SELECT COMMITTEE ON

PUBLIC INTEREST WHISTLEBLOWING

Submission No:	49
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The Secretary,
Whistleblower Action Group
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15 December, 1993.

The Secretary
Senate Select Committee on Public Interest Whistleblowing
Parliament House
Canberra, ACT 2600

Dear Sir or Madam:

Whistleblower Action Group of Queensland submission to Senate Select Committee into Public interest Whistleblowing

*****

He's a good man, honest, gentle and kind; always helping other.
He played the game. He studied hard, got three degrees.
He trained to develop skills and expertise.
He worked hard for many years to get experience.
An honest employee who in the course of his duty, and in obedience to his moral code, exposed the ineptitude, the inadequacy, the dishonesty, the malpractice he saw in his organisation. He acted in the public interest.

I'm crying for my husband.

For his honesty, for his morals and for his values, he was punished; deskilled, suspended, ostracised and sacked. Everything's upside down: the bad go to the top and the good go to hell.

I'm crying for my children.

They watch their father whom they admire and respect and love. They watched him study hard to get degrees; train hard to get skills; work hard to get somewhere. Then they watched what happened to him.

I'm crying for my husband.

He only did what society taught him to do; excepted of him. To provide for his kids; to do the right; to live an honourable life.

I'm crying for my children.

They watched what happened to their father. They saw him being cast aside - punished as if he were the 'bad guy', and they ask me:
Why study hard to get degrees that are ignored?
Why work hard to get skills we cannot use?
Why get experience only to have it denigrated?
Why bother?

I'm crying for my country.

What has gone wrong? Top executive in government bureaucracies are inept, inadequate, inexperienced, amoral, and practise malpractice.

I'm grieving for my country.

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These emotional words are from the spouse of a whistleblower.

The Queensland Whistleblower Action Group commenced in August 1993. The group escalated because of the work conducted by the Queensland University Research Team headed by Dr Bill De Maria, Mr Tony Keyes, Cyrelle Jan and Tracie Peil-Story.

For the first time whistleblowers from all organisation, from different sides of the fence, from different environments all discovered that they had all one thing in common. Many couldn't understand why they had been attacked, they knew that it related to the issue of an action or stand that they took within their organisation.

In a short period of time, after the relating of experiences and trials that each whistleblower had suffered a very disturbing and frightening imagine started to appear.

The whistleblower was the average person, who had a high standard of values, whose belief has structured the shape of our communities, their thoughts and beliefs in the future for their families.

The whistleblower on showing their organisation the wrongdoings are attacked personally. They reacted instinctively and fight back to such attacks, thus putting themselves in a defensive position on the whistleblowing and at the personal level. The demise of the credibility of the whistleblower had begun.

In every instance that a whistleblower has uncovered a wrongdoing, members within the organisation that purports to protect, casts the first shreds of destruction to the whistleblowers credibility.

Once a whistleblowers credibility is destroyed, the whistleblowing that he exposed is covered up. The whistleblower is by this time appearing to be a paranoid, obsessed and out of touch. In truth, the whistleblower has had all his ideal, beliefs and faith in the system destroyed and the whistleblower is trying to come to terms about his feeling and what has happened.

The whistleblower then goes through a grief period, not unlike the grief that one has when they lose someone close. The grief that the whistleblower feels is based on the betrayal and the death of the system that they knew, respected and lived by.

The following are some resumes of the Queensland Whistleblowers Action Group:-

RESUMES

A.
In the summer semester of 1990-91 I was the unit moderator for a subject taught at the University in Queensland. It is the job of the unit moderator to ensure that students are assessed fairly.

Shortly after the students were advised of their results in this unit I received a number of complaints. Upon investigation I found that:

* the failure rate in the unit was almost 50%;
* not all students had completed the same examination;
* the examination completed by the majority of students differed from what students expected; and

* there had been arbitrary assessment in that some answers had received high marks even though they were unrelated to the questions asked.

I placed this information before the Dean of the School and asked for an investigation. My complaint was dismissed. I then placed it before the School Board where I was accused of being inaccurate. Finally I took it to the University Council who passed the complaint to the Vice-Chancellor to investigate. The Vice-Chancelor upheld the complaint and ordered that students who had failed be allowed to take a new examination.

It took nine months to achieve this outcome. It took a further six months to get the School to write to the students and offer them the new examination. It was another six months before they were allowed to sit it.

After the Vice-Chancellor had upheld my complaint, a new "investigation" of the matter was conducted in the School, without my knowledge. This investigation levelled a number of accusations at me. Subsequently an allegation of non-performance was made against me, with this new "investigation" produced as evidence. I only learned of the accusations made in the new "investigation" because I obtained the document under FOI.

B.

A few days after my husband had received advice from the Vice-Chancellor that his complaint had been upheld, I approached one of the Professors in my husband's School to ask him if he would be a referee for me in a job I wanted to apply for in the School. The Professor told me that I should bear in mind, if I applied, that my husband had gone "over the top" in pursuing his moderator's complaint and that this would not be forgotten.

Subsequently, when I applied for the job, I was not shortlisted although at least one individual less qualified than myself was shortlisted. When I indicated to the Personnel Department that I might wish to appeal, the advertisement for the position was cancelled and it was readvertised in a form which effectively excluded me. When I complained to the Vice-Chancellor that the advertisement had been cancelled because I had indicated that I would appeal, the Personnel Manager and the Dean of the School constructed a false chronology of events to cover up what had been done and the Vice-Chancellor dismissed my complaint, noting that there were "inaccuracies" in my statement. He has refused to detail those inaccuracies. The documents show that I was not inaccurate.

In pursuing my complaint I also blew the whistle on the plagiarism of external study materials in my husband's School. I believe that my knowledge that this plagiarism had been covered up might have been an additional reason for discriminating against me. No action has ever been taken on that matter.

Twelve months later I had reason to appeal on another position where I was not shortlisted. My appeal was upheld, but the advertisement was cancelled and readvertised in a form which effectively excluded me. The same Personnel Manager was involved.

C.

My experience in whistleblowing has involved the reporting of the following incidents to the Criminal Justice Commission:

(a) a Member of a Local Authority who admitted falsifying an account he forwarded to the Council for payment;

(b) a Member of a Local Authority for breaches of the Pecuniary Interest provisions of the Local Government Act;

(c) a CEO for unlawfully and without authority converting annual leave entitlements to sick leave, thereby obtaining substantial financial benefits.

D.
On 3rd January 1991 I was a prison officer at a Queensland Prison. (I was retrenched in August 1991 and the prison was closed in September 1991).

On that day I was on duty in a supervisory capacity when an incident occurred involving a prisoner who had breached the rules. Officers attended the scene of the incident because the officers at the scene had activated the alarm system, which suggested an emergency.

All available officers attended including the Manager of Security, and a First Class Prison Officer.

The First Class Prison Officer was at this prison `under a cloud'. He was on remand to appear before the District Court in Brisbane to answer several counts of assault against a prisoner whilst he was serving in the Brisbane Prison.

At the time I was also the Hon. Sec. of the local branch of the Public Service Union and in the capacity I had made representations to management, on behalf of members, to the effect that the officers`were not happy' that this man should be serving at a Queensland Prison or indeed anywhere else, with serious charges against him unresolved. This fell on deaf ears: "This is a decision of the Director General" we were told.

