Submission to the Senate Standing Committee on Legal and Constitutional Affairs in relation to the Public Interest Disclosure Bill 2013

1. Introduction and background

1.1 Thank you for the opportunity to present a submission on the Public Interest Disclosure Bill 2013 (the Bill). I do so as the Chairman and Director Operations at STOPline Pty Ltd and based upon more than a decade of experience as a practitioner in the external facilitation of internal organizational whistleblowers and also the investigation of allegations of workplace corruption and misconduct flowing from disclosures; many of which were dealt with under the auspices of the Whistleblowers Protection Act 2001(repealed on 13 February 2013 by the Protected Disclosure Act 2013) and overseen by the Victorian Ombudsman. I was also involved in the extensive "Whistle while they work" project conducted by Dr A J Brown and also a review of the previous whistleblower legislation here in Victoria.

1.2 I have also given evidence on my opinions and experience pertaining to whistleblowing to a NSW parliamentary committee on the Independent Commission against Corruption.

1.3 In the latter decade of my prior 36 year career in policing here in Victoria and as the Commissioner in Western Australia I had responsibility for governance, professional standards and liaison with external oversight bodies. I was also on the Board of Crimestoppers in Victoria and introduced that particular crime orientated whistleblower program to WA.

1.4 Since establishment in 2001 STOPline has provided an external hotline service for use by internal whistleblowers in both the public and private sectors. Over that time we have assisted clients including Commonwealth and State entities as well as Local government Councils in various States to address disclosures lodged by internal whistleblowers.

1.5 We provide the same service to private sector clients including Telstra, Woodside, Visy, and Toyota. Interestingly, like the Commonwealth, the private sector is not subject to any form of whistleblower legislation per se. Although like the Commonwealth they are included in the wording or certain other legislation and prescriptive codes of practice focused upon organizational integrity and good governance.

1.6 It should be emphasized that the utilization of our type of service is not a form of abrogation of corporate responsibility and accountability in respect to allegations of misconduct, as the disclosure reports taken are referred to nominated parties within the employing body. (See attachment)

2. Interpretation of Clause 36

2.1 Based on the above background and experience I searched the Bill in an effort to determine whether there is allowance for the appointment of an external service provider to be authorized to receive disclosures on behalf of Commonwealth agencies. I identified clause 36 - Meaning of *authorized officer* as the relevant area

and after consideration concluded that the Bill as presented does not allow providers such as ourselves, or any other external party, to be so authorized. Therefore there is no scope for the provision of an external conduit to accept and present disclosures from internal sources.

2.2 It is my submission that this stance is at odds with some existing legislation, the requirements of certain existing codes of conduct applicable to the public sector and finally, available research and anecdotal evidence regarding staff attitudes to the facilitation of workplace whistle blowing and the management of disclosures.

3. Existing Legislation

3.1 Commonwealth legislation which does provide for the inclusion of formally appointed third parties to receive disclosures is as follows:

- Corporations Act 2001 - Section 1317AA 1 (b) (iv)

  "the disclosure is made to:….a person authorised by the company to receive disclosures of that kind;…"

- Banking Act 1959 - Section 52A (2) (a) (iv)

  "a person authorised by the body corporate to receive disclosures of the kind made:"

- Insurance Act 1973 - Section 38A (2) (a) (iv)

  "a person authorised by the body corporate to receive disclosures of the kind made:"

- Life Insurance Act 1995 - Section 156A (2) (a) (v)

  "a person authorised by the life company to receive disclosures of the kind made:"

- Superannuation Industry (Supervision) Act 1993- Section 336A (2) (a) (iv)

  "a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of the kind made."

4. Standards Australia – Good governance principles

4.1 In 2003 a suite of standards (Numbers AS 8001 to 8004) pertaining to good governance was promulgated by Standards Australia. Those requirements are applicable to public and private companies, and also Government entities with governing boards.

4.2 Australian Standards 8001- 'Fraud and corruption control' and 8004 - 'Whistleblower protection programs for entities' each provide for reporting unethical or illegal behaviour through;

(a) normal reporting channels
(b) outside the normal reporting channels but within the entity; and
(c) through reporting channels external to the entity

4.3 In spite of the above, and other prescribed standards requirements, in a Griffith University three year study of 175 federal, state and local government agencies across Australia only five agencies had existing programs that rated reasonably strong against the basic Australian Standards for whistleblower protection.

5. Research findings and related commentary

5.1 In 'Whistleblowing in the Australian Public Sector' 2008– edited by Dr AJ Brown (Based upon a three year survey of 6 Universities and 118 public agencies involving 7763 public officials) the research found that 29% of respondents who had observed 'very or extremely serious' wrongdoing had not reported it.

5.2 Brown reported that the main reason for non-reporting was;

- a belief that no action would be taken,
- fear of reprisals,
- or that management would not protect them from reprisals (especially where the perceived wrongdoers include managers).

5.3 The current bill provides no capacity for agencies of any size to engage a third party provider and thereby enhance the perceived, and in the author's experience actual levels of confidentiality, impartiality and independence of the reporting process to internal senior management is not provided.

5.4 The experience here at STOPline has also been that staff given the role of "*authorised internal recipient'* in the Bill usually have to handle disclosure management duties as an extraneous appointment, often with little or no experience and/or training. In many contemporary work environments there are also high rates of staff mobility, including in such governance roles. One troublesome result of these issues we encounter regularly in discussion with whistleblowers is the lack of confidentiality accorded to the reported misconduct and the identity of the whistleblower, which of course leads to the workplace attitudes identified in a number of other pieces of research on the topic.

5.5 For example a 2008 "People matter survey" by the Victorian State Services Authority reported:

- over one-quarter of respondents did not have confidence in the procedures and processes for resolving grievances in their organisation; and

- thirty per cent were concerned about the negative consequences of lodging a grievance

5.6 Based on a decade of dealing with whistleblowers and employer organisations, it is the author's contention that those two commonly held fears are greatly assuaged by the capacity of an experienced external interviewer able to inform the

whistleblowers of the independence of themselves and the security of the disclosure reporting process into the employing agency.

5.7 It should also be stated that the STOPline process provides for partial or full anonymity for whistleblowers which is provided for in the Bill. And contrary to negative corporate folklore attributed to the provision of anonymity we have had very few vexatious reports over the years.

5.8 In their advice on establishing adequate organizational whistleblowing procedures, the highly regarded St James Ethics Centre advises that under circumstances where staff confidence in internal systems is lacking or where there an "operational *conflict of interest*" is perceived, which they state can happen where the responsible individual recipient has other duties which "*involve a blurring of lines of responsibility and so on*". This is a point the author has already referred to at paragraph 5.4 above.

6. Conclusion

6.1 It is the author's recommendation that the Senate Committee needs to give consideration to whether or not the Bill should be amended to provide the capacity for Commonwealth public bodies to authorise appropriately experienced and vetted external providers to act as an independent conduit for the receipt of disclosures on their behalf.

6.2 Should you or any member of the Senate Committee require further information or input in regard to the comments and information contained in this submission I would be pleased to oblige.

Yours sincerely,

R (Bob) Falconer APM

Chairman & Director Operations
STOPline Pty Ltd

Attachment: STOPline disclosure model in chart form

ATTACHMENT

The STOPline Process

Protecting your Assets, People & Reputation