

INQUIRY INTO PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES

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Date received: 7/04/2009

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DEPARTMENT OF EDUCATION AND TRAINING RESPONSE TO THE DISCUSSION PAPER – *PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES*

Proposal 1

The proposal that a Protected Disclosures Unit be established in a suitable oversight body is not supported. The NSW Ombudsman and the Independent Commission Against Corruption already have the powers and capacity to oversight investigations where the complainant has been accorded Protected Disclosant status.

A specialist oversight and monitoring Unit will simply add further administrative burdens to an already administratively cumbersome system.

An alternative solution would be to clarify the respective roles of the Ombudsman and ICAC in overseeing protected disclosures and to make those roles explicit to agencies.

Proposal 2

Proposal 2 is supported.

Proposal 3

This proposal is supported on the basis that a *contractor* would need to be clearly defined. A broad definition of who constitutes a contractor could risk opening up protected disclosant status to a range of groups and individuals for whom it was never intended.

Proposal 4

Proposal 4 is supported.

Proposal 5

The effect of proposal 5 will be to lower the threshold for matters on which protected disclosure status can be sought. The criteria of an *honest belief on reasonable grounds*...means that complaints that may not even provide sufficient evidence to merit an investigation may result in the complainant being given protected disclosant status and therefore having a reasonable expectation that a matter will be investigated.

Also, if agencies are required to investigate matters purely on the belief that something MAY have happened – resources will have to be redeployed to ensure that agencies are responding to such matters. If this proposal were to be adopted it would need to be tightly linked to Proposal 13 (frivolous and vexatious) to ensure that

employees and other complainants understand that they must not report false or vexatious allegations.

Proposal 6

Proposal 6 is supported.

Proposal 7

Proposal 7 is supported.

Proposal 8

Proposal 8 is supported on the basis that it requires people making protected disclosures to maintain confidentiality, in order to maintain their PD status. This should assist agencies to better manage investigations and reduce the numbers of breaches of confidentiality by complainants themselves.

Proposal 9

Similarly, this proposal is supported.

Proposal 10

Proposal 10 reflects the Department's current policy and is therefore supported.

Proposal 11

Proposal 11 is supported.

Proposal 12

This proposal is not supported on the basis that it potentially poses significant administrative difficulties. It is unclear as to the grounds upon which another agency could accept a matter as a protected disclosure on behalf of the subject agency and the determining agency may not have sufficient knowledge of the responsibilities of the other agency to make a decision about whether a complaint constitutes corrupt conduct, maladministration etc. This proposal risks adding to the confusion about the administration of protected disclosures rather than clarifying and streamlining matters.

Proposal 13

Proposal 13 is strongly supported as it would be most helpful for clarification of when complaints could be deemed "vexatious" or "frivolous". Investigating agencies are often reluctant to determine a complaint to be frivolous as it often requires significant investigation to be able to make that assessment.

Proposal 14

Proposal 14 is supported.

Proposal 15

Proposal 15 is supported on the basis that the updated information to be provided should be about the progress and general outcome of the investigation – not about the specific details.

Proposal 16

Proposal 16 would not pose undue difficulties for the Department.