A GUIDE TO THE SOUTH AUSTRALIAN WHISTLEBLOWERS PROTECTION ACT 1993*

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The decision to enact whistleblowers protection legislation was grounded in the policy recommendations of the Fitzgerald Royal Commission[1], the Ontario Law Reform Commission[2], the Gibbs Committee[3] and so on. That was, in many ways, the easy part. The hard part was to fashion legislative principles and hence legislation which would be clear, accessible, and which would not create intolerable difficulties. Moreover, while there seemed to be a general level of support for the principle amongst interested groups and people, that surface consensus masked divisions about the defensible limits of the idea. As ever, for example, the interests of the media lay in as much protected disclosure as possible. By contrast, for example, the Local Government Association was generally concerned about the preservation of a deal of confidentiality. As ever, one's perspective always depends on where one sits. I am not saying that either the media interest or the local government interest was wrong. I am saying that they are examples of forces pulling in different directions.

The first thing to do was to set about the broad principles. The draft Queensland Bill produced by the Electoral and Administrative Review Commission contained no less than 70 sections, several pages of definitions and was highly bureaucratic[4]. It involved, for example, the establishment of a Whistleblowers Counselling Unit in the statute. We did not like this at all. We wanted something that could, so far as is possible, be read by the public with some chance of understanding. We did not want to create another bureaucracy - and we thought that we had enough authorities with investigative powers around the place to deal with issues without having another to stumble over - or by legislating another set of investigative rules which may be at odds with their own.

Nevertheless, the Queensland Bill pointed to some decisions that we had to take to start with. First, what institutions should be subject to the regime of protected whistleblowing? The key problem here turned out to be whether to extend it to the private sector. The Queensland recommendations were that it should[5]. We thought that to be right. Here are the reasons:

- In terms of the public interest, the distinction between private and public sector is blurred now and there is every indication that it will be even more blurred in the future. The influence of privatisation is the most obvious example of this.

- The consequence of excluding the private sector entirely would mean that, if one council did its own rubbish disposal and did it appallingly, it could have the whistle blown on it, but if it contracted out the same appalling service to a private company, it could not. This makes no sense.

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- There are hard cases at the overlap. For example, are Universities public or private sector[6]?

However, it did make sense to discriminate between private and public sector in terms of matters in which the public interest in having the information revealed outweighs the private interest in having something not nice concealed. We took the view that the private sector could hardly argue that it should be able to conceal information about criminal activity, or about the improper use of public funds, or about conduct that causes a substantial risk to public health, safety or the environment. But we also thought that, while there is a public interest in disclosure of information which tends to show that an officer in the public sector is incompetent or negligent, for example, that is not so about the private sector. If a company wants to keep secret the fact that its managing director has shown incompetence - well, so be it. The legislation is structured to reflect those decisions. Later we discovered that the Western Australian Royal Commission came to a similar conclusion.

... while the primary purpose of our proposal is to protect our system of government from the actions of public officials, this inquiry has revealed that it can be the actions of persons in the private sector that put public funds and government itself at risk. For this reason, while the Commission does not now positively recommend that its proposed whistleblowing legislation be extended generally to the private sector, a step which has been taken in the United States of America and which in modified form has been recommended by EARC in Queensland, it is essential at least that it extend to allow disclosures about companies and persons dealing with government where those dealings could result in fraud upon, or the misleading of, government.[7]

The next question was to sort out what sort of protection to offer a genuine whistleblower. There was no lack of options. The core of debate centres around the protection of the employment of the whistleblower - from victimisation because of his or her disclosure of confidential information. Working from the principle that we should not create another agency or bureaucracy if we already had one that could do the job, we could not follow the Queensland model centering on a Criminal Justice Commission. The normal industrial grievance tribunals were a possibility, but that would be complex because of the bifurcation between private and public sector rules about dismissal and so on, and avenues of appeal. The Ombudsman has the reputation, the powers and the procedures - but again, if we stuck to our decision to keep the private sector in, we would have to amend his legislation to widen the scope of his powers. The clue to the solution came from the very conservative Gibbs Committee recommendations, which suggested that unlawful discrimination in Commonwealth Government employment could be dealt with via their Merit Protection and Review Board. The Equal Opportunity Commissioner has the powers, the procedures - and covers both private and public sector employment. Further, the Commissioner fits the bill - she deals with discrimination in employment on grounds deemed to be contrary to public policy. This all seemed to make sense.

