

Department of Justice

Whistleblowers Protection Act 2001



Introduction

The Act implements a key commitment of the Bracks Government to promote open, honest and accountable government by:

- ★ encouraging and facilitating the making of disclosures about public misconduct;
- ★ providing the most extensive, up-front protections for whistleblowers in Australia;
- ★ promoting a culture in which potential whistleblowers feel safe to make a disclosure; and
- ★ ensuring that public sector standards are articulated and maintained.



Up-front protections for genuine whistleblowers

- ★ Under the Victorian scheme, the Ombudsman makes the final determination as to whether a disclosure is protected by the Act.
- ★ This provides far greater certainty for whistleblowers than the interstate schemes, as they know up-front whether they are covered by the protections under the Act.
- ★ In the interstate schemes, a person will only be protected from reprisals or detrimental action if a court finds that they have made a public interest disclosure. This may take years to determine.
- ★ The certainty provided by the Victorian Act protects whistleblowers more effectively than the interstate schemes, and is designed to encourage whistleblowers to come forward.



The role of the Ombudsman

- ★ The Victorian scheme also differs from the interstate schemes in relation to the assessment and investigation of disclosures.
- ★ In Victoria, the Ombudsman has a central role in this process. This is important in promoting consistency and clarity within the whistleblowers regime.
- ★ It is also important in terms of accessibility to the scheme. A whistleblower who does not wish to disclose improper conduct to the relevant public body can instead make the disclosure directly to the Ombudsman, who is independent from Government.
- ★ The DOJ experience has been that many potential whistleblowers prefer the added confidentiality and/or anonymity that this option provides.



Links with other complaint mechanisms

- ★ The whistleblowers scheme complements the other complaint mechanisms that exist in Victoria, eg:
 - complaints to the Ombudsman under the *Ombudsman Act 1973*;
 - complaints about alleged criminal conduct directly to the police;
 - departmental processes eg complaints to a manager about a co-worker.
- ★ However, unlike these other options, the whistleblowers scheme gives people disclosing improper conduct the confidence of knowing up-front whether they are protected, and provides greater protections.
- ★ As previously referred to, it also caters for situations where an employee may wish to disclose misconduct by a manager.



Lessons from the scheme - challenges for public bodies

- ★ The Act presents some key challenges for public bodies whose employees are the subject of disclosures.
- ★ In particular, if a public body is asked to investigate a matter by the Ombudsman, it is a challenge to balance the following three factors:
 - (1) the conduct of a fair investigation;
 - (2) support of the whistleblower (whether or not he or she is an employee), unless he or she has chosen to remain anonymous; and
 - (3) support of the person against whom the allegations have been made.
- ★ Balancing these factors can be difficult. However, the process is assisted by the Guidelines developed under the Act, which clearly set out the obligations of public bodies.



The Department of Justice experience

- ★ Seven disclosures have been received by the Department of Justice since the Act commenced.
- ★ Of these:
 - two disclosures were investigated by the Department;
 - two were referred to the Ombudsman for investigation as they were more appropriately dealt with by the Ombudsman than the Department (eg one included allegations against an official of another agency);
 - one resulted in a report titled 'An investigation into the allegations of a conspiracy between members of the then DNRE and of the DOJ to defraud the estate agents guarantee fund' being tabled in Parliament on 1 May 2003;
 - the remaining three did not meet the threshold tests set out in the legislation.



Both of the Departmental investigations resulted in most aspects of the allegations being proven.



Conclusion

- ★ The obvious main benefit of the Act is that inappropriate behaviour is being brought to the attention of employers in the public sector, who can then take appropriate action.
- ★ Much of this behaviour would probably have gone unnoticed if it were not for the Act, as it is appears that the protections contained in the Act have encouraged whistleblowers to come forward.
- ★ The results show that the Act is working effectively to promote open, honest and accountable government by:
 - raising awareness of the importance of, and the Government's commitment to, this objective; and
 - facilitating the investigation of serious public sector wrongdoing and protecting genuine whistleblowers.

