APS employees. I will preface that by saying that there is an underlying concern in very many of the submissions, and it is related to what you said about creating a culture in which public interest disclosure is made simple and people feel encouraged to make public interest disclosure; that is what protection is for. Part of the culture is also the possibility of taking your report or

complaint to a body which is perceived to be independent. Some of the submissions have suggested that the Ombudsman is appropriate because he has that feature of being independent, which you do not. That is why I want to see if we can burrow down to why it is confusing for it to be part of the structure that it go to either the Ombudsman or some other agency. I do not think you necessarily need to focus on it being the Ombudsman; it might be another agency.

Ms NEAL—I thought as I was following you, Ms Briggs, that the essence of your argument was that, as you deal generally with complaints from within the Public Service while the Ombudsman generally deals with external complaints, to have the Ombudsman dealing with complaints from within would become confusing because people would not distinguish between the two and would not know where to go. That is what I thought that you were saying.

Ms Briggs—That is absolutely right.

Ms Tacy—That is certainly part of it. Another issue goes back to the earlier discussion about the spectrum of allegations. Certainly the objective should be as simple as possible, but there is always going to be an issue of how you define public interest, this difference and the spectrum of what might start as an employment grievance but is, perhaps, suggestive of more systemic issues. So there is this spectrum of issues that will come up. Having them in the one agency, I think, is a far more streamlined, simple approach because it is going to come down to a matter of judgement about where on that spectrum the particular case falls.

CHAIR—But that point is surely to be made for any agency. No matter which agency is given some overarching or primary responsibility for public interest disclosure, they are going to have to make judgement calls and to determine where on the spectrum—to use your suggestion—it lies.

Ms Tacy—Certainly, but if you have one agency perhaps looking at employment grievances—for example, a commission looking at issues around the application of merit—and another one looking at some different definition of public interest then you have a number of matters that will fall somewhere in between.

CHAIR—If it is to be an agency other than the Public Service Commission, isn't this something that it might be possible to deal with through protocols between whatever the other agency is and the Public Service Commission? It is an administrative question, to be handled administratively.

Ms Briggs—Yes, that is what we would have to do; there is no doubt about that. Otherwise, in a practical sense it would not work at all, I have to tell you. But, from the confusion angle, I am frightened that it would not work either. I really think that we would be creating a lot of inefficiencies in the system if we split it. I want to come back to your earlier point about independence and perceptions of that, because I take exception to those comments from the people who have made them to you. I am a statutory office holder. I take my roles and responsibilities under the legislation very seriously indeed. I might not be in the press every day giving a press conference and releasing the findings on the grievances and so on that I deal with—indeed, that is not my practice at all; I keep those matters held very tightly—but, if that presents an impression that I am not an independent officer fulfilling my roles and responsibilities properly, I absolutely believe that that is incorrect.

CHAIR—I do not want you to take any question from me as accepting suggestions by submitters that you are not independent, or that all three of you are not fully independent and independently carrying out the roles that you are charged with under the legislation. I would, however, raise with you independence in another sense, which is an independence from your other functions. Your other functions are concerned with a whole range of matters that are about the health of the Public Service which, to some extent, are separate from and different from the much more general concerns that a public interest disclosure scheme is directed to.

Ms Briggs—They are certainly separate and different from it; absolutely. When I was responding to Mr Slipper's question, that was specifically what I was identified for this new broader role around whistleblowing protections. I would have a separate assistant secretary who would manage those functions in that investigatory role quite independently and report directly to me. But I do not want to pretend that I do not have these other functions under the act. I absolutely do, and I consider that the material that comes through or the experiences that we have in managing the code of conduct arrangements now in the existing whistleblower protection provisions actually inform the work we do on the other side, leading to a more integrated approach on how to handle these issues.

Mr NEUMANN—I will move away to something different. You talk in your submission about deterrence to discourage allegations which are false, misconceived or lacking in substance, and then you say there should not be any repercussions if people who make those complaints have their complaint not upheld. In other words, if they honestly and reasonably believe that to be the case, there should be no consequence. When it comes to process, you think there should be deterrence to discourage noncompliance with process but you then want to say that these people should be sanctioned if they fail to comply with the process, but there should be no repercussions if the complaint is upheld. Do you think there is any inconsistency there? The other question I have is: what sort of deterrent do you think you should put in to discourage allegations?