When the Bill was debated in the Legislative Council, the Opposition moved to, in effect, create a tort of victimisation as an additional option for the victimised whistleblower, subject to the proviso that a person must elect which of the two alternative remedies he or she will pursue. A civil remedy is, strictly speaking, unnecessary - the Equal Opportunity system contains the power to make the equivalent of injunctive orders and award compensation for loss or damage[8]. The Government decided, in

the end, that it would accept the amendment. The real argument against giving a victim a choice of remedy is that the equal opportunity route is designed to reduce confrontation, and encourage conciliation and education if possible, unlike the court-based option. The real question was whether that outweighed the choice aspect. In the end, it was decided that it did not.

The other central component for protection was obvious - protection was civil and criminal liability. That is common to all schemes. The other options for protection were the creation of a criminal offence of taking reprisals and a public sector disciplinary offence. In the end, we rejected both of these. The criminal offence was rejected as overkill, and contrary to the general principle of parismony in the criminal process; that is, that the blunt weapon of the criminal law should only be employed where the need is clear and the offence will go at least some way to meeting it. The public sector disciplinary offence was a possibility - but that failed to take into account the private sector part of the legislation, and, in any event, would reveal a certain lack of faith in the ability and willingness of the Commissioner for Public Employment to take appropriate action against a member of the public service who failed to comply with legislative directions in the public interest. So we stayed with the shield of immunity and the sword of unlawful discrimination. The tort, of course, was added later.

That leads naturally to the central building blocks of the legislation. It seemed to us that the core of whistleblowing was, in non-technical terms, the disclosure of information in the public interest to an appropriate body for genuine reasons. There are three elements to that: (a) what information engages the public interest sufficiently to warrant this protection?; (b) what is the test for genuineness in a whistleblower?; and (c) what restrictions, if any, should the legislation impose on the ability of the whistleblower to 'go public'? Each of these questions has key implications for the scope of the measure.

What we came up with one the first question was a definition of 'public interest information'. Here is what was in the Bill originally:

'public interest information' means information that tends to show -

(a) that an adult person(whether or not a public officer), or a body corporate, is or has been involved (either before or after the commencement of this Act) -

  (i) in an illegal activity; or

  (ii) in an irregular and unauthorised use of public money; or

(b) that a public officer is guilty or impropriety, negligence or incompetence in or in relation to the performance (either before or after the commencement of this Act) of official functions;....[9].

This definition turned out to be *relatively* uncontroversial, but some features of this definition require further commencement[10].

- A number of people or organisations consulted questioned the restriction of the first part of the test to adults. The answer to this is an excellent example of the real power of this measure, and an illustration of why it is necessary to be cautious. The reason why the provision was limited to information about adults was to preserve the confidentiality of the identity, or information that might disclose the identity, of children who are either the victims of crime or who are offenders or alleged offenders. It was thought that the legislation should not invade that area of confidentiality. On the other hand, that has the consequence that the

conduct of a 16 year old (for example) poses a substantial risk to the environment remains uncovered by the Bill. We simply could not devise an effective way to frame the legislation to resolve that hiatus.

- A number of the organisations and people consulted felt uncomfortable with the possible width of the term 'incompetence'. It was there originally because the term appears in the Queensland Bill[11]. On the other hand, the first New South Wales Bill covers 'maladministration' which is quite extensively defined.[12]. This was repeated in the second Bill[13]. The Gibbs Committee recommendations are far more restrictive in a number of ways and would require 'gross mismanagement'[14]. The WA Royal Commission referred to the necessity of coverage of allegations about 'the protection of public funds from waste, mismanagement and improper use'[15]. The Interim Report of the (Finn) Integrity in Government Project also recommended the coverage of 'maladministration'[16]. This was a matter concerning which there was clearly no consensus. In the final analysis, it was the Local Government Association which came up with a very persuasive argument for changing it. They argued, in effect, that the public interest was with the *effects* of incompetence rather than the mere fact that it existed. Maladministration is the effect. We thought that to be entirely persuasive. so we amended the Bill to replace the concept of 'impropriety, negligence or incompetence' with the word 'maladministration' and defined it to include 'impropriety and negligence'.

