Submission No 7

INQUIRY INTO PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES

Organisation:

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Committee on the Independent Commission Against Corruption
Parliament House
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SUBMISSION: Please 'BITE THE BULLET'

A news release by the Griffith Project, 'Whistling While They Work' states that: *"Whistleblower protection laws need national revision."* I submit that far more drastic action is required than revision of whistleblower protection laws.!

Thirty years involvement in this subject motivates my submission that Australia needs legislation that jails victimisers of public interest whistleblowers. The prevailing contest is overwhelmingly one sided. For every whistleblower protection law there exists a plethora of security and administrative type laws to facilitate lawful retribution.

Management culture requires loyalty in all circumstances. The onus must therefore be placed on prima facie victimisers of disclosers of wrongdoing to prove, on the balance of probabilities, that their decisions were fair and reasonable and in accordance with community standards rather than convenient laws.

I know of several cases in which the lives of public interest whistleblowers were destroyed by a managerial culture that demands unconditional loyalty of its adherents. The attachment outlines the case I know most intimately because my statutory duties involved me in it. The facts of this Federal case could just as easily occur under any State or Territory administration. It covers the period 1972-2008 and epitomises the timeless strength of organisation culture of loyalty which has proven capable of compromising normally fair and decent people.

Forensic psychiatrist Dr Jean Lennane is an Australian pioneer in this subject. Jean was Director of Drug and Alcohol Services at Rozelle Hospital until dismissed by NSW Health Services because her public support for public hospitals was critical of government initiatives. Dr Lennane was a co-founder of Whistleblowers Australia Inc. in 1991 and was its first National President for the next fourteen years. In May 1992 she published a paper *"What Happens to Whistleblowers and Why"*. It included the following succinct fact: *"Obedience to authority, a basic necessity for constructing and maintaining our society, becomes a powerfully destructive force when that authority is doing wrong."*

Another Australian pioneer in this field is Professor Kim Sawyer. He likens public interest whistleblowing as attempted removal of a cancer that is growing within the organisation. Kim is the principal author of 'The necessary illegitimacy of the whistleblower', an insightful analysis which reflects the views of all relevant stakeholders.

The Griffith Project did not seek their views.

Table 15 of the Project's report is a useful analysis and ranking of Australia's eleven Federal, State and Territory legislations which purport to protect public interest disclosures. The report acknowledges that each has problems.

Only three of the eleven legislations make any provision to protect public interest disclosures to parliament or to a parliamentarian. Only one of those is accorded the top score for that provision. It is also the only legislation that makes any provision for disclosure to the media. Even this sole exception becomes effective only if no action is seen to be taken six months after disclosure to an *"approved authority"*, such as the accused department, or the Ombudsman, whose Offices are regarded by victimised whistleblowers as a bad joke.

It is evident from the full title of the Griffith Project, and contents of its report, that it seeks to **manage** the consequences of organisational wrongdoing rather than address the root cause of the cancer.

The report acknowledged that 74% of respondents believed that they had witnessed defined wrongdoing, but reported that *"contrary to a strong popular and organisational myth – many public employees are not currently deterred from reporting wrongdoing even if they anticipate or have established from previous experience that whistleblowing is not an easy process."* It is natural for officers who have no experience in disclosure of wrongdoing to trust authority until their trust is betrayed.

The Project's conclusions missed the mark because they were based mainly on the results of a comprehensive survey of 7,663 public servants, instead of exploring authenticated public interest whistleblower cases. The project consequently lacks the depth expected of a quality tertiary academic project. It is publicly known that public interest whistleblowers continue to pay a heavy price for speaking up in the public interest. Several further examples are outlined in the October 1995 report of the Senate Select Committee on Unresolved Whistleblower cases, and in the July 2008 issue of 'The Whistle" - Newsletter of Whistleblowers Australia Inc..

UK and USA whistleblower protection laws appear to be comparatively more effective than Australian laws. Even so, unevenness of the situation has not eradicated necessity for commercial and voluntary organisations to advise public interest whisteblowers.

The attachment points to the accuracy of Royal Commissioner Athol Moffit's prediction in 1974:

> *"There appears to be a very great danger that organised crime will infiltrate this country in a substantial fashion. If it does, there will be little appearance of its arrival and it will be difficult and probably impossible to eradicate it. Its arrival is unlikely to be signalled by the arrival or activity of armed gangsters with black shirts and white ties. More likely it will arrive within the Trojan horse of legitimate business, fashioned for concealment and apparent respectability by the witting or unwitting aid of expert accountants, lawyers and businessmen."*

The question remains unanswered as to why the Government all but ignored the considered recommendations of the 1994/5 Senate Committees on public interest whistleblowing.

Whistleblower protection legislations don't work because they are drafted by government lawyers whose traditional first priority is protection of their client. The drafting of recommended new and amended protection laws should be out sourced to firms approved by respected independent community organisations such as the Salvation Army and like.

Yours faithfully

Keith Potter

(Keith Potter)

Attachment:
The 'Toomer Affair' and Authority's Culture of Loyalty