In addition, this man had reached the final stages in the selection process for promotion.

Shortly after the incident with the prisoner had been resolved, it came to my notice that the prisoner had been severely assaulted by the First Class Prison Officer whilst he was handcuffed with his hands behind his back. At least six other officers in attendance, one of those being the Manager for security who witnessed the whole incident and indeed said to the First Class Prison Officer (paraphrased) "That's enough, that's an assault".

I subsequently received complaints from other officers who had witnessed the incident.

In my capacity as supervisor and union rep. I brought the complaints to my senior management at the prison. The prisoner also made a written complaint about the treatment he had received.

I made a written complaint to management who ignored my report until I wrote to the Director General. Local management then answered my first report. The Director General ignored my report to him until I corresponded with the C.J.C. The D.G. advised the matter had been investigated and resolved. The C.J.C. advised that they were not empowered to investigate Corrective Services or it's employees.

OUTCOME
* The Corrective Services Police investigated the complaint and interviewed the prisoner.
* The prisoner withdrew his complaint.
* The prisoner was charged in the Magistrates Court with "Assaulting an Officer and injuring a prison dog". He pleaded guilty and received an extra prison term.
* The subject First Class Prison Officer appeared before the Promotion Panel, one of whom was the Security Manager who had witnessed the assault, and he was promoted.

I pressed my concerns with the Corrective Services Police who eventually interviewed me my home, nearly twelve months after the incident. I supplied them with statements from officers who had witnessed the incident and names of other officers who were present. To my knowledge, to this day, no other person has been interviewed by police.

E.

I have been employed for the past 15 years with the Queensland Government. My whistleblowing could be defined as complaining, in 1988, of a subordinate based in Queensland who, without permission, was using a government vehicle to travel from his home a considerable distance and return daily, then across a country town for several kilometres to a second job.

I was a District Ranger responsible for the care, protection and development of 16 national and 15 environmental parks, 10 staff, all wildlife matters, volunteers, rural nature conservation, interdepartmental liaison and public communication: a high pressure job. A testimonial dinner held in my honour (June 1990) was attended by some 90 people, including the Minister, several Shire chairmen, the Mayor, existing and former staff, public servants, conservationists, historical society members etc. This would indicate the public considered I had done a good job.

On return from leave (Jan. 1989) I found I had been stripped of all responsibility and my files, maps and vehicle etc were removed. These were given to the person I had complained about. After a few months my role was defined as being responsible for answering the telephone and the public counter. This continued for all of 1989.

Following reorganization of the Department I appealed unsuccessfully against my Acting Supervisor being appointed to the District Ranger position in Queensland. During the appeal, the existence of secret documents was raised three times. One of these official letters was sent from the appointee's private residence and introduced into the appeal. the Appeals Commissioner `directed' the Departmental representative verbally and in writing that the matter of my treatment needed correcting.

The Departmental response to written complaints has consistently been procrastination, evasiveness, avoidance and obvious lies. Material detrimental to me that I had never seen was found on personal files 18 months later. A Departmental apology was issued with a promise the action would not be repeated; further such material was found on personal files within 9 months. There is nothing on file to indicate why I had been treated in this manner.

Freedom of Information was used to search the Department and P.S.M.C. for documents, some of which the Department acknowledged existed, but which now cannot be found. The Departmental Officer handling my request for documents using F.O.I. was helpful but could not find the missing documents. After `all' documents were tabled, I asked for other specific material which was quickly found. A written promise by the Department undertakes to provide any further material should this come to light.

An approach to the P.S.M.C. resulted in my being told they could not assist. An approach to the Ombudsman resulted in my being told to go through the P.S.M.C. grievance procedure (still current).

In June 1990 I was transferred to Brisbane and took up duties as Technical Officer (Wildlife). I felt `isolated' as I was and am still not kept up with Departmental activities, and had to get permission to send any FAX or go out of the office. I was given work to occupy about 25% of my time but eventually earned the written support of my superior to make job applications and to initiate my own work.

In February 1991 I lodged application for upgrading. Enquiring after 6 months, I was told the necessary recommendation (from the senior officer who stripped me of responsibility) would not be forthcoming. The Department has now said officially (1993) that `Departmental procedures were not followed' and have suggested I re-apply (currently delayed due to official grievance hearings).

In my wildlife co-ordinating role I became aware of the unlawful activities of the senior officer who had removed me from my role as District Ranger in Queensland. I was `carpeted' on one occasion for objecting to one such wildlife activity and for which I wrote a memo

recommending that the matter be investigated by the police. Soon after this, my position as T.O. (W) was abolished. I was told I had never been appointed to the position despite my duty statement and the delegation of legal powers to me as T.O.(W). I am not now involved in direct wildlife work.

My health has suffered. In 1991 I lodged a notice with the Worker's Compensation Board for stress. It took the D.E.H. some 12 months to respond formally to this. During this time the W.C.B. sent a disgusting Departmental report (of which I was unaware) containing many lies regarding poor performance etc to a psychiatrist and requested a report on me. Despite my paying for consultations I have been threatened with legal action for non-payment. My first claim was accepted by the Medical Board up until I stopped seeing my doctor because of mounting expenses. A second claim for stress is still current.

F.

I work at a High School in the Queensland Education Department. A student made an allegation against a teacher. I was involved in reporting the incident. Since then I have been harassed by certain members of the staff.

G.

I was appointed as Director of Nursing in 1983 for the second time. My problems began in 1988 with the change of key personnel in the higher hierarchy. In 1988 restrictive policies were imposed by the Hospital Board. Six disciplinary charges were served on me on 9.4.90. I was suspended on 10.5.90, and dismissed on 21.5.90. Four of the disciplinary charges were sustained. I appealed on 3-7.9.90. I endured eight hours of cross examination. A hearing de novo was denied.

An Appeal established that the 1988 policies were specifically designed so that I could be charged in the future as it was deemed by Hospital Board that the ordinary provisions of the Queensland Hospital Act 1936-88 would not be sufficient for that purpose.

Three of the four charges were based on the allegations of a medical officer. The fourth charge alleged harassment of three registered nurses (RNs). In my role as the Director of Nursing and Permanent Head of Nursing Services I had written a letter to the three RNs. They replied in writing that they would not respond to my request. I wrote again requesting problem solving and dialogue. This second letter was deemed to be harassment and the reason given for my dismissal. Under cross examination all three RNs stated that they had not made a verbal or a written complaint of harassment.

The people who imposed the 1988 policies were the same people who imposed the disciplinary charges, and the same people who adjudged me guilt and decided on punishment that effectively ended an otherwise unblemished thirty-year nursing career. I had no recourse to ordinary courts of law under the Queensland Hospital Act 1936-88.

H.

I work in a large educational institution. Several years ago I received a complaint from a young female student who was being molested by a male teacher. I followed the appropriate procedure, getting a female office staff member to take the girl's statement (which included details of a series of incidents, as well as the names of other students and teachers who could corroborate parts of her story).

