

**Submission
No 58**

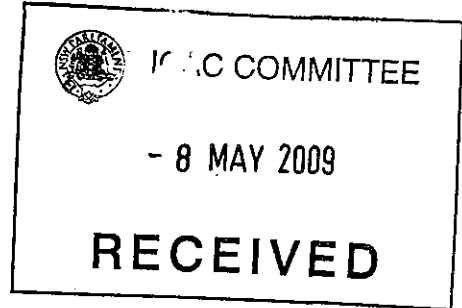
INQUIRY INTO PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES

Organisation: NSW Legislative Assembly
Name: Mr Russell D Grove
Position: Clerk of the Legislative Assembly
Telephone:
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Mr Frank Terenzini MP
Chair
Committee on the Independent
Commission Against Corruption
Legislative Assembly of New South Wales



Dear Chair

Thank you for the opportunity to comment upon the Committee's discussion paper on the "Protection of Public Sector Whistleblower Employees".

This submission from the Department of the Legislative Assembly is in relation to one proposal in the discussion paper, that is proposal 4:

that the Protected Disclosures Act 1994 be amended to make it clear that, additional to public officials, disclosures made by volunteers and interns working in the office of a member of Parliament are eligible for protection.

The current situation in the Legislative Assembly is that the Legislative Assembly does not have a policy on "non-staff persons" working in members offices, and there is no assistance provided to members in the administration or management of volunteers, interns or non staff persons.

The Legislative Assembly advises members not to directly employ staff to assist in their electorate offices. It is onerous to establish themselves as an employer and undertake all the requirements of an employer, for instance arrangements in regard to withhold taxes for income tax purposes, superannuation guarantee payments, workers compensation insurance and the requirements of the Industrial Relations Act 1996 and other legislation. People employed directly by members are not recognised by the Department for the purpose of access to computer network or other facilities and there is no requirement for members to advise the Department of their private employment arrangements.

Interns placed with members through an accredited university program are provided with access to Parliamentary facilities and computer network and the Department request members to advise the Department of such placements.

With 95 offices through the state, the coming and going of volunteers through those offices is remote from Parliament House and the oversight of the Department. There is no requirement for members to advise the Department of the attendance in the office of volunteers. No access to the Parliament's computer network or other official facilities supported by the Department.

The further observations are made in general given that we do not have access to the submissions or information that gives rise to the Committee making this proposal.

1. The Committee's proposed changes to legislation are not required to protect volunteers and interns. Volunteers and interns making disclosures as members of the public have alternate protections available to them under other legislation, as noted in the Discussion paper on page 5 and 6.

2. Special treatment of volunteers and interns in Members of Parliament offices.

The reasons for the special treatment of members of parliament in this proposal compared to other public sector organisations that have volunteer and intern programs would benefit from further clarification and explanation. There are many agencies that formally use volunteers in the delivery of their programs and are integrated into their operations and service delivery, for example volunteers in the Rural Fire Service or in the health and community care sectors. As a group or class of people engaged with the public sector volunteers and interns perhaps need different protections to employees, for example protection against dismissal or disciplinary action as defined in the Act are irrelevant.

3 Impact on Members' administration and volunteer and intern programs.

The proposal will increase the administrative burden on the Parliament and on members and their staff in managing their volunteer and intern programs, which may lead to members ceasing to participate in volunteer or intern programs.

Any increased induction, training or administration required for volunteers and interns would fall to the member or their senior staff to provide at the electorate office.

Members would be advised to take a risk management approach to managing their volunteer and intern programs, especially if other proposals of the Committee are adopted and they become exposed to potential criminal prosecutions and potential civil damages claims.

For instance, members should consider implementing formal enrolment process for volunteers and in cases where members have any behaviour or conduct issues with a volunteer or they wish to terminate a volunteer from their program Members should document the issues and the reasons for terminating the person's volunteer status in case a disclosure is made and the required proof as a defence to prosecution under section 20 of the Protected Disclosures Act such as to meet the onus of proof on the defendant in s20 1A): *In any proceedings for an offence against this section, it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a protected disclosure.*

It would be a concern if in developing a risk management approach and the necessary administrative documentation in the management of their volunteer and intern programs members decided to withdraw from offering places and facilitating the programs rather than meet the more onerous administration and management requirements.

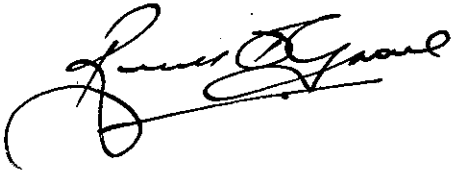
4. Alternative Approaches

There is an alternate approach available for the Parliamentary administration to clarify a separate code of conduct for volunteers and interns rather than apply the members' staff code of conduct. For example the Legislative Assembly has a code of conduct for work experience students (attachment 1).

Secondly, the Legislative Assembly is planning to develop information to support an induction is OH&S and Security in an electorate office, it would be feasible for such a program to also include how volunteers or interns can report any personal grievances and complaints and how these will be dealt with, and how to report suspected corrupt behaviour or maladministration to external investigating authorities and the protections available to them under various other legislation as a member of the public.

Thank you for the opportunity to respond to the Committee's discussion paper.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Russell D Grove', with a large, stylized flourish at the end.

Russell D Grove
Clerk of the Legislative Assembly

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Work Experience - Code of Conduct

Attendance

Work experience students should attend each day for the specified hours as arranged, and must telephone their supervisor if not attending for any reason. In addition students should advise their supervisor when proceeding to lunch and leaving for the day.

Dress and appearance

Work experience students are asked to maintain clean and neat standards of dress and appearance suitable to the workplace.

Personal behaviour

In performing their duties, work experience students should:

- treat Members, staff and the public with courtesy, sensitivity and honesty
- comply with any reasonable directions given by a supervisor and adhere to guidelines concerning the performance of their duties

Use of official resources

Work experience students must not misuse or waste the resources of the Parliament. Equipment should only be used for the purpose of carrying out official duties and waste should be kept to a minimum.

Confidentiality

Work experience students must not discuss information told in confidence by a Member or other Parliamentary employee to anyone else except with the express permission of that Member, or unless it has become public knowledge.

Use of official information

Work experience students must not disclose official information obtained during their time of work experience, except information that is on the public record or where formal approval has been given.

Political participation

Work experience students who are politically active must ensure that their participation in political matters does not impair their ability to serve all Members in a politically neutral manner.



Public comment

Other than in the course of any assigned duties, work experience students should not make public comment relating to the operations of the Parliament.

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