Ms Godwin—I think there are issues about process that we talked about; we are talking about issues of procedural fairness. Certainly there is an onus on the people who are undertaking the investigation to make sure that procedural fairness has been followed in those sorts of circumstances. There are well-researched and well-documented approaches that we use within the Merit Protection Commission to ensure that there is procedural fairness in those approaches. In response to the issue of sanctions for not following procedural fairness, that works both ways; it is on both us as the investigators of that process to make sure that we have gone through those appropriate steps, but also on the person who is making the allegation to actually have something more substantive than just a rumour or hearsay—that they are going to put forward a whistleblower allegation. There needs to be something that they can provide us in evidence that we can then go forward and investigate. It is that dual aspect that picks up the issues about fairness in the procedures that we go through.

From my experience in some of the cases that come forward, when we have done an initial investigation we go back to the person to provide more detail. There is a whole issue around providing people with opportunities to come back and clarify what they are talking about. Whilst they originally had an idea that something was occurring, when you independently investigate it, tease out the issues and then go back to the person, they will quite often say that they just did not understand the other issues that were involved in it and they will withdraw the allegation once

they have the full picture. One of the issues that we deal with regularly is that people only have one slice of the perspective; they do not have the full picture. Some people obviously take it through to a continuation, but if they have not been able to provide us with further information that will change that process, and we have really done a good a job in trying to inform them about things that are happening, then there is really very little more that we can do. We prefer to move on to look at other cases and other issues rather than to continue to invest time when there is nothing further coming forward.

Mr NEUMANN—When you talked about the idea of the whistleblower not complying with proper procedures or processes, you are thinking about fairness to the person about whom the complaint is made. Is that what you are talking about?

Ms Godwin—When you are talking about fairness issues, there are a whole lot of components. One is about the procedural processes that we go through. There is the issue, from the individual's perspective, about providing information that we can then investigate and substantiate or come back to them about, and then there is the final aspect: against whom is the complainant making the allegations? We have put out, in conjunction with the Privacy Commissioner, a whole range of information about how we currently address issues to do with providing information to the complainants and, in some cases, the people who have had the allegation made against them.

Mr NEUMANN—What about deterrence? How are you going to deter people—to discourage them—from making allegations which are false and misconceived? What are you talking about there? If there are going to be no repercussions, what deterrents are you talking about?

Ms Godwin—I did not say that there were not necessarily going to be any repercussions. I was just saying that those were the processes that we go through to get there. In terms of deterrence, quite often when you go back and query someone upfront about providing us with the information that we can follow through with and investigate—at that point when they realise that you are actually taking the issue seriously and that they have no further information to provide you—they will self select out of the process because they realise that it is going to be investigated fully and they do not have anything other than hearsay. I am quite happy that at that point, when we have clarified the issues with the people, to step back from the process.

Mr NEUMANN—I am still not sure what you mean, 'We consider that the system should include deterrents to discourage allegations,' when there are going to be no consequences. I was quoting what you actually said.

Ms Briggs—Within the act, under the code of conduct there are a couple of provisions. One is that Australian public servants must treat others with respect and courtesy and that they must not provide false or misleading information in response to requests for it. One of the ways that this can be utilised in these activities is to remind people who are making false allegations, when they are public servants at least, of the requirements under the code of conduct.

Ms NEAL—What is the penalty for breaching that?

Ms Briggs—We would have an investigation as to whether or not that has occurred, then the penalty structure applying in the agency would deal with that.

Ms Tacy—For breaches of the code of conduct—which in effect would be what it is if you are making false allegations deliberately—then there are a range of sanctions provided in the act, running from a reprimand right through to termination of employment. That is a generic provision for sanctions against the code of conduct in the act.

Ms Briggs—But on the whole I think it is important to say to the committee that we aim for it not to get to that situation. We would like to think that the people who work in the public service have enough confidence, and the culture of the organisations they work in is appropriate, so that matters will be dealt with at the time in the work place. That does not always occur and that is the very reason why this committee is here to look at whistleblowing arrangements and how they can be made stronger.

