

**Submission
No 16**

**INQUIRY INTO PROTECTION OF PUBLIC SECTOR
WHISTLEBLOWER EMPLOYEES**

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Date received: 27/08/2008

Partially Confidential

Submission to: The Committee on the Independent Commission Against Corruption

Protection of public sector whistleblower employees, 2008

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I have made submissions to the Committee now for over a decade. I ought to be entitled to my say as it was in the course of conducting research for the government of the day following allegations made in the NSW Parliament that I became labelled and treated as a whistleblower. My experience, like that of others I am acquainted with through community activities, subsequent public service roles, and in my capacity as an expert witness forensic psychologist leads me to conclude that there is no protection of public sector whistleblower employees. I would welcome the opportunity to give evidence to explain why.

But I am not alone in this. Indeed, no one in NSW who has ever dealt with whistleblower cases has ever reported any demonstration of justice. By that I mean in the common sense that we see every night in TV fiction: *whistleblower is framed, seeks & finds evidence to redeem self and protect community, police are informed, villains exposed and prosecuted, hero acknowledged and reinstated, sometimes with promotion*. I cannot recall a single such incidence in my nearly 40 years in NSW.

Dr Norman Swan, who had produced numerous award winning whistleblowing and bullying exposes, said: *"I will never do a case of scientific fraud ever again. ... And the reason for that is just the failure of institutional responses. ... I'm not going to do another one because I just don't think that the institutions in this country have responded seriously to this."* Williams, R. (2005) *What happens to the Whistleblowers? Science Show, ABC Radio National, 3 September*.

ABC reporter Quentin Dempster wrote about his experience with whistleblowers: *"... the entrenched nature of the police, legal, judicial, political and media cultures operating in a web of self-deception. It is far deadlier than the simple expediencies and lies of politicians in their lust for power: far more degenerate than mere character assassination, insider dealings and bribery of rival corporations; far more insidious than the disinformation run as sensation by ignorant media. ... At the bottom of it is a contempt for the law far lower and more cunningly applied than the usual contempt displayed by orthodox criminals. ... So much for the principle of the separation of powers, which, even under the Westminster parliamentary system, is meant to ensure the absolute independence of the judiciary from the executive. ..."* (Quentin Dempster, *Honest Cops*)

That was merely the ABC. The commercial press has been far more sanguine, with headlines such as.. "Sex offenders working with kids", "managers who sexually harassed an office secretary face the sack amid more shocking revelations about their lewd behaviour". Indeed, private sector investigative journalism has actually brought to light some of the ideology which blocks all well-intentioned legislative reform. A senior lawyer with the Department of Employment and Workplace Relations

to light some of the ideology which blocks all well-intentioned legislative reform. A senior lawyer with the Department of Employment and Workplace Relations Department, Jeremy O'Sullivan, recently revealed some of the motivation behind departments fighting cases to the point where the amounts they spend far exceed the amounts they 'win' in these one-sided contests: "*... to make sure incorrect precedents are not being established, .. Flawed precedents could cost taxpayers hundreds of thousands or millions of dollars when similar decisions were made for thousands of people.*" (Millions lost in fierce legal war on the poor Debra Jopson and Adele Horin December 10, 2007 SMH)

If a government department culture convinced itself that it was saving "hundreds of millions of dollars" it could well resort to all sorts of means to justify such an end. However, their view of "anything that can be done to try to reduce the chances" is invariably toward greater efforts to squash the next whistleblower.

The official complaints bodies such as the Health Care Complaints Commission have not been convincing to the public in their dealing with staff complaints from public hospitals. The legislation allowed complaints to be deflected as mere 'industrial issues' Even the ICAC tried to turn the allegations back on the nurses. (*ICAC blows whistle on nurses By Ruth Pollard and Jonathan Pearlman September 23, 2005*) It wasn't until the media turned up the heat on problems in the Royal North Shore Hospital that the backlash was halted.

Police cases such as *Wheadon v State of NSW* (District Court Judge Cooper 2/2/01) have been cited as demonstrating that even Common Law 'duty of care' remedies were often more favourable to whistleblowers than later legislative solutions.

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