



The Accountability Round Table (ART), is a non-partisan group seeking to strengthen the honesty, integrity, accountability and transparency of our parliamentary and governmental processes. Attached is a list of members and a Flyer with more information about the ART.

The ART wishes to raise particular concerns relating to the present attempt to introduce federal whistleblower protection laws by the government. ART's concerns have recently been conveyed to the Prime Minister's Office and to the Offices of the Attorney General, Foreign Minister and the Special Minister of State.

The reform exercise is a most unusual one. The objective is not simply to address domestic concerns and to respond to the 2009 report of the House of Representatives Committee on Legal and Constitutional Affairs. In addition the objective is not simply to honour the Government's 2010 agreements with the Independent MPs in the House of Representatives which put the government into office. Enactment of effective Whistleblower legislation is necessary to honour Australia's international commitments as a Member of the G20 and as a party to two international Conventions, the United Nations Convention Against Corruption (UNCAC) of 2003 and the OECD Anti-Bribery Convention of 1997. Enactment is also necessary to address official criticism by the UN and OECD of Australia's lack of performance under those Conventions. The concerns we wish to raise arise from those commitments and criticisms.

- 1. Member of the G20.** In November 2010, the G20 Leaders recognised the protection of Whistleblowers as a high priority and called on G20 countries to enact and implement Whistleblower protection laws by the end of 2012.
- 2. State Party to the United Nations Convention Against Corruption.** Australia ratified the Convention on 7 December 2005. Article 33 of that Convention provides:

"Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".

In the course of the recent triennial domestic and international review of Australia's performance under this Convention, Australia announced its intention to develop a National Anti-Corruption Plan (NAP). In the NAP Discussion Paper, the Government identified (page 20) as one of its "Recent Initiatives", its intention to introduce a stand-alone Whistleblower Protection Scheme, in response to the 2009 recommendations of the Parliamentary Committee, which would "facilitate reporting and provide for investigation of alleged wrongdoing in the public sector".

The UNCAC International Committee's Report identified Whistleblower protection as a matter requiring attention. It also recorded the intention of the Australian government to enact comprehensive legislation as a "positive development" and included reference to that intention as one of the "Challenges and recommendations".

- 3. State Party to the OECD Anti-Bribery Convention.** Australia ratified the Convention on 18 October 1999. Its performance in complying with the Convention was recently examined and criticised by an OECD Working Party (see Report particularly paras 143-5). In particular, after identifying a number of significant inadequacies in whistleblower protection under federal laws it concluded -

"The lead examiners recommend that Australia put in place appropriate additional measures to protect public and private sector employees who report suspected foreign bribery to competent authorities in good faith and on reasonable grounds from discriminatory or disciplinary action. The Working Group should also follow up the enactment and implementation of the Public Interest Disclosure Bill."

The OECD Working Party statement confirms the reality that the present Government, and any successor Government, will be expected by the OECD Convention parties, together with the UNCAC parties (and the UNCAC International Committee notwithstanding its diplomatic language) and the G20, to take effective steps to address this major weakness in our National Integrity System by introducing a Whistleblower Protection Scheme of real substance.

Bearing in mind that there are effective laws already in place in most Australian States, the Northern Territory, and the ACT, anything less than best practice at the federal level cannot be justified. Further, if anything less than best practice is introduced -

- o serious questions will be raised in those forums about Australia's sincerity and commitment to its obligations as a signatory to the Conventions;
- o Australia's international reputation on anti-corruption issues, already under criticism from the UNCAC Committee and OECD Working Group, will be further damaged, and
- o Australia's aspirations, to a leadership role in international endeavours to reduce corruption, referred to in the Attorney-General's Discussion Paper for the National Anti-Corruption Plan, will be seriously compromised by the government's failure to lead by example in enacting those measures for Australia which we are urging on other countries; and
- o serious doubts will be raised both domestically and internationally as to the Australian government's understanding of the phenomena of international and domestic corruption, and the government's ability to resist corrupt activities with the potential to undermine national integrity at all levels.
- o Australian Government Ministers, public servants and business people will suffer declining trust by reputable foreign governments and businesses, and a concomitant hesitance to deal with Australians, and suffer an increased risk of becoming a target for corrupt governments and businesses.

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