Mr GEORGIU—Taking up that last point, you talk about process and you want compliance. Is there a situation where disclosure to the press should be covered by the whistleblowing legislation?

Ms Briggs—In our view, no.

Mr GEORGIU—Can you spell that out, because, despite the astonishing merits of the public service, sometimes complaints are not dealt with properly. Sometimes people feel that they have been not taken seriously. You take the case of Kessing, and you say it is not clear whether Kessing pursued available avenues or allowed sufficient time to respond prior to leaking. If he had taken up all the available avenues and allowed sufficient time, would that justify a Kessing type of case being covered by whistleblower legislation?

Ms Tacy—This is a really difficult one, obviously, because if you are establishing a scheme that allows disclosures to be made in a certain process then that process should be followed. The fact that there is a formal process and, hopefully, out of this process a better system for making whistleblowing allegations, then the onus on us all as public servants or whoever, is to use that process and not to go elsewhere. The issue is: if you go right through that whole process and you do not get the answer you want, should you be free then to provide it to the press? And then the issue is: is saying ‘because we did not get the right answer’ a good enough reason? We do not think it is.

Mr GEORGIU—Even when the answer is wrong?

Ms Tacy—That is what I am sort of working my way to. The way that the system is set up really needs to preclude that. The last issue is: what do you do in cases where they have gone through the independent agency and it is wrong? We have raised the possibility of some sort of review or appeals process to cover that, but we recognise it as a really tricky issue.

Mr PERRETT—I was just wondering if you have dealt with situations such as Mr Georgiou was just running by you, where someone has gone public—without giving us the names or anything.

Ms Briggs—It has not been my experience in the cases that have come to us, but I would need to go back through the history of our organisation and try and determine that, to give the committee a proper answer, if I may.

Mr PERRETT—I was also wondering whether the defence would be that it was in the public interest. Without talking about a statutory process or anything, you might be able to avoid recriminations in your workplace by saying, ‘I did so because it was in the public interest’—the Toni Hoffman defence, basically.

Ms Tacy—I think the issue there is, if there is a new, more visible and more effective whistleblowing scheme, surely the onus should be on people to use it.

Ms Godwin—What is the point in setting up a new scheme if people are just going to bypass the scheme?

Mr PERRETT—I am just chewing over the idea that without the scheme there would still be a defence that could be mounted in the courts that things were so bad that you had to go to the media. You could chance your arm with that defence.

Ms Tacy—Without the scheme it comes to matter of a court decision about whether you did use other avenues that are available currently and was it really in the public interest.

Mr PERRETT—I am not suggesting everyone puts the *Sydney Daily Telegraph* in their speed dial.

Mr GEORGIU—You would be surprised!

Ms Tacy—Or by mistake.

Ms Briggs—Things are taken to court. We acknowledge that.

Mr NEUMANN—I want to go back to what you actually define should be public interest disclosure. Correct me if I am wrong, but you criticise the *Whistleblowing in the Australian public sector* report. You say:

The report’s limitations include the failure to differentiate between serious malfeasance—

and you give a couple of illustrations—

and very minor misdemeanours ...

You say that the report repeatedly talks about wrongdoings. I have read the report and it does. Can you explain to me what you think in simple terms should be covered by public interest disclosure. What sort of maladministration, malfeasance should be covered? What should be covered that you simply should not get at that level? For example, some people talk about immoral conduct. That is a very vague expression.

Ms NEAL—Not that that ever happens here!

Mr NEUMANN—I would just be interested in knowing what you think.

Ms Briggs—I think you rightly point out that this is not an easy decision to take. Quite frankly, it depends on the particular situation as raised. That is why it is difficult to cut this continuum off. If we were to look at maladministration, the most recent example and one that is at the front of people's minds is the management within AQIS of the horse flu stuff.

Mr NEUMANN—Yes, equine influenza.

Ms Briggs—I would certainly have classed that as something that could have been raised under whistleblowing arrangements. It was not, but it could have been.

Mr NEUMANN—Mr Perrett and I, coming from south-east Queensland, would agree with you, I can assure you.

