

**SELECT COMMITTEE ON
PUBLIC INTEREST WHISTLEBLOWING**

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WHISTLEBLOWERS ACTION GROUP (QLD) INC: SENATE SELECT COMMITTEE

The 18th May 1990 is a date that my mate and police partner John Reynolds and I will remember for the rest of our days.

Looking back now, it was on that date when we were given three choices, the first choice was to ignore a complaint that a senior officer had committed a criminal offence.

The second choice was to use the evidence from that complaint to better our positions within the police force by exposing to senior police officers the complaint, and to use that information as a golden parachute to advance our police careers.

The third choice was to investigate the complaint and if sufficient evidence was available to charge the senior officer and place him before an open court.

We chose the third choice and effectively destroyed our careers, our future, the future of our families. On that date we sealed our own fate by making a decision which was right in the eyes of the public and the law, but was dreadfully wrong in those who controlled power within our society.

On that date John and myself effectively became whistleblowers, a term which we are slowly coming to grips with. From this experience we learnt that Australian Society has a split personality. We have two cultures, One is out in the sunlight whilst the other exist in dark shadows. One is the Australian way, openly expressed and espoused and based on those adopted values, honesty, integrity, hard work and loyalty. The shadow culture is unwritten, unstated, undiscussed but understood by all who climb to the top of the ladder. It is based on fraud, deceit, lies, rorting the system and the cold blooded utilization of one's mates for one's own personal gain. It is based on protection and blackmail.

When I joined the Whistleblower's Action Group (WAG) I was to find that there were many stories the same as mine, only the department and names had been changed.

A sad fact about our organisation is that some of our members are reluctant to talk openly and publicly to this committee, because they know that they will lose their employment, and suffer many harsh consequences for being honest and for talking to the Senate Select Committee about their personal experiences. I find it an incredible situation, that if one of our members who presently hold a position in a government department talks openly to one of the highest offices in the land that they could lose their right to work, I ask, are we a democracy or are we a corrupt country.

There are many different ideas and opinions from whistleblowers which covers all areas of the terms of reference. The Whistleblower Action

Group will assist the Committee in all possible ways to ensure proper and secure legislation is given to whistleblowers.

(a) what persons and organisations, as subject of whistleblowing, should be covered by the legislation; It is the opinion of the Whistleblower's Action Group, that the legislation should cover the Local, State and Federal Governments and all aspects of Private Enterprise, throughout Australia and its territories. It is common experience that when the Whistleblower blows the whistle within his immediate sphere of work, be it Local, State, Federal or Private Enterprise, that the same universal procedure to discredit him is used against him. It is very common for the Whistleblower Action Group to receive complaints from all the abovementioned organisations. It would be a death blow to any whistleblower to know that his rights as an Australian are being eroded because of where he works. There are many other reasons why we believe such legislation should be covered by the Commonwealth, however we do not have the time to debate those issue here.

(b) the nature of any protection that should be extended to whistleblowers and to the subject of whistleblowing;

Every whistleblower should enjoy the same rights as every Australian Citizen, the rights to be innocent until proven guilty, the right to be able to face your accuser, the right to call and cross examine evidence, the right to question and to investigate, the right to have answers to questions asked, the right to appear in a forum. A very sad fact of whistleblowing in todays society is that as soon as the whistleblower exposes the wrongdoing, he is attacked. Many times the whistleblower is only coming forward to say something is wrong, nothing more than that. Yet, our research show that he is attacked, and many time attacked viciously and without provocation.

When a whistleblower makes a complaint about the wrongdoings in his organisation and register the complaint with the new agency. The new agency should officially log and recorded the complaint. Such register should be a public document. The new agency should then notify the Department of the whistleblowers complaint.

(c) whether a new agency should be created to receive and investigate disclosures and to investigate any discrimination suffered by whistleblowers as a result of those disclosures, or whether an existing Commonwealth agency should have that role.

