

JOINT STATEMENT WBA & WAG

WHISTLEBLOWERS SAY NO TO THE OMBUDSMAN'S OFFICE

Whistleblowers throughout Australia oppose any transfer of the responsibility for the protection of Queensland whistleblowers to the Office of the Ombudsman.

This transfer was the submission made to the Dr Death Inquiry [Bundaberg Hospital] carried out by the Hon Geoffrey Davies AO completed late last year

'Sending whistleblowers to that Office would be like sending patients to Patel - the statistics would be worse', says solicitor Gordon Harris, President of the Whistleblowers Action Group (WAG) [Point Of Contact – 0419 724 502]

Jean Lennane, President of Whistleblowers Australia (WBA), is equally direct:

'Commissioner Davies gave five deficiencies that caused the problems in Qld Health. The fifth deficiency was the culture of concealment in Government. This Fifth Deficiency was the cause Davies attributed to the reprisals that he found had occurred in that arm of the Public Service. It is the watchdog authorities like the Office of the Ombudsman and the Crime and Misconduct Commission who must accept responsibility for the Fifth Deficiency'.

Whistleblowers have been wary of the Office of Ombudsman in Queensland since 1997. In that year the Office wrote in its Annual Report that it thought that disclosures of mistreatment of public servants was whistleblowing only in a technical sense, not intended by the Whistleblower's Protection Act

The 'Post Office' investigative practices used by the Ombudsman's Office, in forwarding to Chief Executives the disclosures made about the activities of those Chief Executives and their senior executives, have been highlighted in other government inquiries. These failures have led to allegations that this watchdog Office has been ***captured*** by the public authorities that the Office was meant to oversee

Whistleblowers have been especially frustrated by the refusal by the Ombudsman's Office to refer suspected official misconduct to the CJC (now the CMC). This alleged breach of the Criminal Justice Act by the Office of the Ombudsman is at the heart of all concerns that the Office is now the lynchpin of the Government's new strategy for maintaining the Fifth Deficiency in force, despite the findings of Commissioner Davies..

The Ombudsman recommended to Davies that a 'new' system be established where public interest disclosures of maladministration would be required to go to the Ombudsman's Office, while disclosures of official misconduct would go to the CMC.

This **Dual Watchdog Net** sounds reasonable, and the lawyer, Commissioner Davies, recommended this approach. Whistleblowers, however, believe that Davies' Paragraph 6.510 has sold out whistleblowers, consigning them and their disclosures to the control of a partnership with the CMC that will ensconce the culture of concealment within the Government rather than mitigate it. The 'Net' is really a '**Catch 22**', whistleblowers hold.

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Project RAINBOW demonstrated the traps involved in the Dual Watchdog Net idea.

‘RAINBOW’ was the code name given to a Senate Whistleblower from Queensland who had taken legal action against the Queensland Government. The Queensland Government allegedly withheld documents from discovery, and disposed of other documents both after and before litigation was afoot, in circumstances very similar to the Heiner Affair. This document will use the same codeword, ‘RAINBOW’, to refer to the whistleblower.

The CJC found no suspected official misconduct in the Government’s action regarding the treatment of RAINBOW, and refused to investigate what would have been another Heiner type affair (at least with respect to the destruction / disposal of documents wanted for court proceedings). The CJC suggested that the matters may be maladministration and of interest to the Ombudsman’s Office

The Office of Ombudsman found that the maladministration was associated with allegations of official misconduct, and refused to investigate that maladministration. The Office also refused to refer the matters to the CJC/CMC.

The Dual Watchdog idea then did not act to ‘catch’ an investigation of the disclosures. It acted instead as a ‘Catch 22’ for any investigation, so that no investigation occurred. Both the Office of Ombudsman and the CMC knew of each other’s refusal to investigate.

This is a principal demonstration of how the Fifth Deficiency would thrive in the CMC - Ombudsman’s Dual Watchdog Net.

Project RAINBOW was a \$50,000 study on the methods and risks of terminating RAINBOW’s public service employment because of the ‘provocative’ court action RAINBOW had taken. RAINBOW was sent to an alleged ‘gulag’ and terminated. The ‘provocative’ court action was taken at the recommendation of the Senate Select Committee that was inquiring into whistleblower cases in Queensland in 1995.

The Report on Project RAINBOW was only released after the Information Commission was removed from the control of the Office of Ombudsman. This was 8 years after Project RAINBOW was undertaken, and repeats the alleged breaches of Regulation 99 that occurred in the Heiner Affair.

The Heiner Affair remains at the cause of continuing efforts by Government in Queensland to maintain the Fifth Deficiency. That is why whistleblowers nationwide have made the destruction of the Heiner documents a Case of National Significance.

The Government does not view the culture of concealment identified by Commissioner Davies as a deficiency at all, for the culture still holds back investigation of the alleged rape of girls at John Oxley Youth Centre, and the culture worked against RAINBOW.

But it would not have worked as well against RAINBOW without the Catch 22 watchdog operation now being put by the Ombudsman’s Office as the key to a better Queensland.