Mr PERRETT—Could they have raised it the day before the outbreak?

Ms Briggs—Of course they could do that under this kind of provision. With that kind of lateness of advice, it is doubtful that we could have protected against it—in fact, I think we could not have—but, nonetheless, that sort of thing falls within that arrangement. Quite frankly, I do not think a concern from somebody about how merit is being administered in recruitment arrangements in their particular section would cut the mustard, but if that complaint came to us then what it would do would be to raise an issue with us on which the Merit Protection Commissioner or my policy people might well deal with the agency directly. So it is that kind of judgement in situ and in circumstance that is quite important to having that arrangement work, in our view.

Mr NEUMANN—So you are talking about things like fraud, for example, that would obviously come into the category of public interest disclosure.

Ms Briggs—That is right. We have low levels of fraud. We have people who cheat on their travel arrangements and do things like that, and we pick them up in the current code of conduct. But then there is a level above that, of systematic ripping off of the system.

Mr NEUMANN—Yes, illegality would be a classic example. Misbehaviour or immoral conduct is something that we need the wisdom of Solomon to determine for most people.

Ms Tacy—Absolutely. I guess the public interest grouping, in our minds, is things like fraud, corruption and big-ticket conflict of interest type situations.

Ms NEAL—It is sometimes hard to distinguish. We sit in the committee and say, 'It's only serious matters,' but when something comes before you it is sometimes extremely difficult to actually distinguish what is serious and what is not. If we are going to recommend changes to the legislation, it is very hard to define what is serious. That is one of the things that I have had trouble tackling.

Ms Tacy—Yes. We ourselves have debated how you could define public interest in a legislative term in the scheme. I guess it comes back to the continuum we were talking about before and how you manage that, because we are not saying that the non-serious or non-public-interest issues should not be dealt with and are not important, and we deal with them every day.

Allegations will be made of misconduct in a whole spectrum of ways; the issue is what the best process is for dealing with those different categories.

Ms Briggs—I know Annwyn wants to say something, but I would make the point that in the development of any scheme you could have some specific words within the legislation—indeed, you would—but, behind that, certainly our practice with the Public Service Act is that I issue guidelines and directions about how to run these arrangements, and that gives advice to people on the ground.

CHAIR—We have to adjourn the hearing, because we are required for a division. I would like to come back in 10 minutes if possible. Is it convenient for you to wait for us?

Ms Briggs—Yes.

Proceedings suspended from 10.28 am to 10.42 am

Ms Godwin—The thread that we were discussing prior to the break was the spectrum of issues that happen when looking at cases and issues that come in. The point I was going to reinforce with that was that, when you are looking at a case or an allegation that has come through, I think it is very important to actually have some context in which you make the assessments or judgements about that case or that allegation. In particular, there is an understanding that I believe we have within the commission, certainly in my role but also in the Public Service Commissioner role, about what is happening within agencies to be able to make a judgement call on some of the issues. But there is also a greater understanding of what is happening more widely in the APS, the Australian Public Service, so that you can put some of these allegations into some context and have that understanding.

All of that helps you in your judgement that you need to make about where this allegation actually fits within that spectrum. Is it a one-off? Is this something that you were aware of from previous experience and investigations? Is this the trend that is coming through? It changes the intervention that you are likely to make in that particular circumstance, whether it is an educative process—training and awareness—right through to the other end of the spectrum, which is more the enforcement component or looking at compliance issues. That understanding of what happens within the Public Service is actually very crucial in the way that you deal with the judgement issues when you are looking at a review. That was the point I was making before the break.

CHAIR—Thank you. I have a question about something that arises on page 9 of your submission, which relates to which employees or people connected with the Australian government public sector should be covered. The last sentence of that section, which is your comment and view in relation to term of reference No. 1, reads like this:

Further, the current APS whistleblowing protections for APS employees extend to those employees on duty overseas, although locally engaged staff are not covered. The extent of this coverage should continue under the new scheme.

There are obviously a whole range of agencies that have staff, including locally-engaged staff, present overseas. Notably there is the Department of Foreign Affairs and Trade, notoriously there is the Australian Wheat Board, and one can think of other agencies, like Austrade, et cetera.

