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8 August 2008

Dr Anna Dacre
Committee Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

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Dear Dr Dacre

Thank you for your letter of 15 July 2008 to Mr Terry Moran AO inviting the Department of the Prime Minister and Cabinet (PM&C) to make a submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into whistleblowing protections within the Australian Government public sector.

PM&C's submission to the inquiry is attached. Should the Secretariat wish to discuss the submission or seek any further information, the contact officer is Mr Alex Anderson, Assistant Secretary, Legal Policy Branch, telephone (02) 6271 5532 or email alex.anderson@pmc.gov.au.

Yours sincerely

Mike Mrdak
Deputy Secretary

m/m

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE
ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**INQUIRY INTO WHISTLEBLOWING PROTECTIONS WITHIN THE
AUSTRALIAN GOVERNMENT PUBLIC SECTOR**

SUBMISSION OF THE DEPARTMENT OF THE PRIME MINISTER AND CABINET

1. This submission is to inform the Committee of the role of the Department of the Prime Minister and Cabinet (PM&C) on whistleblower policy issues, and provide a brief overview of provisions of legislation administered in the Prime Minister's portfolio that may be relevant to this Inquiry.

Role of PM&C

2. The Cabinet Secretary, Senator the Hon John Faulkner, has responsibility within the Government for policy on whistleblower protection in relation to the Australian Government public sector. PM&C's role of providing departmental support for the Cabinet Secretary includes the provision of advice on whistleblower policy.

Relevant provisions of legislation administered by PM&C

3. PM&C understands that the Australian Public Service Commission (APSC) is making a separate submission to this Inquiry which will provide information on the role of the APSC and current protections under the *Public Service Act 1999*.
4. A number of other agencies within the Prime Minister and Cabinet portfolio may currently receive and potentially investigate certain complaints or allegations from whistleblowers, with or without specific statutory provision for the making of such complaints or allegations.
 - a. The Inspector-General of Intelligence and Security (IGIS) might receive a whistleblowing complaint under section 10 of the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) and would be required to investigate that complaint, subject to the provisions in section 11 of the IGIS Act. It is noted that section 33 of the IGIS Act provides that a person is not liable to civil proceedings in respect of loss, damage or injury by reason only that a complaint has been made to the Inspector-General. (PM&C understands that the Inspector-General of Intelligence and Security has made a separate submission to this Inquiry, although we are not aware of its contents.)
 - b. The Commonwealth Ombudsman might receive a whistleblowing complaint under section 7 of the *Ombudsman Act 1976*. It is noted that section 37 of the Ombudsman Act provides that civil proceedings do not lie against a person in respect of loss, damage or injury because of the making in good faith of a complaint to the Ombudsman. (PM&C understands that the Commonwealth Ombudsman is making a separate submission to this Inquiry.)

- c. The Privacy Commissioner might receive a whistleblowing complaint under section 36 of the *Privacy Act 1988*. It is noted that section 67 of the Privacy Act provides that civil proceedings do not lie against a person in respect of loss, damage or injury because of the making in good faith of a complaint under the Act or an approved privacy code. (PM&C understands that the Privacy Commissioner is making a separate submission to this Inquiry.)
 - d. The Auditor-General might receive complaints or allegations, notwithstanding that neither the *Auditor-General Act 1997* (administered in this portfolio) nor the *Financial Management and Accountability Act 1997* (administered by the Department of Finance and Deregulation) make specific provision for receipt of complaints or allegations.
5. It is noted that paragraph 659(2)(e) of the *Workplace Relations Act 1996* (administered by the Department of Education, Employment and Workplace Relations) provides some protection to whistleblowers employed in the Australian Government public sector who make a complaint about their employer to any competent administrative authority. The paragraph provides that a person's employment cannot be terminated for "the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities".
 6. The *Royal Commissions Act 1902*, administered by this department, contains a number of provisions which may provide protection for whistleblowers in the context of a Royal Commission, as follows.
 - a. Section 6D allows a Royal Commission to take evidence in private and direct that certain information shall not be published.
 - b. Section 6DD provides that statements made by a natural person to a Royal Commission are not admissible in evidence against that person in any civil or criminal proceedings.
 - c. Section 6M provides that it is an indictable offence to use, cause or inflict any violence, punishment, damage, loss or disadvantage to any person for or on account of them having appeared as a witness before a Royal Commission, given evidence before a Royal Commission, or having produced a document or thing as required by a Royal Commission.
 - d. Section 6N provides that it is an indictable offence for an employer to dismiss an employee or prejudice an employee in his or her employment for or on account of the employee having appeared as a witness before a Royal Commission, given evidence before a Royal Commission, or having produced a document or thing as required by a Royal Commission.