

**INQUIRY INTO PROTECTION OF PUBLIC SECTOR
WHISTLEBLOWER EMPLOYEES**

Organisation:

Name: Suppressed by resolution of the Committee

Telephone:

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Partially Confidential

Response: Issues Paper Protection of Public Sector Whistleblower Employees

Introduction

This response has been prepared in response to the Issues Paper on Protection of Public Sector Whistleblowers Employees. Particular focus will be placed on the **lack of consideration of the "Rights of People Who are the Subject of a Disclosure"**.

Issues

Health issues and reputation damage – person's who are the subject of a disclosure

In reviewing the issues paper it is clearly evident that no consideration has been given to the "Rights of People Who are the Subject of a Disclosure", particularly the impact being falsely accused of corruption has on the accused person's health and professional reputation.

Right to be informed of the substance of the allegations

The issues paper indicates that people who are the subject of a disclosure are not entitled to be informed of the substance of the allegations prior to the commencement of any official investigations.

Right to be given a reasonable opportunity to put their case

The issues paper fails to address this right of the subjects of disclosures to challenge the validity of the disclosure. There seems to be some discussion in relation to the difference between complaining about a disclosure and seeking reprisal action in response to a disclosure.

It should be noted that it is everyone's democratic right to put their case and seek a fair unbiased hearing.

Right to a full review of the disclosure via a formal review appeals process

The issues paper fails to acknowledge the right of the subjects of disclosures to a formal review appeals process. The Ombudsman's office opening states that if staff want a review they need to engage legal representation. The office appears to not take on any responsibility for assisting the subjects of a disclosure to a formal review appeal. In the issues paper it is suggested that if subjects raise any issue regarding the disclosure they are seeking reprisal.

The committee and the Ombudsman's office appear to disregard the provisions of The NSW Ombudsman Protected Disclosure Guidelines (5th edition) Part D: Ensuring the Rights of People who are the Subject of a Disclosure. It should also be noted that staff in the Ombudsman's office fail to draw attention to this section to people who complain regarding the injustice.

Rights of people who are the subject of a false or unsubstantiated disclosure

The issues paper gives no consideration to the rights of people who are the subject of a false or unsubstantiated disclosure, except to make mention of reprisal action if they challenge the disclosure, seek to have the misconduct of the person who made the disclosure addressed etc.

Staff being falsely accused of reprisal action & rights of subjects of false disclosures to seek compensation for damages

The issues paper makes many points regarding the need to prosecute the subjects of a disclosure who seek redress for the damages that may have been done to their reputation, health and financial situation as a result of being falsely accused of corruption or bribery.

The lack of rights afforded to the subjects of an unsubstantiated disclosure breaches the basic principles of natural justice that underpin the Australian legal system. The Australian legal system entitles victims of false allegations or criminal charges the right to seek compensation for damages. This same right should be afforded to people who are the subject of an unsubstantiated, false or vexatious disclosure.

Confidentiality

The issues paper makes reference to the need to protect the confidentiality of the person who makes the disclosure.

Persons who are the subject of a false disclosure should be afforded the right to seek defamation damages if the person who made the disclosure continues to defame the subjects of the disclosure.

The NSW Ombudsman Protected Disclosures Guidelines (5th Edition) Part D: Ensuring the Rights of People who are the subject of a disclosure

This section of the guidelines is seriously lacking and needs to be expanded to ensure greater observance of procedural fairness and the principles of natural justice for those persons who are the subject of a disclosure. There also needs to be more guidance on the support that should be given by an organization to those people who are the subject of a false, unsubstantiated or vexatious disclosure.

Prosecution for person's who makes a willfully false disclosure

There are limited directions for organizations on how they should proceed in prosecuting a person who makes a willfully false disclosure. The Ombudsman openly discourages organizations from taking such action and debates at great length what constitutes willful.