- There was also some discomfort with what was perceived to be the vagueness of the descriptive language used. We would have been most interested in any attempt at definition which would not sacrifice flexibility for certainty, but the very difficulty of the task had the result that the expressed discomfort was not accompanied by a suggested precision. The problem is that any attempt to cast a net which would adequately cover the range of possible misconduct of public interest in both private and public sectors would necessarily contemplate a toleration of a deal of uncertainty. That this is so is demonstrated by the fact that the same kinds of words are used in all Bills and reports on the issue. Because these words and phrases are essentially words of degree - that is, they were designed not to have a fixed meaning but to convey a spectrum or continuum of meaning within the parameters of the ordinary meaning of the words - they would be resistant to definition but would rather require description - using other words of similar meaning which would then be susceptible to criticism as being vague[17]. This would complicate the Bill to no sound end.

- When the Bill was debated in the Legislative Council, the Opposition moved to amend the definition to add 'the substantial mismanagement of public resources'. This was agreed by the Government. It was thought that the Bill covered this conduct in any event, but there could be no objection to spelling it out in this way.

The next problem was the question of disclosure to whom? The first question was whether protection should be restricted to disclosure via 'the proper channels' or whether and if so in what circumstances the whistleblower could go to the media. This forced us back to the basic rationale for the legislation. The reasoning went as follows.

If the Bill makes it too hard for whistleblowers to obtain the protection that it offers, then they will ignore it and

take the risk of reprisals as they do at the moment. That would not be a good result both because the martyrdom of the whistleblower obscures the truth or otherwise of his or her allegation - and that is the heart of the matter - and because one of the points of legislating is to try to offer encouragement for whistleblowers to do the right thing and go to a responsible authority if that is the reasonable thing to do in the circumstances. Equally, on the other hand, if the legislation makes it too easy to obtain the protection in the sense of sensational allegations in the media, it would have a tendency to undermine the integrity of government and the justifiable need for a politically neutral and impartial public service to keep some matters confidential while serving the government of the day; or alternatively, undermine the integrity and corporate ethos of a private sector employer and put at risk justifiable commercial and industrial confidentiality.

Setting that balance is not an easy task. But stating the matter in that way led us to reject the position taken by the Gibbs Committee and the New South Wales Bills that protection was conditional on disclosure via an official channel. We agreed with the Queensland and Western Australian recommendations on this. There was another reason for that. Common law contains a vague and ill-defined public interest exception to certain kinds of legal action in relation to the unauthorised disclosure of information, known as the 'iniquity' rule[18]. There is some authority on it and it is inconclusive[19]. But the point for present purposes is that there is an argument that it might allow for a defence in some cases in which the whistleblower goes beyond the proper channels. The last thing that we intended to do was to restrict existing rights. So we decided to put a non-derogation clause in the Act to say that[20] - and we decided that we had to allow a certain going outside the authorities. This also entailed the very significant advantage that, as we shall see, we did not have to list every single appropriate authority for every single possible eventuality.

The course we have adopted in the Act is to say that in order to get the protection, one had to disclose to a person 'to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure.'[21]. I submit that it is hard to quarrel with that. Then we deemed disclosure to an appropriate authority to be reasonable and appropriate. Then we listed what we thought to be the main ones. We thought that a Minister of the Crown was always appropriate. In relation to illegal activity - the police. In relation to the police - the Police Complainants Authority. In relation to fiddling public funds - the Auditor-General. In relation to public employees - the Commissioner of Public Employment. In relation to a judge - the Chief Justice. In relation to public officers not police or judges - the Ombudsman. And in any event, a responsible officer of the relevant government unit. And so on[22]. Because of the decision we had made, we did not face the unenviable task of specifying who is right when the disclosure is about the Chief Justice, or the Ombudsman, or the Auditor-General (for example)[23].

Once we had made it clear in the drafting that the system was that you could go to anyone if that was the reasonable and appropriate thing to do in the circumstances, there was little agitation expressed about the appropriate authorities list. There are, however, three brief points to make about it.

- There was some pressure to make MPs 'appropriate authorities'[24]. We could not agree to this. The Bill enacts a very powerful weapon indeed, once a disclosure falls within its scope. It provides very complete protection against all legal action. It follows that it potentially protects the leakage of confidential information from all levels of the public service. If a Member of Parliament was, as

such, an 'appropriate authority' in terms of the Bill, then any member of the public service could with impunity leak information to any Member. This would seriously compromise the integrity of any Government.