It is our opinion that a new agency should receive and investigate disclosures and the discrimination suffered by the whistleblower. However such organisation unless extremely careful would quickly fall into the pitfalls that organisations like the Criminal Justice Commission, the National Crime Authority etc, have fallen into. Once a person has registered his complaint, the department concerned must provide full personal details of the whistleblower and full details of the whistleblowing to the new agency and to the whistleblower. In effect the department does an internal investigation and makes public that investigations. If the department refuses to do the investigation then the new agency should be empowered to do such investigation, by whatever means.

The Whistleblowers Action Group can be the new agency. It is beginning to structure itself, it is formulating policies, it is protecting whistleblowers. It is counselling whistleblowers, it is

conducting research, it is discussing legislation, it is becoming a lobby group, it is in the process of looking for funding. It is discussing tactics and strategies with individual whistleblowers to ensure that their cases are being heard. It is investigating for ways to expose the plight of the whistleblower. It is presently working with whistleblower from all levels of government and private enterprise.

Apart from investigation of the allegations by the whistleblower, The Whistleblowers Action Group is using the structured system, ie the Police, the Criminal Justice Commission, The National Crime Authority, Local Government, and Members of State and Federal Parliament, Opposition and Government Members and Ministers of the Executive to have its investigations carried out.

The problem that has arisen is that many of these investigation can be and are selective, are not done, or can be hidden from the public view.

For example:

1. A Special Prosecutor in the Fitzgerald Inquiry found evidence that Police in that inquiry had fabricated evidence to obtain convictions, to this date despite many numerous complaints to the proper authorities no investigations has ever been done.

2. A Supreme Court Judge claimed that perjury was committed at a Commission of Inquiry, when an investigation was conducted and evidence was obtained to show that the Judge's claim may have been true, the investigation police officer was stopped from continuing the investigation, and then evidence contrary to the Judge's claim appeared, the contrary evidence was in direct contrast with the Police Officer's investigation. Senior Police then took over control of the investigation and the police officer was charged and demoted.

3. Allegations that suspected improprieties had been committed by a Supreme Court Judge. No investigations was ever done into the allegations.

4. Evidence that shows a Parliamentary Committee covered up and stifled investigations to achieve desired results. In a dissenting report, Mr Neil Turner said:-

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3. I view the report of the Parliamentary Criminal Justice Committee with concern. I consider that if allegations against former Superintendent Huey are proved the people of Queensland will form a view that there has been a cover up at the highest levels of the administration of justice (the Criminal Justice Commission, the Government and some of the most senior members of the legal profession in Queensland).

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40. Given the wide powers available to the Criminal Justice Commission and the Parliamentary Criminal Justice Committee it is inconceivable that witnesses who appear to be relevant were not interviewed. It is of concern to me when the Parliamentary Criminal Justice Committee adopts

the view that there would be no benefit in interviewing potential witnesses on such a serious matter.

41. CONCLUSION

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A. Release the Report of the Director of Prosecutions.

My reasoning for this statement is that what has been released of the Directors of Prosecutions report in no way represents the whole report. We have seen the most shameful misquoting of this report by people in high places. One can only assume that this has been to protect someone self interest?

The above is a very sad indictment on the guardians of our rights and freedoms. To whom do we now turn to.

5. A complaint was made through a local member of Parliament to the CJC. Those allegations were that a fraud to the value of \$450,000.00 was committed on the people of Queensland. The Proper Authority was asked to investigate. The reply was "The Commission is of the view that his complaint therefore is not worthy of any further investigations".

If it is the opinion of the new agency that a proper investigation is not being done, then it is our belief that a Whistleblowers Protection Tribunal should be set up to call and obtain evidence from the Whistleblower. Once a prima facie case has been established, then the Whistleblowers Protection Tribunal (Whistleblowers Submission Page 15) has the power to issue search warrants and to order an investigation. Such investigation, whether conducted by the new agency or by who ever the Tribunal selects must give a full detailed account of such investigation and such details must be present to the Tribunal in a public forum.

