



WHISTLEBLOWERS ACTION GROUP QUEENSLAND Inc

Post Office Box 859 KENMORE QLD 4069

31 January 2016

Queensland Ombudsman
GPO Box 3314
Brisbane Q 4001

Dear Mr Clarke,

SUBMISSION: REVIEW OF THE PUBLIC INTEREST DISCLOSURE ACT 2010

Outline

1. The **Queensland Whistleblowers Action Group** [QWAG] has more than twenty years now in direct observation of attempts at managing corruption and crime occurring in the public sector. Our particular interest has been in the effectiveness of public interest disclosures in identifying wrongdoing against the public interest, and in the effectiveness of protections afforded to those who make such disclosures, but we have observed much more widely than these strategic interests.
2. Those twenty years of intimate involvement within the mechanisms of this legislation, and of its predecessor legislation, have provided our members with an accumulation of experience and case histories relevant to this review. That accumulation has directed our analyses towards the macro aspects of the legislation rather than the micro features that are also certainly important. Those macro aspects involve both the structure of the legislation in its fundamentals, and the administration of legislation in its existing structure.
3. The patterns observed in the regime of disclosures and protections, we submit, to the need for a fundamental restructure and reform of this legislative and administrative regime. These patterns include:
 - a. The performance of the regime in addressing corruption and crime in the public sector;
 - b. The costs to the public of these performances; and
 - c. The changes in the health of our community in terms of corruption, including changes in the strength of our justice institutions.

The Effectiveness of Responses to Disclosures

4. Three examples below may point to the vulnerability of the current regime to failure in making best use of the information obtained from public interest disclosures:

- a. The disclosures about the monitoring and reporting of fire ant populations;
- b. The disclosures about allocations of water beyond the available supply of water from the source rivers in Queensland for the Murray Darling system; and
- c. The disclosures about the breaches by mining companies of the terms of mining releases relating to the discharge of acid sulphate and other pollutants into Queensland coastal aquifers, our coastal streams, and the ecology of the Great Barrier Reef.

5. Fire Ants. Disclosures made on this developing issue and the implications of those disclosures were ignored by the State Government, and a public advertising program was initiated by the State Government about hunting for the last fire ant. A decade later, the Commonwealth and State Governments committed \$250 million in efforts to contain a problem that is spreading widely and which may have reached irreversible proportions.

6. Water Allocations. Disclosures made here to a State Government watchdog authority by a public officer saw that watchdog immediately inform the agency, which subsequently moved the officer to reduced duties. The Commonwealth and State Governments, fifteen years later, committed \$100 million to buying back allocations for water, which water may never have been available.

7. Pollution from Abandoned Mine Sites. The Queensland Government faced a \$3billion bill for treating abandoned mine sites, so as to control or mitigate the release of pollutants into the coastal streams of Queensland. Those pollutants are spoiling aquifers and surface water resources used by industry and community, and are outpouring into the waters of the Great Barrier Reef, thereby threatening that national asset. The downfall of the coal mining industry and resultant mine closures is posing an exacerbation of this issue nationally of approx. \$18 billion, of which Queensland and New South Wales would have major shares. This may demonstrate that the disclosures of the whistleblower 20 years ago may not have been heeded. Research into whistleblowing, funded and steered by watchdog authorities in 2007, dismissed this whistleblower and the implications of his disclosures as a *'mythic tale'*.

8. Summary. It appears the alleged corruption that may attack the whistleblower who has made the disclosure, may also be able to engulf the production, administrative and/or service functions of agencies, corporations and departments, such as to relieve these organisations from responding to the threats and calamities disclosed. It is submitted that private interest may be dominating the public interest in the functioning of these public sector organisations, so as now to be in steady control of the wrongdoing. The only threat to the wrongdoing and its operation may be the disclosures by the whistleblower and any continuation of those disclosures.

The survival of the whistleblower may be vital to the well-being of the whistleblower and their family. The realisation by the observer of corruption, however, that is emerging after the 20 years since whistleblower protection legislation arrived in Australia and Queensland, may be that the survival of the whistleblower is equally vital to the well-being of the community being inflicted with the wrongdoing.