After the statement was typed and signed I gave it to my superior, telling him that it was the only copy. He read it, indicated to me that the teacher would almost certainly be dismissed, and that he would put the appropriate procedures in train through Head Office.

It became obvious to me when several months of inaction followed, that some type of "cover-up" was under way, and it was necessary to bypass my superior to force a proper

inquiry which revealed that five other students in that same class had been assaulted by the teacher.

The teacher was dismissed and I was subsequently told that my superior had destroyed the statement I had given him and also that the interview panel which had appointed that teacher had known of his "history" in relation to females, but he "had to be employed because he had powerful friends in Head Office".

At about the same time, I further embarrassed my superiors by "blowing the whistle" to the Chief Auditor of our Department in relation to financial mismanagement. As a consequence of my action (and that of another person, who has been forced to take early retirement), there have been two scathing reports by the Auditor-General in relation to the institution where I work. The **third** report should go to Parliament in late October or early November. It will be well worth the $6 it will cost to buy through Goprint. (I will have to regard this report as the "highlight" of my public service career as it is obvious that my actions have caused me to be blacklisted).

In both the above, as well as in other instances, I have found that trying to put things right by going through specified Departmental procedures or reporting directly to the Director General, P.S.M.C. Ombudsman or Human Rights Commission is like some form of wierd bureaucratic un-merry-go-round.

I.
A public sector union official was requested by his employer to act as a scrutineer in a ballot to ensure his employer's interests were protected. The union official discovered prima facie numerous rorted ballots. He refused to accept the result which saw his employer defeated in the ballot. The official wanted the ballots inspected by a proper authority.

At the same time the ballot was under question, the union official was acting on behalf of a union member seeking access to public documents to which the member had a statutory right and over which the member had threatened defamation action against certain people who had maliciously defamed him.

The official negotiated directly with the Chief Executive demanding access to the documents, and his union lodged official breaches of the PSMC Regulations with the Department signed by the official's union General Secretary and Assistant General Secretary.

The union member's solicitor lodged official letters with the Department seeking access to the documents as per his client's statutory rights. The union member was suddenly seconded to special duties. The solicitor officially informed the Department that court proceedings would commence.

The union official confronted the Chief Executive seeking access to the documents and tapes under question. He was refused access stating that the material was safe with Crown Law, and the Department was awaiting legal advice.

Unbeknown to the official, on the same day, the Cabinet, with the knowledge of the Department, was seeking urgent approval from the State Archivist to shred the material. The Archivist had over 100 hours of taped material to inspect to assure herself that they had no legal value to any body or individual and yet she gave her approval to shred in less than one (1) working day on the urgent request of the Cabinet.

A matter of days afterwards the official inadvertently came across information from the Minister's Private Secretary that the material was shredded. He immediately challenged the Private Secretary, saying that he had been given the assurances and that the material was safe, and needed for litigation. The conversation was abruptly terminated without response.

A few days later he was abruptly removed from the case by his union General Secretary on the insistence of the Minister and on the allegation that he had threatened the career of the Minister and her senior Departmental officials. The member was unhappy that the official was removed.

The General Secretary met with the Minister and subsequently phoned the union member to offer him an equivalent position elsewhere in the Department despite his sudden secondment to special duties being declared as having nothing whatsoever to do with the member's agitation over his statutory rights.

The member refused the General Secretary's offer, and unknown to him the documents were secretly shredded one week after the Chief Executive officially communicated with the public servant that she was still awaiting Crown Solicitor's advice which in fact was provided five (5) weeks beforehand.

The media ran the story of the shredding 4 weeks after the secret shredding, and the Minister declared that the documents were shredded because they weren't required.

In the meantime the union official became aware that his employer was not going to get the prima facie rorted ballots checked by a proper body (the Fraud Squad) but was prepared to accept a report from another government body which **never** checked the ballot papers. The union official believed that the ballot papers were going to be shredded on the pretext of an incomplete report, so he went to the Fraud Squad seeking its intervention.

The Fraud Squad secured the ballot papers, and the union official was severely questioned over his actions, by his General Secretary and Assistant General Secretary. Acting on police advice the official did not confirm that it was he who lodged the complaint.

The Fraud Squad involvement was kept from the union Council. The official decided that the governing body had the right to know, so a question was arranged and thereafter he disclosed for the first time the action of his employer to the union's supreme body. A protective motion was moved for the official.

The official had told the General Secretary that the shredding represented a breach of the criminal code, but the General Secretary did not initiate any action with the police to correct the illegal act.

Four weeks after the disclosure to the Council about the Fraud Squad, the official was suddenly sacked (after 6 years with the union). The General Secretary assured the union Executive that it had nothing to do with the official's having involved the Fraud Squad. He was suddenly found to be incompetent.

The official refused to resign, and was sacked on contrived grounds. One false charge was the union official's handling of the shredding case, with the General Secretary declaring that the Minister's (the union member's employer) assertion was sufficient grounds to dismiss him.

The extraordinary dismissal is on-going. It has involved and currently involves the Queensland Cabinet, Australian Senate, Criminal Justice Commission, EARC, and the Cook Commission of Inquiry.

J

I had worked with a superior who was committing theft and fraud for over two years. The dental technician below him started to commit the same offences. Early in the piece I had asked my boss to stop and had reported it to no avail. After the two years I officially reported

the fact that they were carrying out their private work in departmental premises and time and it was stopped (they were rapped over the knuckles). I was then harassed and discriminated against by my boss, and I then lodged an official discrimination complaint against him via the formal grievance procedure. He was asked to acknowledge his wrongdoing and apologise, but he found this unacceptable and resigned.

K

1. I informed on a Permanent Head of a State Government Department to a Commonwealth Government agency over breaches of a Commonwealth Government Statute.

2. I suffered loss of promotion, position, staff, responsibility, and finally my professional career and reputation both within and outside the Government Department. I have to date been able to ward off threats to my salary and my job.

L

My name is Gordon Harris and I was a very proud police officer with 13 years experience. In May 1990, with my partner.....we received a complaint that a senior police officer (a Detective Superintendent) had committed criminal offences in 1983. We investigated the complainant and found the offences of fabricating evidence could be proven in a court of law. We also found evidence that showed that other criminal offences such as perjury, interfering with crown witness, compounding crimes and forgery may have been committed. We did not have the time nor the resources to carry out the investigations into these offences.

The senior police officer was a senior investigator in charge of a squad at the Fitzgerald Inquiry. We further found evidence that offence similar to those described above had been committed in 1988 by persons attached to that squad in the Fitzgerald Inquiry.

We notified a member of the Parliamentary Criminal Justice Committee of our intentions and the actions we proposed to take, we also told him that we believed that we would be attacked and our reputations and careers destroyed. We then commenced summons proceedings against the senior police officer and required him to appear before a court of law. We prepared a report and presented it to the Criminal Justice Commission. In that report we outlined our actions and why we had taken them, we asked for assistance from the CJC to continue the investigations and we further made formal complaints of official misconduct and criminal offences.

Applications to be protected as Whistleblowers was made to the Criminal Justice Commission.

On the summonsing of the senior police officer an investigation was immediately commenced into our investigation. We were told by another very senior police officer (an Assistant Commissioner) that we would be charged if we continued in this investigation into this senior police officer.