Counselling:

The Whistleblowers Action Group recognised that counselling was one of the most important parts of the whistleblowing process. It is our experience that whistleblowers are people who are devastated by the attack upon them by the very organisations that are suppose to protect them. It is noted that the Whistleblowers Protection Bill has provision for counselling, I would suggest that the Senate Select Committee talk to the Whistleblower Action Group regarding this subject.

Research:

This is the most important part of our organisation. This supplies the independent, no nonsense facts that shows that a large amount of reek rhetoric has been given off in the past for the populace to digest. The funding for the Queensland Whistleblowers Study at the University of Queensland has finished. We are presently looking for funding for further research. It is interesting to note that in last Saturdays Courier Mail (5/3/94), that a position for a Manager has been established at the Criminal Justice Commission for their Whistleblowers Support Program. The CJC recognises how important it

is to conduct research, and how valuable that information is. The problem with the CJC research is that it will only be state based.

Protection:

Two types of protection should be offered, personal protection and legal protection. The personal protection should deal with the whistleblower, their personal safety and the safety of their families.

The legal protection of the whistleblower is an absolute must. It is becoming quite clear that in many instances when a whistleblower makes their claim, that a cover-up takes place. That cover-up shows that the corrupt practises go to the highest echelon of Governments. In an incident in Queensland, we have a whistleblower who became fearful of the organisation that was suppose to be protecting her. She found that the true facts of her evidence which would show that a culture of corruption existed was not in Statutory Declarations that she was being asked to sign. That fear caused her to hide in toilets and have people tell the Proper Authority that she was not at home to escape from the pressure. She had made complaints about the culture and told the Proper Authority that she had death threats made against her. The proper Authority did not think it proper to protect her.

She approached her Union for funding for her legal protection, and received this reply: "It is true that this organisation, together with other Unions affiliated with the Australian Council of Trade Unions (Queensland Branch) and the Australian Workers' Union, have sought and obtained Cabinet approval for the financing of legal representatives for members of the two Unions.....This is because members such as yourself are not "at risk" in relation to your present employment and have the assistance of advise and support from the Criminal Justice Commission itself.....Although the Federation is not presently prepared to fund legal representation for you in this matter, I have sought on your behalf that public funding be provided for you by the Department of Family Services. If that is forthcoming, you will be notified immediately."

In correspondence from the Family Services Department: "The Department in its policies and services adopt the view that client interest are of paramount consideration, and this is highlighted in staff training programs. Staff are expected to be loyal to the department in accepting and implementing these policies and procedures."

Have you ever heard of such a situation, she cannot have legal protection, her Union can get funding from the Cabinet to protect those she complained about, but not for her, the Government Department she worked for wants her to be loyal to it, the organisation that wants to be the proper authority for whistleblowers wants her to sign documents that aren't completely true.

She came to the Whistleblowers Action Group and we have been attempting to get her funded so that she can appear with legal representation and give her evidence for her own protection. It appears that the only funding that she can have is through Legal Aid,

and with the criteria they work by it appears that she will be turned away there.

We asked for a legal opinion on the responsibilities of legal representation and protection for our whistleblower, and we find that the Criminal Justice Commission have unrestricted power to provide protection and/or legal representation for whistleblowers.

Experience has shown us that the Commission elects not to exercise its discretion in favour of whistleblowers.

Funding:

If the Senate Select Committee was to accept that the new agency was to be a Whistleblower's Action Group, bearing in mind that each State would have its own independent group, it is suggested that the Agency operating expenses should be by way of legislation be a standing charge on Consolidated Revenue without any further appropriation, in order to ensure financial independence from the Executive Government. Such funding should be reviewed through the Senate on a regular basis.

(d) what powers any investigating body should have;

The powers which are provided within the Whistleblowers Protection Bill for investigations appear adequate. The only submission that appears necessary in this matter, is that the investigation officers keep a detailed record of his investigation and opinions so that such record can be publicly called before the Tribunal and that the investigator and his investigation can be questioned.

