

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

Organisation:

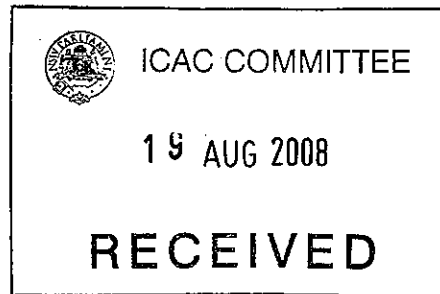
Name: Mr Ben Blackburn

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Partially Confidential

15 August 2008



Mr Ben Blackburn

Mr Frank Terenzini MP for Maitland,
Chairman,
Committee on the Independent Commission Against Corruption,
Parliament House, Macquarie Street,
SYDNEY NSW 2000

Dear Chairman and Committee Members,

I write in relation to the establishment of the inquiry into the protection of public sector whistleblower employees, referred by the New South Wales Parliament to the Joint Statutory Independent Commission Against Corruption (ICAC) Committee on 26 June 2008 and the subsequent public call for submissions on 30 July 2008.

Firstly, I note the terms of reference as follows:

'That the Committee on the Independent Commission Against Corruption, which is a joint statutory committee, inquire into and report on the effectiveness of current laws, practices and procedures in protecting whistleblower employees who make allegations against government officials and members of Parliament'.

– Legislative Assembly Votes and Proceedings, No 79, Thursday 26 June 2008, item 22 and Legislative Council Minutes, No 62, Thursday 26 June 2008, item 37.

Secondly, I turn to recommendations that were made to the New South Wales Government in November 2006 at the completion of the ICAC Committee's *Review of the Protected Disclosures Act 1994*, chaired by the Hon Kim Yeadon MP.

Many of the recommendations were ignored by the New South Wales Government, even those which were aimed at strengthening the *Protected Disclosures Act*.

Those recommendations which remain worthy of implementation by the New South Wales Government, include:

- the establishment of a 'Protected Disclosures Unit' within the Office of the New South Wales Ombudsman to provide advice to whistleblowers, to monitor the response of public authorities to protected disclosures and to report annually on disclosures made across the NSW public sector;
- Establishing standard guidelines to provide for "the lodgement, investigation, handling and reporting of protected disclosures".
- Putting in place a 'statistical program' to provide a reliable foundation for any future performance assessment regarding public sector employee disclosures;
- Altering the name of the Act to 'Public Interest Disclosures Act 1994', based on the WA, ACT & Tasmanian models – making the focus of the Act clearer;
- Amending the Act to protect the whistleblower where that person had an 'honest belief on reasonable grounds' that their disclosure met the grounds for protection under the Act;
- Amending the Act so as to "impose an explicit requirement on an authority to investigate a disclosure subject to such exceptions as may be prescribed by regulation"; and
- Introducing the right to seek damages when whistleblowers have suffered detrimental action in reprisal to making protected disclosures.

Three separate reviews have supported the recommendation to establish a 'Protected Disclosures Unit' and the New South Wales Government has so far failed to act.

Furthermore, under the current system, a whistleblower who has been treated poorly as a direct result of making a disclosure, has no options for redress under the *Protected Disclosures Act* except to commence a private prosecution.

There is also a dark cloud hanging over compensation for whistleblower employees under the *Protected Disclosures Act* for any damages they may have suffered.

Successive governments in New South Wales have perverted the intent of the existing laws which require urgent reform with better redress for public sector whistleblowers.

There is an absolute imperative to strengthen the State's whistleblower laws

In conclusion, I note that National Party Members of Parliament, and in particular, the Member for Murrumbidgee, Adrian Piccoli and the Hon Trevor Khan MLC, worked tirelessly in canvassing support from their cross-bench colleagues in the Upper House to have this ICAC Committee inquiry into the protection of public sector whistleblower employees established.

I also note the ongoing decent and thoughtful contributions on this subject in the House, including members of the ICAC Committee, in particular, the Hon Reverend Fred Nile MLC.

I seek the indulgence of Committee Members to appear in a public hearing, during the deliberations of this Inquiry, should it be considered appropriate for me to do so.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B. Blackburn', with a long, sweeping horizontal flourish extending to the right.

Ben Blackburn