- The Commissioner of Police made the point that the Anti-Corruption Branch of the Policy Force should be an appropriate authority in relation to allegations of corruption and the like. We considered this very carefully. Our response in the end was to say that the reason was that the ACB was to act as a clearing house for information of this kind, and that it would be better to write this role into the legislation directly. Even so, we had to amend the Bill in the Legislative Council to make sure that this role did not conflict with the jurisdiction and role of the Police Complaints Authority.

- It was put to us that there may well be new 'appropriate authorities' created in the future. The most obvious example was the announced policy of the Government to introduce legislation to set up an Environment Protection Authority. Clearly, the EPA would be the appropriate authority in relation to at least environmental matters. That is why we amended the legislation to give a regulation making power to add and delete appropriate authorities.

The third building block was the hardest one. In general terms, how do you define a genuine whistleblower? The leads one to consider, also, for example, the research and anecdotal evidence on the nature of whistleblowers themselves. Who are we dealing with here? What kind of behaviour and motivation is involved? De Maria, summarising the available research, distinguishes between whistleblowers, informants, perpetual complainants, and activist groups. De Maria continues:

'All participants appear to define wrong-doing in their own moral terms, usually as a breach of some absolute rather than relative ethic, and all want to do something to improve the situation, whatever it is. Beyond these matters there appear to be big differences. Perpetual complainants express their grievances randomly to any sympathetic ear, their behaviour being cathartic rather than change-oriented. Unlike whistleblowers, informants are usually not bureaucratically contexted in the same setting in which the breaches occur.... Informants and whistleblowers also differ in terms of motive. When the informant discloses a serious breach, he or she could be motivated by a desire for prosecutional immunity. Whistleblowers are usually motivated by a concept a public interest..... An attempted working definition would go something like this. The whistleblower, born of frustration with bureaucratic unresponsiveness, is a lone dissident, usually in a public authority, who observes a practice in the course of work, that is personally judged as wrong in law or ethics. At the risk of reprisal.... the whistleblower plans and executes a media-sensationalised and often clumsy strategy of public disclosure.... The purpose of the disclosure strategy.... seems to be to correct a part of the total, rather than seeking a transformation of the organisation's world view.'[25].

A senior Canadian public servant has also taken the trouble to point out the difference between 'public heroes' - the whistleblower to be admired and protected - and 'vile wretches' - what De Maria would call the perpetual complainants. In the passage which follows, he essentially blames what he sees to be the poor record of the American system on a failure to distinguish between the two:

'One reason for these relatively fruitless results is that compulsive moralists tend to be difficult people, and it has been hard for the special counsel to separate reprisals perceived to be due to

whistleblowing from those due to personality defects that make these employees such a pain in the neck to work with. They 'tend to exhibit a distinctive approach to moral issues and decision-making'. By 'distinctive' it is plain that the authors mean 'at odds with peer group values'. During my career I've run across a few of these compulsive moralists. They grieve everything grievable, appeal every competition they lose, incite other employees to complain, and generally make nuisances of themselves. As a class, they are the ones who deliver 'brown envelopes' to opposition members and to media people'.[26].

The Laframboise piece is also valuable for pointing out a more subtle clash of policy values. Contrary to Laframboise's analysis, some research indicates that true whistleblowers are not neurotics or troublemakers and that they blow the whistle precisely because they are highly committed to the public interest goals of the organisation for which they work. This may be as good a distinction as any between the whistleblower and the perpetual complainant - the difference being that one is committed to the public interest which provides the motivation, and that the other is committed to the private interests of individual morality and self righteousness. But it is simply not possible to accurately reflect the complexities of this behaviour in legislation, even if it was desirable - and even if people did conform to the stereotype rather than, as is normally the case, they exhibit characteristics of many kinds.

This is not the place to enter the lists on the subject of whether or not there are absolute moral values and whether or not moral relativism is an abandonment of principle - but if one accepts that moral and ethical issues commonly consist of shades of grey rather than black and white, then one must also accept that the ethics of whistleblowing will depend very much on the individual case and will have both good and bad effects. If that is so, then legislation can do very little more than sketch the boundaries within which judgement must be made and trust specific application to dispute resolution mechanisms (such as courts and tribunals) set up for the task.

Nevertheless, the perceptions of the behaviour do shape the legislation in subtle ways. The legislation does exhibit a desire to mark out a boundary between the whistleblower and the perpetual complainant. It does so by providing that the victimisation remedy should not be available where a person alleged to fall within the protection of the legislation has had the issues fully aired in some other forum - such as a court or a grievance procedure. This remedy is not intended to allow a person to have two or three bites at the cherry[27].