The Director of Prosecutions withdrew the charges against this senior police officer and we were publicly attacked. The senior police officer who we summonsed then transferred.....and myself. I was transferred to the Property Section.

We had been asked by the Director of Prosecution to explain why we had summonsed the senior police officer, and we did as requested. The Director did a report to the Attorney General and to the Commissioner of Police. He commended ..... and myself.

The senior police officer retired from the police service and received his full benefits. We later found out that the Minister of Police ordered the Commissioner of Police to get rid of

the senior police officer out of the police service after he had read the Director of Prosecutions report.

Whilst working in the Property Section I became aware that the diaries and notebooks of the senior police officer who we had charged were being held in this section. My duty as a police officer required that I obtained and secured evidence that could lead to the commission of criminal offences. I also went to a criminal law barrister at the private bar and sought advice from him as to my powers as a police officer and would I be acting lawfully if I obtained the diaries and notebooks as further evidence. His advice was the same as my duty dictated.

I then photocopied the diaries and notebooks. I placed the originals in as an exhibit of evidence in Police Headquarters. I gave copies of the photocopies to my solicitor for safekeeping. I also went and saw another senior police officer (whom I trusted) and told him of the diaries and notebooks. I told him that I intended to lawfully expose the cover- up which had taken place.

I then commenced Supreme Court action against the Police Commissioner over the treatment which we had received. I placed the diaries and notebooks before the Supreme Court. My solicitor had gone to Channel 7 and had given them details of my actions. They conducted a series of programs into the CJC for failing to investigate the allegations which we had made in the beginning.

An immediate investigations into the diaries and notebooks was commenced by the CJC and Police Service. The CJC also commenced public hearings into the whereabouts of the diaries and notebooks. They commenced a second investigation into me over allegations made by a former police officer.

In the public hearings about the diaries and notebooks, I took the CJC to the Supreme Court in order to make them give me natural justice and procedural fairness. All I wanted was the right to cross examine and call witnesses. The CJC agreed to this and a "Settlement" was signed by a barrister representing the CJC. In December 1991 we went to CJC headquarters in accordance with our "Settlement". The CJC then imposed other restrictions on our case, the matter was adjourned. I left the CJC hearing very disappointed by their behaviour.

I found out that the CJC had commenced "Secret Hearing" into the second investigation against me by the former police officer. I went to the CJC and again took them to the Supreme Court to obtain natural justice and procedural fairness.

In January 1992, I was summonsed to appear in the Magistrates Court and suspended without pay for 12 months. I was then to find out that the CJC had, after adjourning the public hearings when I had reached the Supreme Court settlement, commended a secret hearing into my taking the diaries and notebooks. That hearing was conducted by the same CJC barrister who had signed the Supreme Court settlement. I was then charged by the Police Service on the instructions of the CJC.

The Police Service hired a private solicitor, Junior Counsel and a Queens Counsel at enormous costs to prosecute me. During the course of the trial, a senior representative of the CJC admitted that there was no person at the CJC that could properly hear my case, yet they allowed two secret hearings to be commenced against me. We further had evidence from another senior police officer who prosecuted me that he had never seen the Director of Prosecutions report. Evidence shows that the CJC and Police Service had copies of the Director's report.

After a three week court trial the Magistrate found me guilty of disobeying the very senior police officer when I re-commenced the investigation into the senior police officer by handing the diaries and notebooks to my solicitor. He also found that I had acted with honesty, integrity and without malice and the matter was trivial. The Magistrate imposed no penalty.

The Director of Prosecution appealed to the Court of Appeal about the penalty that the Magistrate imposed and to cover costs. The Court of Appeal agreed with the Magistrate that I had disobeyed the direction of my very senior police officer and the matter was trivial.

During the course of this matter we had given the court transcripts, court exhibits, original tapes, diaries and notebooks of the 1983 case to Professor Moody of QUT for an independent scientific analysis of the evidence. His analysis which was given to the CJC just after I had been charged was that the senior police officer had fabricated evidence.

In the second secret hearing into me conducted by the CJC into the complaints by the former police officer, we had taken the CJC to the Supreme Court and we were presenting evidence that the CJC had abrogated their Qct and we were producing evidence to support allegations that criminal offences had been committed to protect the reputation of senior officers of the CJC and the Police Service.

The Supreme Court trial for the second secret hearing was to commence in the Supreme Court on 5.6.93. A week earlier the Police Union withdrew funding for my case. I now have evidence that the Police Union was supporting the senior police officer which we had charged. The CJC indicated that they would continue with the hearings into me after the court case, and further that they would be obtaining court costs for the Supreme Court action. Because my funding had been withdrawn I would then be liable for the costs. The CJC would then apply to make me bankrupt. I would then be dismissed from the Police Service.

I was forced into a position where I had to resign from the Police Service. All I had done was believe in what Mr. Fitzgerald said at p.207 of his report. I exposed a senior police officer who had fabricated evidence, then used that fabricated evidence in court to obtain a false conviction. The Police Union estimates that $400,000 was spent defending me. I estimate that the CJC, Police Service and Director of Prosecutions spent $2,000,000 in prosecuting me for what is now recorded as a trivial matter.

M

The Queensland Corrective Services Commission in September 1991 made a decision to close Woodford prison where I was working as a Correctional Counsellor. Almost all of us who worked at the Woodford prison were convinced that that was a manifestly wrong decision.

The Commission's rationale for closing the prison down was that its rehabilitation of prisoners was working, and therefore money could be saved by a closure of one prison. However, we who worked at Woodford prison could see that the so-called rehabilitation programs and courses were not working. We could see prisoners released after serving only a fraction of their sentence, only to return to the society to commit more, and often more serious crimes.

Crime across the board was rising at the rate of 25% per year, and still more criminals were being released before they should have been. At the same time we had record numbers of escapes from our prisons adding to the workload of the already over-burdened police trying to cope with spiralling increase in crime.

In prisons themselves the discipline was breaking down and there was a great increase in prisoner-on-prisoner bashings. It was difficult for the officers to protect the weaker and older prisoners.

All these problems had to be attributed to the Q.C.S.C.'s so-called "reforms". These reforms were constantly being changed, had not been thought through thoroughly, and were implemented without input or consultation with us at the "ground level". Clearly, the

managers of the Q.C.S.C. did not know what they were doing. It was a clear case of incompetence.

When we heard of the decision to close Woodford prison, we decided that something finally had to be done to bring to the attention of the Q.C.S.C. and the local government member (who was also on the parliamentary prison committee) that the "reforms" were not working, and that the closure of the Woodford prison was not in the interest of the people of Queensland.

I wrote a petition (reproduced below) which was signed by almost an entire shift at Woodford prison.