The Loss of Capability

9. Project managers use the term, 'purple project', to describe projects so heavily driven by political imperatives that the rationale and framework of the discipline of project management do not apply. There

may have been, over the last two decades, a continuation of purple activities and purple activity drivers in the Queensland Public Sector so as to deprive professional practitioners in the public sector of the opportunities to develop and maintain their professional skills. Examples of this deterioration in the skill sets and abilities of professional groups in agencies of the public sector of Queensland allegedly affected by dense purple activities may include:

- a. Water engineering;
- b. Hospital management and medical services; and
- c. The Office of the Director of Public Prosecutions.

10. **Water Engineering & Wivenhoe Dam.** The **Queensland Flood Commission of Inquiry (QFCI)** described in its Interim 2011 and Final 2012 Reports a number of inadequacies that were identified in the preparations for flooding effected by the government, effected by single organisations with responsibilities for flood related functions, and effected by the technical control managers working in support of the operators:

By Government – *an unfortunate hiatus in government oversight* of the preparedness of dams and agency operators for flood events (QFCI, 2012;p604); ***no single agency had overarching responsibility regarding flood mitigation*** (QFCI, 2012; p600); and organisations being ***incapable of agreeing upon their respective roles*** (QFCI, 2011;p50);

By single agencies – using a floodable (access) flood operations centre (QFCI, 2011;p43); adopting communications practices that were in breach of the Flood Manual (QFCI, 2011;p54); failing to provide reports on the annual review of the Flood Manual for a decade, in breach of their agreement (QFCI, 2011;p41); and the Queensland Flood Risk Audit being silent on key flood mitigation issues, including the ability of Seqwater to comply with its flood mitigation manuals in respect of Wivenhoe (QFCI, 2012;p604);

By Technical Control authorities within an agency – the operators were not supported by access to damage curves, the flow equations for releases through the fuse plugs, a hydrodynamic model (one used to exist, but was not updated when a platform changed), or a hydraulic model of the Bremer River (QFCI, 2011; p42); and,

These failings include references to serious shortcomings in internal reporting (audits, reviews), without any 'whistleblower' involvement. The failings also refer to capability loss (the hydrodynamic model that no longer was workable). Other remarks in the QFCI reports indicate that, in 2011, the water engineers were still using software that was developed in the early 1990s. The water engineering professionals also had never conducted training in operating the dam for floods of the size of the 2011 event. This too may prove a \$1billion cost to the government depending on the outcome of a class action.

The public are informed about that set of failures. The failure in water engineering that have yet to be the subject of an inquiry is the operation of Wivenhoe Dam during the drought that preceded the flood. In managing water supplies during the drought, a third of the Dam's water supply may have been wasted by pourings into Moreton Bay. The Queensland Government spent \$8billion approx. in infrastructure directed at overcoming the threat of a complete failure of the water supply at Wivenhoe, while the operations at Wivenhoe may have been wasting a third of its supply.

11. **Management of Hospitals.** The inquiry into the treatment received at Bundaberg Hospital did not address disclosures about medical services in the Bundaberg region going back to the Senate Inquiry into Whistleblowing in the early 1990s. The Bundaberg Inquiry investigated matters at five other hospitals – Hervey Bay, Townsville, Rockhampton, Charters Towers and Prince Charles. Other whistleblowers had made prior disclosures about the treatment regime at many hospitals, including Princess Alexander and Royal Brisbane Hospitals, where one alleged attack on the whistleblower may have been taken by the Health Minister to the Parliament under parliamentary privilege. The Bundaberg Hospital Inquiry may be a summary statement as to just how badly the standards of practising professionals in the public sector need to fall before a response to addressing those failings eventuates.