Why is it that you think that locally engaged staff should not receive the protection of a public interest disclosure scheme?

Ms Briggs—The general reason for that is that those staff work under the laws of the particular country that they live in. I take your point about the AWB. That was something our mind certainly had not run to in this context.

CHAIR—This is a conflict of laws issue. Clearly the people who are locally engaged and foreign nationals who are living and working in some other part of the world, but are paid by the Australian government, will be subject to the laws of the country that they are in. Insofar as it is within the reach of the Australian parliament to offer them protection under Australian law from consequences in Australia, why shouldn't the protection that is going to be provided by a scheme of public interest disclosure be extended to them?

Ms Briggs—That is a fair point. I am happy to step back from that.

CHAIR—It might be that it is of no practical value to the people overseas—because, as you say, they are subject to the laws of the country they are working in. But insofar as it might be of some value, you cannot think of reason why it should not be extended to them?

Ms Briggs—Not in that sense, no.

CHAIR—I will go back to a more general question. Have you got any statistics that would inform us about the volume of reports that you presently receive that would fall within the category of public interest disclosure? I ask because you have said that most of the reports or complaints that you receive really fall within a category of staff issues, personnel issues and human relations issues.

Ms Godwin—In our submission on page 5 we provided some information for you on that. I think the key issue is that there is a very small number of whistleblower complaints that are brought in. If you look at the numbers you will see that there are 21 overall. There were 20 that came through to me and 21 that came through the Australian Public Service Commissioner. The reason is that people will often put in a whistleblower complaint to both Ms Briggs and myself, so we will get—

Ms Briggs—There is some overlap between those two.

CHAIR—I saw the statistics; I am trying to unpick them. I probably did not ask the question very well.

Ms Briggs—You did absolutely ask it quite well. In the first paragraph on page 5 it says that 21 employees from 10 APS agencies were investigated. These are whistleblowing allegations made and handled within the agency context. In the next paragraph, it says that 20 whistleblowing reports were received by the Merit Protection Commissioner last financial year, and 21 were received by me. In total we have got a figure of up to 62, but there are sometimes cases where the Merit Protection Commissioner and myself both receive the same allegation from the same individual.

CHAIR—So there is an overlap, potentially.

Ms Briggs—That is right.

Mr PERRETT—These are the ones who got over the first hurdle, not every contact.

Ms Godwin—That is right.

CHAIR—You could ask the question in another way: what brings them within the category of being a whistleblower complaint that is recorded, by you or by you, as a whistleblower report and therefore forming part of these statistics?

Ms Godwin—The key criterion in that is that the person, when they have put forward the allegation, has referred to section 16 of the Public Service Act. They may not formally refer to it but we then would go back and confirm that they actually want to have this considered as a whistleblower case.

Ms NEAL—It is self definition almost.

Ms Godwin—Section 16 of the Public Service Act is what gives Ms Briggs and myself power to do that.

Ms NEAL—What I mean is that they almost self select by saying, ‘We think it comes within section 16.’

Ms Briggs—That is right.

Ms Godwin—The types of cases that can come through—the issues that I have looked at as I have already identified—tend to do with issues like bullying and harassment. There may be a number of counter allegations that would take a case forward.

CHAIR—Unpicking these statistics on page 5 of your submission, is there any way you can say—you may not be able to tell me right now—what proportion or even what number of the cases that came from the 10 APS agencies, or the ones that came to you, Miss Godwin, or the ones that came to you, Miss Briggs, are public interest disclosure matters rather than the more confined but no less serious bullying, harassment or staff matters?

Ms Briggs—In my case, one or two.

CHAIR—One or two?

Ms Briggs—I can confirm that the secretariat, but that is basically the story.

Ms Godwin—I can tell you mine, and that is that there was none that I would have considered would come under the public interest disclosure.

CHAIR—And that is to be expected, since you are the Merit Protection Commissioner.

Ms Godwin—The one that I did identify as a conflict of interest case, which is in the submission, was a conflict of interest about who was the decision maker in a particular case rather than conflict of interest about the issue that was raised. Someone felt that the decision maker in the particular case had a conflict of interest. So, none of them would fall under your category.