> Crime in Queensland is growing at an alarming rate:
>
> - in just **one** year overall crime of every type has increased by 25%
>
> - armed robberies alone have increased by a staggering 65% in just **one** year.
>
> Much of the rise in crime is due to prisoners being released after only serving a small part of the sentence given by a judge. A judge will sentence a criminal to 4 or 5 years, yet often the criminal will only spend a year or even less in jail. In a recent murder case, the criminal had only served 1/4 of his sentence for assault; released and then almost immediately murdered another man.
>
> Woodford prison has been described as a holiday camp by prisoners. A prison sentence is no longer a deterrent to crime. Food is excellent and if you don't want to work, you don't have to. Some prisoners admit to deliberately committing crime so they can come to prison, especially in winter. Some deliberately come to prison because they enjoy playing football for the prison team.
>
> Criminals know that if they commit numerous crimes, if caught, they will still usually only serve time for one crime. The other crimes will be served at the same time as the one he's been charged with. This gives the criminals **incentive** to commit as many crimes as they can because they will only be sentenced for **one** and so serve only a short sentence.
>
> Dangerous criminals are being let out on one or several days leave soon after coming to jail. Some have not come back after going on leave. Police are risking their lives having to re-capture dangerous escaped prisoners. Some while on leave commit crimes.
>
> This year has seen record number of criminals escape from our jails because of Government's policy of giving prisoners what they want. Coming to jail means sometimes being treated almost like royalty. Free medical and dental care, free psychological care, free legal service. For many prisoners life in jail is much more pleasant than life outside.
>
> In neighbouring N.S.W., when a judge sentences a criminal to six years, he serves six years to a day. There is no early release, no home detention, no parole. A prisoner is treated like a prisoner, not like royalty.
>
> In N.S.W., the prison's head office comprises 20 staff. In Queensland, the Corrective Services Commission comprises over 300 staff, most of them on $40,000 a year-plus salary. In real terms, over the past year, the salary expenditure on **prison** staff has **decreased** by 7%, while the bureaucracy staff in the head office has increased by 50%.
>
> If the Government is serious about saving taxpayers' money, it should sack the fat-cat bureaucrats in the Commission, not close efficient prisons like Woodford.

Woodford is Queensland's most efficient prison. It actually did not spend all of the monies allocated to it last year.

It's the Commission and the Government that are responsible for much of the increase in violent crime, such as murder, rape, assault and burglary by deliberately releasing criminals back into the society well before their release as determined by the judge. The sentence of a judge is almost completely ignored.

Woodford prison and other prisons in Queensland have today fewer prisoners because most of the criminals that should be in prison are roaming the streets busy re-committing the same crimes for which they were released too early by the Commission.

The solution is **not** to close Woodford prison by letting prisoners out before their sentencing dates. Woodford prison must be kept open, criminals must be contained (not allowed to escape) and made to serve their full sentenced time.

The alarming rate of increase in every type of violent crime must be stopped. Already there are too many murderers, rapists, burglars, etc roaming the streets free. Already the police are unable to cope with much of the crime, having neither staff nor time even to investigate many crimes. If the trend continues soon we and our children will not only be unsafe in our streets and playground but in our homes as well. Criminals, because of "sofe on crime" policy and "prisoners as royalty" policy, are becoming more brazen every day.

I admitted to the writing of the above petition and the collecting of signatures. For this action I was sacked by the Q.C.S.C. even though I was going to be made redundant by the closure of Woodford prison anyway.

The Commission sacked me as a retribution for writing the petition and circulating it within the prison because the petition caused it some considerable embarrassment. I was the only one sacked.

By sacking me the Commission did not have to pay me redundancy for terminating my 12-year career with the public service. They also refused to re-employ me even though a similar position was vacant in the town where I live.

****

The above mentioned resumes are a glimpse in time of the life of a whistleblower. Some of the identities and locations have been distorted to protect our whistleblowers.

As publicity grows and word spreads, we have many potential whistleblowers have been approaching the office bearers of our organisation wanting to know how to blow the whistle and survive. Many of these potential whistleblowers will blow the whistle, by blowing the whistle they will find themselves standing beside the soldier who climbed out of the trenches into the burst of gunfire in the horrific battles fought in the First World War. The propaganda, falsities, lies and deceit given to them and to the public of Australia, and the belief which we believed in attest for the casualties suffered by the soldiers and whistleblowers.

SUBMISSIONS

The phenomenon of public interest whistleblowing is not new. Disclosure of wrong-doing, official misconduct or challenging abuse of office have occurred since time immemorial. It is a highly complex issue which brings into play diverse cultural, ethical, legal and political forces and principles which, when mixed, often leaves the messenger isolated, demoralised or destroyed, and the message forgotten.

The fact that whistleblowing is a high risk activity despite the current Federal and State laws does pose the simple but serious question which the Senate Select Committee must consider: **can whistleblowers ever be protected by legislation specially enacted for their benefit?**

If the law is not enforced impartially at whatever level it is required to address an alleged wrong, then what good is it?

Whistleblowing in recent Queensland history (eg the Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct) has predominantly looked at official misconduct in "the public sector". Official misconduct, however, knows no boundaries and it often impinges on the public interest. Invariably wrong-doing spotlighted in the public sector brings political considerations and forces into play. The original disclosure can have a rippling effect on the entire system of government if it involves high level corruption.

In many respects it becomes a power play not of whether corruption exists or not, but more often than not, of pure survival leaving the messenger often open to ridicule, contrived charges or plain reprisal from more powerful forces in "the system." The message becomes deliberately buried under a smokescreen often making the original alleged corrupt act much worse by its deliberate cover-up through either political patronage or intimidation.

"The system" rather than rigourously examining itself for wrong-doing to advance the public interest, moves to protect itself. If a whistleblower finds him/herself reporting on official misconduct at a very high level in the public sector, then he/she is effectively taking on the entire system: the State. It becomes a David and Goliath battle where history shows more often than not, Goliath wins and David is seldom if ever heard of again.

Members of Whistleblowers Action Group (WAG) have individual experiences of whistleblowing with varying degrees of success, with some incidents being dealt with at a departmental level while others involving the Criminal Justice Commission (CJC) or other external "watchdog" bodies, which are so-called "proper authority" to handle such matters.

In general all Queensland whistleblowers have suffered some type of reprisal at the hands of "the system." Few have been greeted or treated as honourably motivated individuals. The more serious the allegation involving high level public officials, the greater the backlash has been, and the less successful the CJC has been as the body to seek out the truth and punish the wrong-doing.

From WAG's perspective, whistleblowers in Queensland do not enjoy the protection from reprisal the community apparently demands. Legislation that currently exists, the Criminal Justice Act 1989, the Police Service Administration Act 1990, and the Public Service Management and Employment Act and Regulations 1988 still leaves whistleblowers vulnerable. A publication put out by the Criminal Justice Commission claims:- 'If you report these matters to the Commission you will not breach your duty to maintain confidentiality or other organisational restriction. **You are protected by law.** Those who report suspected corrupt conduct are protected by law from prosecution for breaching restrictions'.

It is more window dressing than substance when put to the test.

One question that the Senate Select Committee on Public Interest Whistleblowing must consider seriously is: 'What is the good of any legislation in this area which supposedly encourages, legitimises and protects whistleblowers when confronting "the system" over misconduct or alleged misconduct, if those in "the system" who are required to administer such legislation fail to act impartially and honestly for fear of reprisal themselves, or of political consequences'?

In other words, are there sufficient remedies already under common law, and existing laws which would allow whistleblowers who suffer reprisals to seek redress and compensation through our court system.