Other public servants have been disclosing the improper use of selection processes to appoint persons to the Health Department and to other agencies. For the Health Department, these disclosures go back to matters reported in the media involving the head of the Public Service and the appointment of 17 Directors in 1992. ■

■ Allegations of cronyism were reviewed by EARC who criticised the lack of surviving documentation recording the panel's deliberations. ■

■ Against that process of appointing, in the public sector, well intentioned tyros in lieu of experienced professionals, it should not have surprised that an agency caused \$0.5billion in additional government expenditures when the project management of the payroll system for that Department committed basic errors in commissioning the new payroll system. Computerised payroll systems have been operating for decades. That agency was the Health Department. The opening of the new Children's Hospital last year may demonstrate that any loss of capability in managing projects may still not have been addressed.

12. Public Prosecutions & Pauline Hansen, Magistrate Fingleton, and Dr Patel. ■

13. **Summary.** The removal of the whistleblower from an agency that may be dominated by purple activities, may be removing the only force for maintaining professional standards in the operations of that agency. Purple systems cover up the waste, inefficiencies, misconduct and or crime within agencies that may accompany the purple goals and methods. Decades of removing whistleblowers from agencies for disclosing, internally or externally, the errors and wrongdoing being committed and allowed within those purple agencies, may have left the residual professional staff leaderless with respect to standards of practice. Where the purple agency is forced to address certain waste, error and inefficiency, the purple agency may not have the professional skill set to achieve a return to proper professional standards.

The residual skill sets in a purple agency will likely fail the agency, and the public, in the activities of the agency that carry no purple pressures. This is what may have happened in the preparations and planning for major flooding, the outcomes of which may have failed Brisbane in the 2011 Brisbane River flood.

The Measure of Reform

14. There were particular issues that set off the establishment of the 1987-89 Fitzgerald Commission of Inquiry and other justice initiatives about that time. Their purpose was to address important corruption issues in Queensland. One measure as to how anti-corruption programs have or have not succeeded in effectiveness is to evaluate the state of those same issues in Queensland after the twenty years of operation of those initiatives and programs. Four issues with this history are addressed below:

- a. Destruction of Evidence;
- b. Integrity in the Police Force;
- c. Bullying in the Workplace; and
- d. The Separation of Powers.

15. **Destruction of Evidence.** The destruction ordered by the Goss Cabinet of documents sought for foreshadowed legal proceedings was the issue at the beginning of the two decades of purported anti-corruption reform. Such conduct can never be considered as trivial in nature because the rule of law relies on evidence. In 2014, a Judicial Inquiry by Commissioner Carmody found that the action by the 5 March 1990 Goss Cabinet may be in breach of the *Criminal Code 1899* (Qld). This was a position known by authorities since the October 1996 Report by Morris QC and Howard, if not earlier in 1995 in the material presented to the Senate Select Committee on Unresolved Whistleblower Cases. The finding by the Carmody Inquiry ended the claim by watchdog authority in Queensland that there was no wrongdoing because the foreshadowed legal action had not actually been formerly initiated at the time of the decision to destroy the evidence. The Carmody Inquiry formally recognised the well-established precedents in Queensland and Australian Courts, dismissing this rogue argument from the Queensland watchdog.

Significantly for this review, neither the rebadged CMC nor CCC have taken a path different to that of the CJC.

Equally concerning, however, is the common occurrence now in other government agencies of destroying evidence relevant to legal actions that already have been initiated.

It appears that the scope of wrongdoing regarding the destruction of evidence may have broadened. It may now be carried out procedurally at middle levels of agencies rather than as 'a special act' at the highest levels of Government. The defences by government against allegations of destroying evidence may have broadened from rogue legal arguments by watchdog authorities to coercion of entire workforces by the agency. State authorities are now claiming, in defence of the Heiner allegations, that prosecution would not be in the public interest.

16. **Integrity Levels in the Queensland Police Service.** The issue for the Police Service at the beginning of the subject two decades of purported anti-corruption was the treatment of Police Officer Col Dillon, the whistleblower who gave life to the Fitzgerald Inquiry. The Queensland Police Service assigned him to a job reporting to a public servant three levels below Inspector Col Dillon in rank. [REDACTED]

[REDACTED] It may indicate that little may have changed since the whistleblower for the Fitzgerald Inquiry was allegedly found 'guilty' by police authorities for the same 'offence', and 'sentenced' to denigration and oblivion within the Police organisation.