CHAIR—It has been suggested to us that one of the responses within the Australian Public Service to employees who raise public interest matters has been for the person making the disclosure or making the report to be sent for a psychiatric or psychological assessment. Are you able to comment on that?

Ms Godwin—I cannot comment on the procedures that an agency may have put in place. An agency may have taken that as an option. I certainly have never seen anything in an agency procedure which actually said that it was an automatic component. I will speak from experience, both from being in an operational role previously and also in this role: cases are very multi-dimensional. There is rarely a single issue case that comes all the way through. A case may start out with a perception of bullying and harassment and then, over a period of time, it may grow and develop—particularly if it has not been addressed right at the key point. So timeliness is an issue. There may be issues then that will come through about allegations of psychiatric illness which would go to Comcare and illnesses to do with stress-related causes within an agency. Under those circumstances agencies may decide that there would be a need for an assessment of the fitness to work, of which psychometric testing may be one component. I just stress that it is not part of the whistleblowing procedures that are set down. An agency may choose—

CHAIR—It is important that you state that.

Ms Briggs—It is absolutely not, but we would be kidding you if we said that, on occasions, this has not occurred. It has not occurred at our direction but I have seen cases where this has occurred in agencies.

Ms NEAL—I have known some in the New South Wales government.

CHAIR—You are aware of cases where a first response to a complaint has been—

Ms Briggs—I am not sure whether it was a first response.

CHAIR—Not necessarily a first response but part of the response—

Ms Briggs—Part of it, yes.

CHAIR—may have been to refer the—

Ms Briggs—Not through our organisation but through another agency.

Mr PERRETT—Chair, could I just clarify that? Were you informed of it, or were there indicia in the files?

Ms Godwin—You would pick it up in a file.

Mr PERRETT—In the files that you have talked about it has been evident?

Ms Godwin—You would pick up in a file that there had been a request that the person was sent for an assessment of their fitness for duty, of which a part may have been to have undertaken psychiatric testing.

Mr PERRETT—Is that a small number? Would there be one or two?

Ms Godwin—Yes.

Mr PERRETT—And it did not jar. In looking at the circumstances, it was not from left field that they suddenly went off to see a—

Ms Godwin—From my reading of the files, I would say that, as part of a long continuum of trying to manage a case within an agency, this is one of the steps that they may have taken.

Ms Briggs—In my experience, that was absolutely the story. As I said in my initial presentation, it is very difficult to maintain the quality of a relationship in these circumstances.

Mr NEUMANN—I asked you questions about what public interest disclosures you thought should be protected—for example, illegality, corruption, fraud et cetera. I am going to talk about immunity from criminal or civil litigation. You say in your submission that there should be some level of immunity and you go on to say:

... we believe this should specifically be limited to genuine whistleblowers who have made approved protected public interest disclosures.

I think I know what you mean by ‘protected’—because we have gone through that definition. Who does the approving? Surely you are not saying that the courts should be the ones that do the approving? You do not want to get to the point where someone is charged with a criminal offence and reports it.

Ms Briggs—I think that is loose drafting in our case. What we were getting at is when an individual making an allegation may well have been involved in criminal activity themselves in the workplace—this does occur in issues of major fraud—and sometimes they will report in order to avoid the gun being turned to them. So there is that issue. I would not immediately exclude people on the assumption that every whistleblower has actually done the right thing. This is on the basis of our experience. It might sound tough, but I think you really have to understand that these things can happen in big organisations where there are large amounts of money in particular.

Mr NEUMANN—That comes back to the issue of motivation. In your next sentence you say:

Immunity should not be granted to a person who makes a whistleblower report in retaliation ...

Someone you might accept might be feeling quite aggrieved at the way they are being treated and they have a bit of information in their possession regarding, say, corruption and they make

the whistleblowing report in retaliation for the way they feel they have been treated. In those circumstances would you think that they should receive immunity?

Ms Briggs—As I said to Mr Georgiou earlier, I think it is very important that we get to the substance of what this is about, and what it is about is dealing with corruption, fraud et cetera in the workplace. I think we should look at what is being revealed rather than necessarily the details of their motivation. It is really important that this stuff is brought to the surface and dealt with. So I am saying that that should have the priority.