An issue and probably one of the main issues that the Senate Select Committee would then need to consider was providing adequate resources for such whistleblowers to access the court system. Given the apparent public support for public interest whistleblowing, it would be necessary for the Federal and State Governments to establish a "Whistleblowers Legal Aid Fund" or the ability for a whistleblower to fund his way through the system, be it legal or otherwise as a real sign of support for individuals who undertake the risky and bumpy road of public interest whistleblowing.

To access such funds a whistleblower would need to appear before a specially selected and convened on a needs basis **Whistleblowers Protection Tribunal** to establish a prima facie case that his/her reprisal relates to a public interest whistleblowing incident. The Tribunal should consist of:

* a Supreme Court Judge and/or eminent QC
* a Federal and/or State Industrial Relations Commissioner
* a Human Rights Commissioner
* three whistleblowers selected from the Whistleblowers Action Group.

In Queensland there appears to be great confusion as to whether or not an employee - in particular a public sector one - has a duty to disclose wrong-doing. There was a perception upon the establishment of the Criminal Justice Commission after the Fitzgerald Inquiry that **all** public servants had a duty to "blow the whistle." (See enclosed media release by CJC Chairman Sir Max Bingham QC April 1990).

The Senate Select Committee needs to consider this matter and in doing so restate or reaffirm, if it considers it necessary, the special status and obligations of being "a Crown Employee (Federal or State) working in the public interest." It should state publicly whether there is not a special relationship in such a contract of employment.

WAG asserts that a special relationship does exist in the employment contract of public officials which appears to have been lost sight of as Australia's public administration moves further and faster away from the traditional Westminster model of an independent non-political public service.

Politicisation of the public service appears irreversible throughout Australia, and may inevitably accelerate as the republican debate takes hold in Australia. Queensland has not reversed the politicisation trend since the election of the Goss Government in late 1989 despite claims to the contrary and its pre-1989 election statement of "Return to Westminster."

WAG believes that public servants are required to work in the public interest, administer the laws of the State honestly and impartially while drawing remuneration from the public purse. Public servants must implement Government policy, not thwart it for personal political reasons. However, they cannot, by choice, ignore official misconduct in their workplace because to do so does not advance the interest of their employer: the community. The community pays the piper, it should be able to call the tune of impartiality and honesty in exchange for secure employment.

Equally, any public servant (police included) who blows the whistle is entitled to the full range of protection from the State (against the State if necessary) if it is clearly understood that under his/her contract of employment with the State, that there is an inherent duty to disclose official misconduct in the advance of the public interest. The employer (ie the State) must understand that it is imposing that disclosure duty as well.

If, however, the employer is **not** requiring the duty of disclosure on public servants, then it should be stated publicly, clearly and loudly, so that the community at large knows precisely what standards of conduct are being required of State employees whose remuneration is being got from their taxes.

The current situation is:

THE DUTIES OF AN EMPLOYEE UNDER A CONTRACT OF EMPLOYMENT :

THE DUTY OF DISCLOSURE

The following extract from an industrial relations journal makes the following observation regarding "the duty of disclosure on an employee."

> " Information in employment situations poses a further problem. In contrast to an insurance contract, the contract of employment is not one where the applicant (the prospective employee) is obliged in law to disclose information about himself, and, as stated clearly by Lord Atkin in Bell v Lever 1932, this principle extends to protect the prospective employee who is under no obligation to disclose his past faults. Lord Atkin was satisfied that "to imply such a duty would be a departure from the well established usage of mankind and would be to create obligations entirely outside the normal contemplation of the parties concerned." Senior responsible employees commonly undergo exhaustive interviews however, and where the prospective employer asks specific questions as to health, experience, previous employment records and other personal information, then the employee must answer with care and honesty and a failure to do so may have serious legal consequences.
>
> But what is the position of the employee who fails to disclose information about other employees? Is the employee under a legal obligation to disclose such information? The answer is twofold. First, at common law there is no duty to disclose general information and second, the kind of problems which arise are likely to be dealt with through the machinery of the federal conciliation and arbitration system, as a dispute arising out of a failure to disclose would be an "industrial matter" under the Commonwealth Conciliation and Arbitration Act 1904 (see definition of "industrial matter"in sec 4(b), (h) and (k)).
>
> While there is no general duty at common law to disclose improper conduct of a fellow employee, this proposition collides with the principle that an employee must always advance the best interests of the employer. Accordingly, it seems clear that, say, a general manager will be found wanting if he fails to disclose to the Board of Directors that a senior manager is issuing orders which may result in fraud or other dishonesty and it may be that any employee who is in a supervisory position has an implied duty to disclose information about those employees whom his is supervising. Clearly, it would not be advancing the best interests of the company if a supervisor learned that the employee was an epileptic. Likewise, the senior employee who became aware of a conspiracy to break the law will be caught between his duty of confidentiality and the obligation to advance the best interests of the employer, not that there can be any doubt as to the employee's duty in such a situation."

Sykes & Yerbury "**Labour Law in Australia**" Volume One 1980 "Individual Aspects" Professor E I Sykes states that there are five duties on the employee in a contract of employment:-

> The five duties:
>
> (1) The duty to obey lawful commands;
> (2) Duties to display skill and/or care;
> (3) The duty of fidelity or "good faith";

(4) Duty in regard to relations with fellow-worker;
(5) The duty not to commit misconduct.

The Queensland Attorney-General provided the following answer to State Parliament to a Question on Notice for Tuesday 31/8/93 regarding the duty of public officials to report official misconduct when he/she becomes aware in dealing with "a unit of Public Administration."

The answer was as follows:

> "The Criminal Justice Act 1989 does not impose any general obligations on members of the public or public officials to report conduct that is perceived as, or may be, official misconduct. Section 2.28 of the Act does impose a duty on - the Parliamentary Commissioner for Administrative Investigations ie the Ombudsman; the Principal Officer in a unit of Public Administration (apart from the Commissioner of Police); and any person who constitutes a corporate entity which is a unit of Public Administration to refer to the Complaints Section of the Official Misconduct Division of the Criminal Justice Commission all matters which those person suspect involve, or may involve official misconduct[1].
>
> Section 2.28 also imposes a specific duty on the Commissioner of Police to refer to the Complaints section all complaints of or matters involving suspected misconduct by members of the Police service, whether such complaints and matters arise within or from outside the Police Service.
>
> So far as police are concerned, S.7.2 of the Police Service Administration Act 1990 requires any officer or staff member of the Police Service to report to the Commissioner and to the Complaints Section of the Official Misconduct Division, any conduct of an officer wherever and whenever occurring, and whether the officer whose conduct is in question is on or off duty at the time the conduct occurs.
>
> Regulation 7 of the Public Service Management and Employment Regulations 1988 requires any supervisor of an officer of the public service who becomes aware of any action which might make the officer liable to disciplinary action under the Public Service Management and Employment Act to ensure that the chief executive is made aware of the circumstances.
>
> Unless the public official referred to in the Honourable Member's question falls within one of the categories which I have mentioned, he or she is under no legal obligation to report suspected official misconduct of which he or she may become aware when dealing with a unit of public administration."

This is contrary to the publications being put out by the Criminal Justice Commission and other Units of Public Administration. See Appendix "B" and "C".

