

**Submission
No 60**

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

Organisation:

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ICAC COMMITTEE

11 MAY 2009

RECEIVED

The Hon. Frank Terenzini MP
The Chair
Committee on the ICAC
Parliament House
Macquarie Street
SYDNEY.

✓ Cc: Jasen Burgess
A/Committee Manager
Dear Committee

**COMMENT ON REPORT 5/54
PROTECTION OF PUBLIC SECTOR WHISTLEBLOWERS**

Thank you for the opportunity to comment on the discussion paper and for your continuing attempts to improve governance through oversight of public administration. The recommendations are commendable but the basic machinery could remain fundamentally flawed even if adopted in their entirety.

Unfortunately it is apparent that three similar recommendations to provide external oversight have not been adopted and regurgitation will not ensure success. This reality underlines the reluctance of governments to genuinely open themselves to learning from internal criticism of public service organisations. Ministers and their senior executives can be expected routinely to engage in self-justification and denial and usually to shoot messengers rather than heed their message. The absence of prosecutorial powers for offences under the Protected Disclosures Act is another fatal flaw in the governance architecture.

Little systemic change will be achieved while ever "whistleblowers" are obliged to work through and seek succour from individuals and agencies dependent on government for their tenures. So even if the current Government were to adopt your latest recommendations, they are unlikely to improve the fate of whistleblowers nor improve accountability. Close observers of existing oversight agencies including ICAC can perceive the ways in which they are "nobbled" through subtle changes in legislation, restricted funding and "reliable" appointments. A specific example is the Government and Related Employee Appeals Tribunal, whose act was amended so that the defendant agency can embark on a fishing expedition to dredge up unrelated issues to procure a dismissal even when the initial ground for suspension is unsafe or unsustainable.

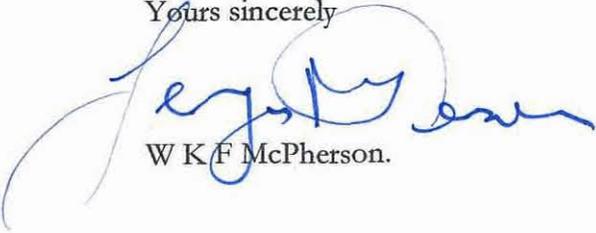
Parliament itself is invariably dominated by the governing party but the best we can hope for is improved judicial review avenues and governance and accountability authorities appointed by and answerable to the Legislative Council (if necessary, sitting in joint session with the Assembly). An officer of the Parliament supported by staff answerable only to Parliament should be the channel through which protected disclosures are made and investigation organised. Relying predominantly on the subject agency to act on the issue raised by a whistleblower is fundamentally naïve as is the suggestion that internal procedures and codes offer safeguards. There are many examples of such "codes" and "procedures" failing employees in rogue organisations. They are often seen as constraining subordinates but full of loop-holes for senior executives to exploit. Changing the process so that the disclosure is made first to the specialised authority answerable to Parliament would enable the issue to be

channelled more efficiently to the agency with the appropriate access and investigatory powers \ resources. Some of the demarcation concerns might be eliminated by characterising disclosures as alleging "maladministration against the public interest " with other aspects including corruption being sub sets.

Please note my request that neither this nor my original submission be treated as confidential. The fact that Appendix One appears to impose confidentiality on all individual submissions but not those of the agencies they presumably criticised conveys the (unintended) impression that everyone's views are not given equal consideration \ weight, even by this Committee.

My thanks to your Committee for its important work and congratulations for the sensible recommendations.

Yours sincerely



W K F McPherson.