17. **Bullying in the Workplace.** Two decades ago, bullying action was allegedly taken by the Goss administration when it sent 250 approx public servants to gulags, one in George Street and one at the Normandy Fiveways, to stay there to wither until they left the service. Bullying today within the public service has obtained special mention in inquiries into the management of hospitals, into the treatment of children in child services, and into the behaviour of ministerial staff in agencies. The development in bullying of strong concern is its escalation into education, both with respect to teachers and children in the playground, where whistleblower teachers have suffered that same treatment.

18. **The Separation of Powers.** The separation of powers was an issue used to criticise the National Party Government that preceded the 1989 Goss Government. When the Queensland community, from media organisations to QWAG, called for a judicial inquiry into the Queensland judiciary in 2015 over the treatment of Chief Justice Carmody, it was alleged that Queensland's judiciary had become politicised. This too was not denied, but was taken up as the issue to be addressed by the current judiciary. QWAG submits that a politicised judiciary, and worse, a one-sided politicised judiciary, is the antithesis of a state of a jurisdiction where a separation of powers is healthy and where the rule of law is fully respected. As opined in the media, **'... the unrelenting campaign against (Carmody's) appointment indicates there are sections of the judiciary who only agree with the precepts of the separation of powers when it suits them'** (Courier Mail, 26 May 2015)

In 21st century Queensland, aggrieved persons seeking a fair hearing on a matter relating to alleged wrongdoing within government, may be deciding to launch their own legal proceedings or gain a hearing from a court or a lawyer from outside of Queensland. [REDACTED]

[REDACTED] The indicators that this state of affairs was developing may have been visible in the response to the death in custody incident at Palm Island, and in a notable child abuse case where a private prosecution was attempted, but was ruled impermissible to be proceeded with by the Supreme Court, *inter alia*, because the plaintiff did not represent the public interest.

19. **Summary.** From the notable issues, involving allegations of wrongdoing and corruption that may have been alive in Queensland two decades ago, when purported anti-corruption programs, including whistleblower protection, were initiated, little progress may have been made in reducing the extent or the entrenchment of wrongdoing in our public institutions. Clearly, agencies are primarily at fault, potentially also flowing from our unicameral system of government. It is not evident, however, that those administering the anti-corruption programs, including watchdog authorities, the police force or the Office of Prosecutions, may have taken on a sufficient effort in serious contests with purple authorities and corrupted agencies in the public service. Contests as serious as those that have been taken on against non-public sector organisations, such as the bikies (drugs) and the churches (child abuse) have not been repeated in the public sector with the same determination. The pattern to efforts regarding wrongdoing in the public sector may not be more than an 'inquire & forget' approach, the same approach that dominated the administration of Queensland in the years before the Fitzgerald Inquiry, QWAG submits.

A Quantitative Measure

20. QWAG submits that the above comparisons are compelling, but accepts they are qualitative, not quantitative. A quantitative measure of the effectiveness of whistleblower protection programs, however, is available from whistleblower studies undertaken in the early 1990's at the University of Queensland and another study undertaken in the late 2000's by the Griffith University.

QWAG submits that the University of Queensland's study was sound. The prime reason for this rating was that it took a longitudinal study of what happened to the whistleblower over time, including over the time between any first public interest disclosure and any retaliation. On the other hand, QWAG submits, the large volume study conducted by the Griffith University is unsound, inasmuch as it studied the situation of any whistleblower at one point in time (which is called '*a cross-sectional study*'). For example, the latter study refused to include the data from the fire ant disclosure discussed above, because when the fire ant whistleblower contacted the Griffith study, it is alleged, the Griffith researchers refused to include the whistleblower because the whistleblower was no longer a member of the public service – that is, the whistleblower was not part of the study cross section. A whistleblower study that excludes former public servants must, by definition, be unable to provide data on retaliations, because those who suffered retaliations and had left the agency, or those who were retaliated against by termination, are no longer in the public service.