The duty of public sector employees within their own contract of employment to disclose official misconduct appears to be deliberately clouded at worst and ambivalent at best. As long as it remains so, it makes "whistleblowing" on real or suspected official misconduct in Queensland a very high risk business with real questions of doubt as to whether the duty of disclosure and not to engage in misconduct inherent in any normal contract of employment really affords any protection whatsoever to the employee-would-be whistleblower when carrying out what he/she may perceive or understand to be a duty rather than a choice.

THERE IS NO ONE WAY TO BLOW THE WHISTLE EFFECTIVELY

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[1] Sections 2.22 and 2.23 of Criminal Justice Act define "Official Misconduct"

The proposed Queensland Whistleblower Protection Bill currently under consideration by the Goss Government[2] requires would-be whistleblowers to report their concerns first of all to "a proper authority." Unless this avenue is gone through, the would-be whistleblower will not receive the protection of the Act.

WAG profoundly disagrees with this restriction on would-be whistleblowers. Each case needs to be judged on its merits firstly, and inevitably by the would-be whistleblower, and secondly by the proper authority. There should be no blanket restriction.

There are circumstances where it would be counterproductive - in the public interest - to keep matters inhouse. Indeed, it is the nature of Government that its workings are usually kept secret, and that would become an even greater imperative if those workings involve official misconduct, if for no other reason than politics.

There are members of WAG who have no confidence in the stated "independence" of the CJC. Those members have found that the CJC rather than supporting them in their efforts, it has effectively used or misused its powers in a political manner rather than impartially and honestly. For such a body to have the confidence of would-be whistleblowers, (and the community at large) it must not only be independent, it must be seen to be independent. Whistleblowers are effectively putting their future into the hand of the CJC when they blow the whistle.

Because of those circumstances and past bitter experience, WAG believes that a would-be whistleblower must be able to use whatever legal means are available in our democratic society so that a remedy is obtained without a reprisal occurring. Such an avenue is the media, and it may need to be the first port of call for the would-be whistleblower. Another avenue may be Parliament.

The protection that society - and Government - has is that no one should be protected for making frivolous or vexatious complaints.

It would be morally wrong for whistleblower legislation to punish any would-be whistleblower because he/she did not follow the restrictive rules laid down by "the system". "The system" is not fail safe. The benefit of the doubt MUST be given to the conscientious would-be whistleblower. There is every likelihood that he/she would have agonised over taking the step for some considerable time, possibly even taken legal advice, before actually reporting what is allegedly or actual misconduct in the workplace. That process, in Australian culture, is torture enough for any individual let alone having the additional concern of suffering reprisal from the legislation itself enacted to protect whistleblowers.

WAG is presently working on its own policies and guidelines to show potential whistleblowers how to blow the whistle and how to protect yourself once you have blown the whistle.

DEMOCRACY - QUEENSLAND STYLE:

Many members have grave doubts about the independence of the CJC. That body receives its funding from Government, its responsible Minister is the State Attorney-General, and it reports to Parliament through an all party Parliamentary Criminal Justice Committee (PCJC) on which the ruling political party has the numbers.

In the Electoral and Administrative Review Commission Report on Protection of Whistleblowers, a draft bill, Appendix "A" was advanced. The bill sought to make the Criminal Justice Commission the proper authority to receive any public interest disclosure from any person. We find this proposition totally and completely unacceptable and untenable.

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[2] See Electoral and Administration Review Commission, Report on Protection of Whistleblowers, 1991, Appemdix A.

Often the nature of whistleblowing is highly political. Would-be whistleblowers are either aware of that before they report a particular incident, or very soon afterwards.

Queensland is serviced by one main daily newspaper **"The Courier-Mail."** Irrespective of that newspaper's assertion that it provides a balanced impartial view, and is entirely free of political influence, only one so-called balanced view is being offered to the Queensland community. If that media outlet is not interested, the would-be whistleblower is going to be severely disadvantaged. Worse, no action has been done by the Government on EARC's review of Government Media Services.

Queensland does not possess an Upper House to provide the long established "checks and balances" inherent in the Westminster system. Queensland has recently introduced a wide-ranging Parliamentary committee system but it is limited by referral processes and dominance by the ruling political party, notwithstanding the opportunity for dissenting reports to Parliament.

Queensland, perhaps more than any other State, has a history of unbridled Executive power. Abuses have occurred under both political sides.

Many whistleblowers have discovered, notwithstanding their loss of faith in "the system" and politicians in general, that the only way their story can get public notice is via MPI's in Parliament under privilege without the fear of writs being served for defamation.

There are certain members in WAG who believe that Queensland needs the reintroduction of an Upper House, with the voting system such as to elect "an independent", so that there is someone of last resort where they can go to get their story on the public record in the public interest, outside of party political considerations.

While it may not be in the capacity of the Senate Select Committee to recommended to the Queensland Government that it reintroduce an Upper House - a referendum would be required - it may be necessary to establish a Senate Standing Committee on Public Interest Whistleblowing with at least one Senator from each State on the Committee so that whistleblowers have an avenue of last resort to get their story on the public record, under oath and privilege, and in the public interest.

Certain citizens will blow the whistle whether they have legislative protection or not. It is in their nature. They see no glamour in the act but something drives them to it both fearful and fearless of the consequences.

Senate Select Committee members, as representative of the community at large in elected positions of authority, have one of two stark choices to make:

(1) It must do something to encourage and protect these people who ultimately risk everything in the public interest. In essence, they must be protected for their own sake because society values them;

or

(2) It must make a bold, unequivocal public statement,because of the enormous risk to health, finances, family and safety on whistleblowers, that no one should blow the whistle in Australia today on corruption and official misconduct because laws will not, and do not offer any real protection, and Australian society doesn't really care.

If the first option is taken then there needs to be a "Hotline". A communication setup in all states that allows the potential whistleblower and the whistleblower access to information on how to blow the whistle properly and how to be protected when he blows the whistle. The problem that most whistleblowers find with this is that if the communications were Government controlled and organised then they wouldn't complain because of reprisal fears. Experience has shown that "Whistleblowers only trust other whistleblowers".

First and foremost whistleblowers are people who need to be accorded the basic respect of valued human beings who have intrinsic worth and who are not a means to an end.

The personhood of each individual is separate to their role and status in which they function. It is a common tactic to subjectively attack the individuals personhood by demeaning and labelling that person as less than nominal, thus marginalising, minimalising and trivialising the problem. In reality the problem needs to be objectively assessed separate to the person, to seek solutions to the identified areas of concern otherwise, it is merely blaming the victim or shooting the messenger.

In all matters concerning whistleblowers the principle of natural justice must prevail. Very often there is plenty of judgement but no justice. Justice is only done when what is due or owed is fairly accorded. It is a fundamental principle of law that "Justice must not only be done but be seen to be done." Another area which must be considered is Natural Justice retrospectively for the whistleblower.