The issue of genuineness is all the more central because of the possible consequences. For example, Goldring states:

'There is a problem when public servants go to the media: if they do so without good reasons the result could be disastrous. There are unnecessary restrictions on public servants' communication with the media, but when people are revealing corrupt conduct, maladministration or substantial waste they ought to be protected..... However, an unfounded or malicious complaint can do untold harm to the career and personality of officials. The interests must be balanced.'[28].

Easier said than done. We started with a position which was, on reflection, not coherent and showed how hard the problem was and our own confusions about it. A major part of the problem was that we had genuineness in three places. First, the whistleblower had to genuinely believe that the information was true - in order to be a 'whistleblower' for protection purposes. Second, we had a defence to a victimisation allegation if 'the disclosure

is false or not made or intended in good faith'. Third, we had a criminal offence of making a false allegation knowing it to be false and misleading.

Consultation quickly revealed that this did not hang together, and that we had to rethink it all. The first thing was that no-one approved of the defence to an action for victimisation - so we took it out. The second matter was that we had to keep an offence to deal with what might loosely be described as malicious complaints. Now, we decided that, for these purposes at least, if the information was true, then it did not matter if the motivation was malice. So the offence should be concerned with disclosures of false information. Next, we appreciated the concern that some had shown about the uncertainty inherent in the word 'misleading'. It is one thing to tolerate a degree of uncertainty in dealing with discretionary remedies - but the criminal law should be as certain as possible. False should stay - misleading should go. That left us with an offence that covered a disclosure of information that is false knowing, or being reckless about, the fact that it is false.

Respondents to the consultation process were not happy with the requirement that the whistleblower genuinely believe that the information is true. There were two reasons for this. The first was that, as a general proposition, many were concerned that it catered too much for a person who was very credulous and/or self-deluding, and, further, that a person could genuinely believe that the information was true - thus attracting the protection - and still be aware of the possibility that it was false - thus also being guilty of the offence.

We started from the proposition that if the disclosure was true, then there was no need for any further objective test. The objectivity lies in the truth of the disclosure. Further, for example, it does not matter if the disclosure is made in bad faith or for all of the wrong reasons, because the public interest lies in the disclosure of the truth of those defined categories of information[29].

The problem arises in an acute form once one examines what the test should be if the disclosure is false. In that case, we could only say that we preferred reasonable belief to reasonable suspicion. Further, we could not justify a test which was different according to whether the information was true or not. We could not bear to contemplate the metaphysical decisions that would be required and the minute dissection of possible complex information and statements that that would involve.

As it happened, the respondents in consultation preferred the test in the Queensland Bill[30] that there must be a belief on reasonable grounds that the information is true. We agreed for the above reasons and that is the test.[31].

The second point is a little more subtle. The Commissioner for Equal Opportunity commented that the requirement that the person genuinely believe that the information is true created an unfair distinction. The distinction is best put as follows:

'As a matter of fairness it would seem to me that the Act ought to protect the fair-minded and objective person, who is unable to make up his or her own mind about the truth of the allegations, to the same extent as it protects the person who rashly accepts and believes everything he or she hears.'

That seemed right to us. So that went in too. That is why the test of belief on reasonable grounds is supplemented by an alternative as follows:

'..... is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify

its disclosure so that its truth may be investigated.'[32]

That explains, I think, where we came from and where we finished up and why the journey took the course that it did. It will, of course, be necessary for there to be a good public awareness campaign to educate the public about what the legislation says and what it is intended to mean. I look forward to co-operating with all concerned parties to do that. Hence, I hope that this seminar is just a beginning.

Endnotes

1 *Report of a Commission of Inquiry Pursuant to Orders in Council, 1987-1989.*

2 Ontario Law Reform Commission, *Report on Political Activity, Public Comment and Disclosure by Crown Employees* (1986).

3 Review of Commonwealth Criminal Law, *Final Report* (1991).

4 See Electoral and Administrative Review Commission, *Report on Protection of Whistleblowers* (1991).

5 This was a replication of the current state of the argument in Queensland. There is a summary in Legislative Assembly of Queensland, Parliamentary Committee for Electoral and Administrative Review, *Whistleblowers Protection* (1992).