This said, the Griffith study did look at a much smaller group of persons who were whistleblowers, similarly sourced as were the whistleblowers for the University of Queensland study. Those similarities allowed a reasonable proportionality process to be applied in order to upgrade the data from the Griffith study for the omission of persons who were no longer in the public service.

TABLE:COMPARISON OF ACADEMIC STUDIES INTO RETALIATION AGAINST WHISTLEBLOWERS						
Year	Study	Number of Wbers	Number of Agencies	Retaliation Rates	Terminations	Change in Rates
1994	Uni of Qld	102	19	71%	27%	
2008	Griffith	139	15	80%	6%	+9%
2007	Griffith	168(1)	15	83%(1)	27%	+12%(1)
Note: 1. Figures adjusted for the whistleblowers excluded because they were no longer in the Public Service. The basis for adjustment was the 27% termination rate in the UoQ study.						

For the benefit of this review, a comparison of the University of Queensland research results and of the Griffith study adjusted for the cross-sectional flaw is provided in the table below.

The figures appear to show an increase in retaliation rates from 1994 to 2008 of 12%, approximating a 1% increase per year.

The Performance of Watchdog Authorities

21. The bodies responsible for dealing with uncorrected waste, error, misconduct and crime in the Queensland Public Sector, and for the protection of whistleblowers, include the Crime and Corruption Commission, the Ombudsman, the Office of the Information Commissioner, the State Archivist, the Office of Public Service, and the police. The three authorities within Queensland who have had responsibility for whistleblower protection have been the CCC (formerly known as CMC and CJC), the Office of the Public Service and the Ombudsman.

Noteworthy, these other watchdogs are obliged by law to refer all reasonably suspected misconduct matters, including retaliatory actions taken against whistleblowers, to the CCC, least they themselves may be engaging in official misconduct.

QWAG members have observed, reported and received information showing certain practices adopted by the Ombudsman and the CCC have been detrimental to the opportunity for and the chances of whistleblowers being able to gain protection from retaliations. Three practices merit special focus.

22. Referral back to Agencies. This practice started with the whistleblowers who made the disclosures about water allocations, and about the pollutants streaming from non-rehabilitated and abandoned mining sites. Now, 'dobbing in' the whistleblower by the watchdog to the agency against whom the whistleblower has made a disclosure is the standard, normal and usual practice by watchdog authorities. It is estimated that approx. 95% of complaints made to principal watchdog authorities are referred back to agencies, thereby allowing the agency to investigate itself. This dissuades many from taking disclosures to these watchdogs, and accelerates the processes back at the agency for retaliation. Fatally, (if not naively), the practice presumes that the authority itself is dispassionately capable of curing its own ills.

23. Enforcing Standards for these Self-Investigations. QWAG is aware of many examples of investigations carried out by agencies that do not meet a reasonable standard for an investigation into serious matters. The watchdog authorities have shown a disinterest in the flaws and failings with investigations conducted by those agencies, in our combined experience. The result is not surprising, given the practices adopted by principal watchdogs in the conduct of the few investigations undertaken by those watchdogs.

24. Switching Complaints. This is the practice of failing to address the complaint or withdrawal actually made, and addressing in lieu a complaint or referral that has not been made. If the complaint or referral has not been made, then likely the wrongdoing did not occur, and the finding would be expected to be no case to answer. The practice is so rife amongst watchdogs that the Queensland Public Service Act included a clause requiring

the Commission to investigate the complaint actually made. The principal watchdogs in the combined experience of QWAG, have not checked that agencies are addressing the complaint actually made. This observation is not surprising, given the observation of whistleblowers that the principal watchdog authorities may be using the ploy themselves. The response by the CCC to matters referred to the CCC by the Qld Flood Commission of Inquiry may be a case in point, where the matters referred may have been about events and action taken after the flood, but the CCC may have investigated, at the critical element to the allegations referred, events and actions taken during the flood. This may have been, an irrelevancy to the matters actually referred to the CCC, and was a matter that was not the subject of a separate referral.