At page 4 of the Parliamentary Committee for Electoral and Administrative Review, Whistleblowers Protection Interim Measures, the Committee states:

> In discussing whether a breach of a contractual duty of confidentiality could sanctioned on public interest grounds, Gibb CJ said as follows:-
>
> "It is clear that a person who owes a duty to maintain confidentiality will not be allowed to escape from his obligations simply because he alleges that crimes have been committed and that it is in the public interest that he should disclose information to them. He bears the burden of establishing the facts upon which he relies to relieve him of the obligations. That seems clear on principle and I have no authority that suggest the contrary."
>
> Thus, in relying on the common law the whistleblower need to be certain of the accuracy of his or her allegations, or else risks the prospects of liability for damages for breach of confidentiality. This need for certainty may inhibit potential whistleblowers dependent on the common law for protection, who whilst genuinely believing in the accuracy of their allegations, lack the resources or ability to establish as a matter of certainty."

The whistleblower realises that when the whistle is blown that they must come up with the facts.

When a whistleblower exposes the wrongdoing, and after the attacks on them, the whistleblower finds themselves without resources and the ability to establish the wrongdoings. This then creates new problems for the whistleblower. The inherent position of the whistleblower worsens. The whistleblower find the odds stacked against them.

Now that the media is starting to run a few stories about the whistleblower who climbed out of the trench to expose wrongdoings and to uphold the belief that all was starting to be clean, a massive problem has emerged for Whistleblower Action Group. Potential whistleblower are seeking direction on what and how to blow the whistle without getting destroyed or caught. The reason the potential whistleblower seeks out the WAG people is because they simply don't trust the organisation they are in to effectively and properly blow the whistle using internal processes. The legislation which is suppose to protect is not working, the reason, because the separation of powers which is part our system is beginning to crumble because of political intrusion.

In Jago v District Court (NSW) (1989, High Court of Australia)Deane J said: "...In truth, of course, the innocent as well as the guilty are accused of crime and the notions of fairness and decency which sustain our society dictate that an accused is presumed to be innocent unless and until he is convicted. For a person who is innocent of wrong doings, the burden involves undeserved mental, social and often financial damage. And that damage will not be

erased by ultimate acquittal. Life may be resumed but the mental, social and financial scars will ordinarily endure."

Many whistleblowers never get the opportunity or forum to place their case on the record, the criminal does. A sad indictment on our society.

Targeting is the method that is often used against the whistleblower, as this document is being prepared, a whistleblower is being targeted, not investigated, but targeted. It is a known fact that a person who knows the whistleblower and who has contacted the whistleblower saying that pressure is being applied by the appropriate authority to have a statement signed which has already been made by the appropriate authority and that the person has not seen. The person wants to know what to do. The person has told the authority that they will not sign the statement, the person was told that they would be subpoenaed to sign the statement.

A very frightening state of affairs in a democratic country. Fear of reprisal and destruction of careers are methods of power and control and thus an abuse of power. Democracy the word comes from Greek Demos - the people and Kratia - cracy (power and strength). The western world is very good at espousing democracy as a preferred form of government but often fails to make sure that its own house is in order. It is an assumption that a person in a democracy can speak freely without fear or favour. Whistleblowers know that this is a myth.

WAG's emphatically states that the proper authorities have a common law and statutory law right to investigate, however there is also common law and statutory law that gives the whistleblower the right to face his accusers and question his bona fides in the matter. As whistleblower many of use have never had full and frank details of their investigation, or why such investigations are taking place. It is becoming a common practise of the proper authorities to create the situation so that evidence used is not a true reflection of the actual situations and when the whistleblower is accused, they have no access to the information used against them.

There is a underlying feeling of desperation within the Australian People. The message that WAG hears very often is that a person who is in the wrong place at the right time inadvertently becomes a whistleblower. They see a wrongdoing and by the simple mentioning of it, they are either required to conform and accept it or blow the whistle. In a Queensland Government Department a dedicated worker found that their were irregularities in timesheets. (Staff claiming overtime and other allowances that they had not performed) The worker brought this irregularity to the attention of the bosses. The worker was directed to conform and accept the practise. The worker couldn't live with this dishonesty and the bosses sensing this placed the worker into a position of menial tasks. The worker suffered because of the ordeal and eventually left the employment. What the worker really exposed was a criminal offence, but that criminal offence was covered up, thus further offences were committed to protect that criminal offence. The dedicated worker has lost faith in the system.

WAG agrees that there needs to be appropriate authorities, legislation, controls and solutions for the whistleblower situations. If no fair, equitable, just or proper system is available for the whistleblower to expose wrongdoings, then it is possible that an industry will go underground, stories and documents will fall of the back of truck. The whistleblower will become a resistance fighter and will at every opportunity supply data to fall of the back of the truck. Such disruptive actions will be damaging and will mean the public will lose faith in the various government departments.

IMPORTANT AREAS FOR CONSIDERATION.

RESEARCH TEAM:

One of the most important aspect to come out of whistleblowing is the urgent need for an independent research and evaluating program that has integrity, honesty and that is without

malice which allows the whistleblower to 'break down' for the first time. The Queensland University Research Team has a very proven record in this area, and as we whistleblowers know was the light at the end of a very dark tunnel. The success of the Queensland University team is because they are independent of Government control and thus trusted by the whistleblower. However like all programs, they need funding to operate. Their research is slowly moving into the Commonwealth and Private sectors. Without funding the whistleblower situation is being put on hold.

COUNSELLING:

There needs to be a counselling service established for whistleblowers, either existing counselling services such as Lifeline and others be geared up and further funded for the whistleblower, or a specialised Whistleblowers Counselling Service be established.

WHISTLEBLOWERS ACTION GROUPS:

Whistleblower Action Groups are beginning to grow in each state. The Groups are voluntary and staffed by dedicated individuals. The Groups need help in the financial, logistical and administration fields to assist the Whistleblower. The Queensland Whistleblowers Action Group is finding that there are many potential whistleblowers out there who are prepared to blow the whistle. It appears that we are at the tip of an iceberg in wrongdoings and corrupt practices.

CONCLUSION:

The Whistleblowers Action Group has attempted in this submissions by its members to place before the Senate a collective view which its members see as solving the problem of whistleblowing. We know that the whistleblowing war is to be fought on the political front, we also know that if we get complete proper whistleblowing legislation that the power in the political arena will be curtailed.

We know that feeling of honest Australian's, because we as whistleblowers wear that hat, we know that many efforts will be made to derail, demoralise and destroy us, but as whistleblower we have already fought our personal battles and won, we have become stronger within ourselves, we will help other whistleblowers, our reputation in society will blossoms, the next battle may be hard, but we will fight it on our ground, that is through the people of Australia. And we will win, not for ourselves, but for all whistleblowers and Australian's. I suppose you could say, we have nothing, but knowledge, the courage and the fortitude which creates the ability to do it.

This submission has been prepared with the terms of reference of the Senate Select Committee into Public Interest Whistleblowing in mind. We found on discussion that we could not work within the parameters as set down within their particular reference as manner area enveloped and cross sections all aspects of Government, Authorities, Statutory bodies and the like. We felt that if we showed the emotional and subjective problems that we faced as whistleblowers, the solution which we believe could protect future whistleblowers, which could protect each whistleblower now, which would restore some faith within our system of government, then we may be on the right track to solving the problem of whistleblowing.

In an open honest system of democratic government whistleblowing should not be needed and should not exist, is something wrong within our system.

Yours sincerely,

Gordon Harris
Secretary