6 See *The Age*, 10 August 1992 for a story on the whistleblowers who exposed fraudulent research.

7 *Report of the Royal Commission Into Commercial Activities of Government and Other Matters* (1992) at 4.7.10.

8 *Equal Opportunity Act 1984*, s 96.

9 Whistleblowers Protection Bill 1993, clause 4(1).

10 There are other isues of detail which cannot be covered in the text. For example, when the definition referred to a person generally, it was not necessary to include a corporate body because of the operation of s 4 of the Acts Interpretation Act, but once we said 'adult person' that may have carried an exclusionary implication. We also agreed with a submission which said that the legislation should apply to information about conduct occurring before the Act came into operation. It does not, of course, apply to disclosures of information made before the Act comes into operation.

11 Whistleblowers Protection Bill clause 11(1)(b).

12 Whistleblowers Protection Bill 1992 clause 9(2).

'For the purposes of this section, conduct is a kind that amounts to maladministration if it involves action or inaction that is:

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory; or

(c) based wholly or partly on improper motives.

13 Whistleblowers Protection Bill 1992 (No.2), clause 11(2).

14 Review of Commonwealth Criminal Law, *Final Report* (1991) at 32.32.

15 *Report of the Royal Commission Into Commercial Activities of Government and Other Matters* (1992) at 4.7.9.

16 Finn, *Official Information: Integrity in Government Project: Interim Report 1* (1991) at 51.

17 A good example is the attempt in New South Wales to define 'maladministration'. That is contained in a note above. The definition is clearly descriptive and indicative - but not more certain.

18 So called after the phrasing in its first real appearance in *Gartside v Outram* (1856) 26 LJ Ch 113 at 144. Gibbs CJ considered the doctrine without enthusiasm in *A v Hayden* (1984) 59 *ALJR* 6. See generally Starke, 'The Protection of Public Service Whistleblowers - Part 1' (1991) 65 *ALJR* 212 at pp 213-210; Stewart and Chesterman, 'Confidential Material' (1992) 14 *Adelaide LR* 1 at pp 14-21.

19 The Queensland EARC found that the common law protection was uncertain, uneven, potentially costly, and it does not protect a person against all of the different forms of overt or subtle retaliation....' See Legislative Assembly of Queensland, Parliamentary Committee for Electoral and Administrative Review, *Whistleblowers Protection* (1992) at 7. The Australian Press Council says that the current law is 'unsatisfactory, ambiguous, time consuming and discouraging.': Australian Press Council, *Submission to EARC On Protection of Whistleblowers* (1991).

20 This is also meant that we had to discourage 'double dipping':

21 *Whistleblowers Protection Act 1993* s 5(2)(b).

22 During debate in the Legislative Council, the Opposition moved to add two new ones: in relation to MPs, presiding officer of the relevant House, and in relation to local government, a responsible officer of that local government authority. Both were eminently sensible additions.

23 This is all done in *Whistleblowers Protection Act 1993* s5(3), (4).

24 The Australian Democrats moved an amendment to the Bill to achieve this. The amendment was defeated.

25 De Maria, 'Queensland Whistleblowing: Sterilising the Lone Crusader' (1992) 27 *AJSI* 248 at pp 252-253.

26 Laframboise, 'Vile Wretches and Public Heroes: the Ethics of Whistleblowing in Government' (1991) 34 *Can Pub Admin* 73 at p 76.

27 *Whistleblowers Protection Act 1993*, s 9(3). As a matter of detail, this issue also arises in the test for victimisation. The test which we settled on says [s 8(1)] that discrimination exists where the action is on the ground, or substantially on the ground, that the person is a whistleblower. 'Substantially' is, of course, subjective - but our view was that this reflected the test that already exists in s6(2) of the Equal Opportunity Act and to require that it be the only reason would make the task of the victim impossible while making it any part of the reason would make the task of the employer impossible.

28 Goldring, 'Blowing the whistle', *Alternative Law Journal*, 1992 at pp 299-300.

29 Finn, *Official Information: Integrity in Government Project: Interim Report 1* (1991) at p 66.

30 And, as it happens, one part of the test recommended by Profesor Finn: see Finn, *Official Information: Integrity in Government Project: Interim Report* (1991), at pp 63, 66-67.

31 *Whistleblowers Protection Act 1993*, s5(2)(a)(i).

32 *Whistleblowers Protection Act 1993*, s5(2)(a)(ii).