25. A Systemic Failing. These three practices may constitute a system, operated between watchdogs and the agencies that the watchdog overview, that may undermine the process of the investigation in the fabric of processes for ensuring that corruption and wrongdoing are responded to appropriately. The system may see the perpetrators of any wrongdoing, or those that have been compromised by the wrongdoing, deciding on the reasonableness of the disclosure made and any complaint lodged, using procedures without standards, and without fear of overview. This systemic failing may constitute what is termed **regulatory capture** of the watchdog by its agencies.

26. Practices, Ploys and Plays. Watchdogs have, in the experience of QWAG and its members, engaged in the following practices that may have tended to frustrate the purposes of the legislation pertaining to the protected disclosures made to agencies and watchdogs by honest public service officers:

- a. **Using Rogue legal constructs.** The destruction of the Heiner documents provided leading examples of this practice – documents can be destroyed if the foreshadowed legal proceedings had not been formally initiated; the documents were not official documents because they were stored in boxes, not in departmental files. Another rogue concept is that the wrongdoing was done with supporting legal advice, ignoring the legal rule that ignorance of the law is **not** an excuse for breaching the law. Another was the claim that the wrongdoing was not official misconduct, because everybody knew that the wrongdoing was happening;
- b. **Disposing or destroying evidence;**
- c. **Excusing wrongdoing** by labelling it as ‘technical’ wrongdoing or as ‘good faith’ wrongdoing;
- d. **Refusing to give reasons for decisions**, forcing any appeal to be undertaken without any knowledge of the basis for the decision under appeal;
- e. **Denying the status quo** to remain in place until matters are investigated, or the trick of first adversely changing the circumstances of the whistleblower, and then making a declaration of recognised whistleblowing, such that the ‘status quo’ is regarded to be the adverse circumstance;
- f. **Failing to investigate**, or delaying the investigation until termination is effected, and then terminating the investigation because the member is no longer a public servant;
- g. **Failing to investigate fairly**, say, by appointing a person with a conflict of interest in the matter disclosed to investigate or hear the whistleblowing matter;
- h. **Failing to interview witnesses;**
- i. **Wilful blindness**, shown by, say, formally not referring to the document(s) that contain the evidence of the wrongdoing alleged;
- j. **The refusal to act based on a belief**, say, refusing to accept the evidence of documents based on a stated belief that public servants would never behave in that way;
- k. **The ‘Reading-for-purpose’ claim**, that a watchdog can only read a document for one purpose, and that prevents the watchdog from recognising any other indications raised by that document outside of the purpose for which the document was read.

27. Systemic Corruption of Watchdog authorities in Queensland. While the agency referral may be a demonstration of a systemic failing, a particularly concerning ploy is where a first watchdog refuses to

investigate an allegation because it is in the jurisdiction of a second watchdog, and where the second watchdog refuses to investigate the matter because it is in the jurisdiction of the first watchdog. An example here is the CCC refusing to investigate an allegation because it is maladministration, and the Ombudsman then refusing to investigate the maladministration on the basis that it may be official misconduct. Both watchdogs are simultaneously aware of the position of the other watchdog, and thus can see that the whistleblower's allegations are not investigated by either of them. While the earlier examples of bad practices appear to be misconduct, this set of positions mutually assisting the other to deny any investigation by either watchdog, may constitute a system which facilitates a worse situation. This standoff may be a cooperation, and may thus constitute systemic corruption by both watchdogs, and systemic corruption of both watchdogs, to the complete detriment of the whistleblower concerned. Any cooperation to that purpose may be greatly detrimental to the public interest, and to maintaining public confidence in government.

28. Punitive Transfer. As well as alleged failures in carrying out given responsibilities to protect whistleblowers, watchdogs have failed to address principal issues that have arisen in the lot of whistleblower protection. A first example is the punitive transfer or termination, particularly as drawn up by agencies as part of restructuring.

