

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

Organisation:

Name: Ms Margaret Penhall-Jones

Telephone:

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Partially Confidential

**PARLIAMENTARY INQUIRY INTO THE PROTECTION OF
WHISTLEBLOWERS**

Submission by Margaret Penhall-Jones, NSW Ministry of Transport.

Terms of Reference

I understand that the Terms of Reference for this Inquiry is whether the protections for whistleblowers are adequate

Short answer to the terms of reference:

There are in fact NO protections for whistleblowers in the NSW Government.

The legislative provisions are mere “paper tigers”. There is no way of enforcing them. There is no will, at any level of Government, to enforce them.

Public sector managers can:

- ignore the so-called legal protections;
- refuse to implement public service policies (which form terms of the contract of employment in the public sector – thus they can simply breach the employment contract)
- act contrary to law;
- commit criminal acts against the whistleblower;
- engage in character assassination of the whistleblower;

and more, with impunity and funded by the taxpayer.

Further, the public service can count on weaker Ministers to:

- cover up; and
- to allocate unlimited funds to fight the whistleblower through bureaucratic failure or refusal to act, and in the Courts.

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Recommendations

If this Parliamentary Committee is serious it must address two issues:

1. Redress for people like myself who, for merely doing their jobs honestly have experienced detriments including the destruction of their career, health, reputation and finances at the hands of a State bureaucracy which is out of the control of the Ministers overseeing it and has unlimited access to public funds to hire anyone, including whole senior legal teams, to cover up. This should not be the usual Royal Commission which can be turned into a circus by the media⁴, but a proper inquiry with powers for awarding properly assessed damages and/or
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reinstatement and, importantly, can recommend sanctions against those who have caused the detriment; and

2. Establish structures which will prevent these things happening in future. I outline my recommendation on this below⁵.

The only real way to protect whistleblowers is to create an agency which is separate from the main bureaucracy and to charge that agency with investigating the issues whistleblowers raise and the treatment of whistleblowers. This agency must have the power to impose sanctions forreprising against whistleblowers. This agency must have the power to move whistleblowers out of the organisations in which they are located by transfer to another Government agency and to over-ride the decisions of corrupt managers and agency heads who are trying to hold on to their positions by covering up.

An ideal location for this agency would be the Auditor General's Office. This would minimise the possibility that officers in the agency would be compromised.

Inquiries would need to be fully public so there can be none of the usual 'desktop' investigation that invariably leads to the case being covered up and dismissed with either no reasons or flawed reasons given. Only the checks and balances of direct public scrutiny can be relied on to get to the truth and provide justice for the taxpayer and for victims.

Managers who reprice against whistleblowers should be stood down without pay immediately, pending an investigation. If found to have reprised against the whistleblower, they should be fired.

Margaret Penhall-Jones
23 August 2008