(e) the nature of any protection that should be extended to any investigating body and its members;

The provisions of the Whistleblowers Protection Bill appear to cover the protection of any investigative body and its members.

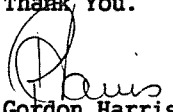
(f) what remedies and penalties should be provided for whistleblowers and the subject of whistleblowing.

We believe that retrospective remedies should be put in place to right the wrongs. Many whistleblowers suffer severe financial losses for their actions. Compensations, ex gratia payments should be considered.

The Whistleblowers Action Group will and is prepared to discuss, debate and advise the Senate Select Committee on its knowledge of Whistleblowing and what it believes should and could be good and proper legislation. We believe that once the Committee has a complete understanding of why whistleblowers react to the operations of the system, then it will understand what whistleblowing is about.

In closing, the Whistleblower Action Group is helping the Whistleblower to peice back his life. The Group is becoming recognised throughout Australia and Overseas for its work. The legislation is only a small part of the whistleblower concerns. I think a scribbled note of one of our whistleblowers says it all "I intend to keep fighting".

Thank You.


Gordon Harris

PHM:C831

10 MAR 1994

March 8, 1994.

Senator J. Newman,
Chair - Senate Select Committee on Whistleblowing,
The Senate,
Parliament House,
CANBERRA, ACT. 2600.

Dear Senator,

It was my privilege to attend, as an observer, some of the public hearings of the Senate Select Committee on Public Interest Whistleblowing in Brisbane today.

I presume to congratulate you on your leadership of the hearings and on your obvious personal empathy with the tragedy of the results, for individuals, of becoming whistleblowers.

At one point of the hearings, you enquired of assembled witnesses in relation to support services, and specifically those from community groups, available to whistleblowers.

I take this opportunity to advise you and your Committee of a commitment made by one Queensland community group to the people and the problems of whistleblowing.

This voluntary-membership Association, funded entirely by its honorary Justice of the Peace Members, is committed to moral and practical support for whistleblowers, at least at this stage within Queensland, through the newly-incorporated Whistleblowers' Action Group (Inc.).

To date, our Association has:-

- (a) Provided and/or committed financial assistance to WAG, primarily through contributions to Phase One completion of the De Maria Whistleblowers' Study, and to maintenance of counselling and administrative support for WAG, in an amount in excess of \$15,000.
- (b) Authorised senior staff of the Association to become Associate Members of WAG (full membership available only to "accredited" whistleblowers) and to act through such Membership with the full authority and approval of the Association.
- (c) Put at the disposal of the WAG Executive all practicable secretarial and administrative support.

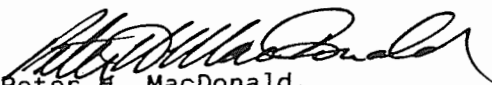
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- (d) Undertaken to act, through WAG and only as requested directly by whistleblowers, on behalf of WAG Members to make disclosures of public interest (the rationale, already endorsed by WAG Members at general meetings, being that our Association will "take the heat" of primary public disclosure in cases where individual whistleblowers fear - with obvious good reason - the personal and career ramifications of being identified in the first instance).
- (e) Agreed to provide WAG Members, as may be necessary from time to time, with access to reliable, professional legal advice/representation (our Association has been instrumental in providing first-level legal advice/representation to the young woman whistleblower at the centre of the current Stewart/Criminal Justice Commission Inquiry into abuse of intellectually-disabled clients of Queensland's Basil Stafford Centre).

We seek no credit for what is a "comfortable" relationship, within the context of Justices of the Peace as statutory community legal officers making a contribution towards whistleblowing as a critical element of an honourable community.

We draw our WAG relationship to your notice merely as an example of the latent support for the search for equity and honour that exists within the Australian society.

Yours faithfully,


Peter H. MacDonald,
ACTING REGISTRAR.