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The Hon Mark Dreyfus KC MP
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Submission: Public Interest Disclosures Act, Open letter

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Dear Attorney-General,

I welcome the reform of public sector whistleblowing.

In an increasingly complex world driven by technologies, whistleblowing forms an essential component of the evolution of democracy. Academics have an important role in this process with professors ideally representing professional whistleblowers while junior academics are less obliged.

Australian universities have changed in recent years:

- ◆ Academic values have become effectively replaced by a focus on profitability and income generation largely through foreign students fees
- ◆ Managers without academic credibility can now occupy key academic positions such as provost or dean that used to be traditionally held by top scholars
- ◆ University autonomy appears to be misunderstood by these managers as a carte blanche to act as if they were above the law as multiple recent examples from the Australian higher education sector indicate, and some government officials at least at the state level seem to share this view

Most cases of whistleblowing serve to enforce the law. This, however, at least in Australia does not protect whistleblowers against losing their job at the hands of the perpetrators they have reported because there is no effective legal protection.

Good universities where academic values and principles rule are protectors of democracy, which is under threat worldwide, and they serve national security interests because "one can withstand the invasion of armies; one cannot withstand the invasion of ideas" (V. Hugo), and good universities are the places where human intelligence and morals can be cultivated at times of A.I.

I would like to emphasize the need for especially two urgent improvements of the Australian whistleblowing legislation:

- ◆ The introduction of personal liability of those who fail to protect, act against or systematically target a whistleblower combined with high penalties to function as a strong deterrent
- ◆ The onus needs to be on the institution where a PID (public interest disclosure) has been filed to show that any actions taken that affect a whistleblower AFTER the PID was submitted are NOT reprisals.

However, a revised legislation is unlikely to be effective in the absence of additional improvements outside this legislation:

- ◆ University offices of general counsel currently provide the legal cover for management misconduct. They have become enablers rather than the correctors they ought to be. There need to be effective protections against corrupt lawyers especially in a university setting where truth and integrity form the foundation of all work.
- ◆ ASIC (the Australian Securities and Investments Commission) will speak to university management but appears to have little interest in taking on university cases even when misuse of money is involved.
- ◆ ICAC (the Independent Commission Against Corruption) at least in one state appears to have refused over many years to investigate university cases submitted by academics that affect university core business whereas comparatively trivial financial matters submitted by university management were investigated. If ICAC fails, the responsible Inspector will currently say: "I cannot investigate the merits of the Commission's decisions as to whether to investigate a complaint".
- ◆ Failure of the Ombudsman seems beyond correction in a similar way as existing legislation prohibits its supervisory committee "from investigating a matter related to particular conduct or reconsidering a decision of the Ombudsman to investigate, not investigate, or discontinue an investigation".

Politically motivated and/or orchestrated refusals by these institutions to investigate clearly work against the whistleblower and cannot be in the interest of society:
no investigation -> no evidence -> no case to answer.

This is fatal especially for the function of universities which need to be considered centres of the truth as the perpetrators come out not only unscathed but encouraged to continue to undermine the academic mission of the university with serious consequences including for our students.

Yours sincerely,

signed
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Cc: USAP Council, AAUP Council