Restructuring is a valid management process that is driven by proper and comprehensive considerations arising in the operations of the business. The need for restructuring is verifiable repeatedly by properly conducted managerial evaluations. However, all may not be as it seems in all circumstances. The notion of localised, rapidly arising restructures affecting the employment of whistleblowers alone is an area where guidelines ought to limit legitimate restructuring affecting the lot of whistleblowers to the existence of rigorous managerial processes, properly documented and based on verifiable information sets. Restructuring outside of such information sets may be dismissed as an authentic managerial exercise, which may then entitle an inquiry to consider other rationale for the restructuring

29. Summary. The effectiveness of the watchdog authorities, in their responsibility to assist the institutions and administration of Queensland to respond with impact to errors and waste and corruption disclosed to agencies and to the watchdogs by whistleblowers and internal officers (auditors, inspectors and the like), may not be acceptable or even proper conduct because they may have been captured by the agencies whom the watchdogs are required to 'watch'.

Macro Measures

30. Experience has shown to QWAG that the existing watchdog authorities over misconduct, crime and maladministration in Queensland may not be suited to the 'associated' role of protecting whistleblowers.

In every sense, the responsibilities by these watchdogs to respond to crime, corruption and maladministration match the responsibilities held in these areas by the agencies that the watchdogs overview. The watchdogs appear to have succumbed to the same forces of purple behaviours and losses of capabilities that has been alleged about the agencies. Both the agencies and their watchdogs share an involvement in the failure of the public sector to be able to correct purple error, purple misconduct and purple crime within the operations of the government. The only factor appearing to threaten the watchdogs and the agencies are the whistleblowers themselves, and a free press. It is open to suggest, on the back of cases which QWAG is aware of, that the watchdogs appear to be as committed as the agencies to controlling whistleblowers, and their disclosures.

Of these whistleblowers, over 80% suffer retaliations. **This is wholly unacceptable and requires urgent structural remedy in the machinery of government.**

The thing that will most affect this situation appears to be the survival of the whistleblower. While the whistleblower survives in the agency, so does the disclosure, so does the pressure to correct the wrongdoing disclosed. Therefore, QWAG submits that the remedy to ensure the survival of whistleblowers would be best done by a watchdog authority with the sole statutory responsibility aimed at the survival of whistleblowers, namely an independent **Whistleblowers Protection Authority [WPA]** reporting direct to the Parliament.

Such a watchdog would not be embarrassed by the alleged corruption involved in disclosures made by whistleblowers. A WPA could receive the disclosure and pass it onto the relevant authorities, but thereafter would concern itself only with the treatment received by the whistleblower. By ensuring fair treatment and reay correction to unfair treatment, the WPA would contribute significantly to the survival of the whistleblower in the workplace. That survival would maintain pressure upon the agency and its watchdog to address the matters disclosed, and encourage a maintenance of professional standards and skill sets in that agency.

31. **Sword & Shield.** QWAG has termed this policy of a **Whistleblowers Protection Authority** separated from an Ombudsman or a Crime Commission as the '*Sword and Shield*' policy.

Legal Costs

32. On the macro scale, the legislation also needs to be augmented by the following provisions:

- a. Mechanisms similar to the False Claims legislation in the US, where whistleblowers are enabled to Claim a share of moneys saved when disclosing 'false claims' made by managers or suppliers or contractors, or disclosing other causes of monetary and economic losses to government; and
- b. Refer relevant claims for legal expenses, in seeking protections from retaliation, to the agency whose operations have been the subject of disclosures by the whistleblower. This provision is to be triggered once the whistleblower has been able to show to the WPA, on the balance of probabilities, that the whistleblower has experienced one or more changes in their employment, from a list of proscribed changes in their employment, during a period two years after registering an accepted disclosure with the WPA, or otherwise have been adversely affected in their employment during that period.

Conclusion

33. The establishment of a Whistleblower Protection Authority is critical to the survival of whistleblowers within the public service. As well as contributing to the well-being of whistleblowers and their families, the reform will contribute significantly to:

- a. The pressures for agencies and watchdogs to address the wrongdoing disclosed and not allow it to be returned
- b. The maintenance of professional standards and skill sets within the public sector, so that the agencies can respond competently to all matters, whether the matters carry or do not carry purple pressures

G McMAHON
President
31 January 2016