Mr NEUMANN—That is slightly at odds with what you are saying in your submission, where you say:

Immunity should not be granted to a person who makes a whistleblower report in retaliation or to pre-empt a whistleblower report or criminal proceedings against them.

In other words, the motivation is relevant, you think, in terms of the immunity. It is quite clear in your submission that you think it is relevant in terms of immunity from prosecution.

Ms Tacy—What we are trying to get at is drafting that means that a person cannot lodge a whistleblowing allegation with no substance—getting to the substance issue—and automatically therefore get immunity from other proceedings that might be occurring.

CHAIR—And I doubt that there will be any recommendation from us that the scheme should be on that basis, but there is a question about whether or not it is a sufficient deterrent that you will simply not get the protection of the scheme. One of the questions that we are going to have to grapple with in our report is whether some additional penalty might be appropriate or whether no further penalty other than—and it is a very real penalty—loss of protection is appropriate. I have a couple of quick questions. There is power in the Public Service regulations for an agency head to direct an employee to undergo a medical examination, which would include a psychiatric examination. Are there any statistics kept on the number of public service members who are sent for medical examinations generally or psychiatric examination in particular?

Ms Briggs—I am not aware of us collecting that data but if we do have it I will certainly let the committee know.

CHAIR—Could you look for it—

Ms Briggs—Yes, I will.

CHAIR—and let the secretariat know. The particular focus is obviously on our earlier question. It may be that if you do not keep the data it will not be possible, or even if you do keep the data it may not be possible, to determine if any of those persons were persons who had made a complaint or made a public interest disclosure of any kind. The committee would like to deal with the suggestions that have been made—that one of the responses within the Australia Public Service to the making of a public interest in disclosure is: go to see a psychiatrist. That is obviously of concern.

Ms Briggs—Could I say, though, I do not believe we have the data, but I will come back to you in writing.

CHAIR—Thank you. Finally—and this is a bit of a technical question and you might like to take it on notice – Ms Briggs, you have suggested that you would envisage your organisation returning two amendments to the Public Service Act which have been put on hold as a result of the government’s announcement that it will look at a scheme of public interest disclosure. Why should it be the case that, if there were a separate piece of legislation called, for argument’s sake, the public interest disclosure act, which generally governs a whole range of people connected with the Australian public sector and which is certainly likely to include all public servants—in other words, all people presently covered by your act—and would quite possibly cover a range of others as well, there would be a need for your act to contain provisions that would in effect duplicate the public interest disclosure scheme that is in the public interest disclosure act?

Ms Briggs—I think the actual words were used in our submission and, again, they were probably not nicely chosen. But we have shelved those amendments—

CHAIR—I saw that, and I do not argue with that. I understand why you might have shelved them.

Ms Briggs—What we were implying is that, depending on the committee’s recommendations and the government’s decisions, we would need to look at what that means for our act. It may very well be the case that, with a new piece of legislation establishing a whistleblowing scheme, we would take out section 16 from our act, for example. It is just a normal thing that would occur.

CHAIR—So you are simply drawing attention to the need to ensure that there is a meshing of whatever scheme is adopted and your act?

Ms Briggs—Absolutely.

Ms Tacy—And also the relationship between them, if there were a separate public interest disclosure act—which hopefully, from our point of view, would have a role for us. But, either way, there would need to be a meshing, in your terms, between code of conduct processes and public interest disclosure, with some clarity about agency processes and the processes generally to apply. The two pieces of legislation would obviously need to dovetail.

CHAIR—Thank you very much for attending the hearing. The secretariat will send you a copy of the transcript and we would ask you to look at it while it is in proof form and let us know whether there are any errors, although Hansard generally do not make them. We would be grateful if you could liaise with the secretariat about the additional matter that I asked you to look at. Thank you very much for the thorough evidence that you have given here and, indeed, for the very thorough submission that you have provided.

Ms Briggs—Thank you. Could I say to the committee that I thought your questions were excellent and very thoughtful. There will be an enormous amount of work to do in the future. Thank you.

Resolved (on motion by **Ms Neal**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.04 am