

**ATTACHMENT 2**

**RESPONSE TO AUSTRALIAN SERVICES UNION COMMENTS ON THE TAX  
OFFICE WHISTLEBLOWING POLICY**

**Background**

1. The Australian Taxation Office (ATO) policy in this area is the Practice Statement PS CM 2006/08 "Employee reporting of suspected, and the PS/ Tax Office protection arrangements (Whistleblowing)" and supporting corporate management practice instruction (CMPI).
2. In February 2007 the ATO met with the Australian Public Service Commission (APSC) to discuss the ATO's whistleblowing policy. Following that meeting the ATO's policy and instructions were amended to incorporate most of the issues raised by the APSC. At that time we understood our policy was correct in form and content.

**Comments on issues raised by the ASU**

3. The ATO has had a fundamentally different view of s16 of the Public Service Act (PSA) from the ASU. Our view was that the types of disclosures to be protected should be limited to public interest disclosures such as illegal activity, corruption, official misconduct involving a significant public interest matter, maladministration, and breaches of public trust.
4. In the ATO's view there have been a number of instances where attempts have been made to use the whistleblowing policy as an alternative avenue for raising grievances, or as an attempt to divert attention from existing code of conduct processes. We have not, to date, regarded as whistleblowing very minor or questionable breaches of the code of conduct and/or reports which are essentially personal interest disclosures. The ATO provides other avenues for these issues to be addressed (e.g. raising the issue with their manager or director, approaching ATO concern for informal resolution, lodging a review of action).
5. The ATO's procedures for whistleblowing complaints provide an assurance for our employees that their report will be investigated (provided it is not frivolous or vexatious) and that they can report suspected wrongdoing secure in the knowledge that their actions will not result in later victimisation or unlawful discrimination. As such, our policy reflects the requirements of the Public Service Regulations.
6. Having said that, we have recently received advice from our ATO Legals area that there is nothing in the PSA or Regulations that would exclude an employee from reporting a suspected breach of the Code of Conduct, even if it is a personal grievance, under section 16 of the PSA. As a result it would appear that Clause 5 of our CMPI, which states:
7. "Where the employee making the report is directly affected or linked to the conduct being reported, the report would not generally be taken to be employee reporting. In this instance the employee would normally report the wrongdoing

through their manager. Alternatively they could approach Fraud Prevention & Control or ATO Concern”.

incorrectly limits the provisions of section 16 and will need to be amended.

8. Nonetheless, consistent with the APSC publication “APS Values and Code of Conduct in practice”, the ATO maintains that the whistleblower scheme is not designed to resolve personal grievances about employment decisions, which are the subject of other agency review processes and promotion review committees.
9. In relation to whether the agency head must let the reporter know the outcome of the case the ATO will give consideration to the circumstances of each individual case, in accordance with Circular No 2008/3: Providing information on Code of Conduct investigation outcomes to complainants.

### **Conclusion**

10. The ATO has been participating in the Griffith University “Whistling While They Work” research project as a case study agency. We take employee protection very seriously and see reports of wrong doing as helping to improve performance and to ensure the integrity of the organisation.
11. We note the House of Representatives inquiry into employee protection and the likely future changes to the legislation. It would appear from the Explanatory Memorandum for the PSA that the then Government envisioned that more detailed whistleblowing legislation would be introduced to clarify section 16, which we would welcome.