

Submission
No 422

**INQUIRY INTO STUDENTS WITH A DISABILITY OR
SPECIAL NEEDS IN NEW SOUTH WALES SCHOOLS**

Name: Mr John Hatton AO (Partially confidential)

Date received: 12 June 2017

Partially
Confidential

TO: Hon. Lou Amato, MLC
Chair of the Committee into the provision of education to students with a disability or special needs

Dear Mr Amato,

I submit the following, related to terms of reference (d) and (e).

Apologies for the lateness of this submission.

Inquiry into Students with a disability or special needs in New South Wales schools

Submission

Synopsis of Experience in NSW Schools

Teacher, 20 years: one-teacher school, Western Division, 2 years; Nowra Intermediate High; then Nowra High.

Teacher of pupils with learning disabilities: State wards (Berry Training Farm) with horrendous histories of isolation and abuse, lack of love and family, with learning difficulties. Teacher of disadvantaged children, including Aboriginal children; I still maintain close relationships.

Teacher of horticulture, agriculture and science.

Independent MP, 22 years.

Qualification of Research Team

Dr Timothy Bailey, former President of P&C

The CVs reveal Dr Bailey's extensive experience in staff management, departmental involvement (health system), complaints initiation investigation, dispute resolution, professional assessment and associated matters.

John Hatton AO, former Independent MLA for South Coast

Mr Hatton has extensive experience in exposure of corruption, mismanagement, wastage and inefficiency in a number of government departments at the highest levels – eg, in the case of the NSW Dept of Motor Transport (now RTA) forcing a magisterial inquiry, and in the NSW Police Force, a Royal Commission.

Parliamentary committee experience exposed him to and involved him in top level inquiries and extensive departmental protocols and procedures.

Complaint Process

EPAC

Question – over 30 investigators:

- Are all EPAC investigators trained, with background and practical experience and basic knowledge of due process?

Ref: Goulburn Police Academy Detective training course (since the RC) emphasizes (eg):

- no preconception
- no targeting
- evaluate quality and source of evidence
- test evidence (in the round) – Devil's Advocate
- impartiality
- signed statements, witnessed, and statutory declarations where possible, etc.

VULNERABLE AND PERSECUTED TEACHERS

The importance of the principal and the culture of the school Finance and performance audit

Many NSW schools and communities are blessed with wise principals, inclusive, valued staff, supportive, active, progressive P&Cs.

However, as a former teacher (20 years) and Independent NSW MP (now retired) I was shocked to find how exposed are educators at the coalface to bullying, injustice and even persecution. Teachers stressed to the limit (some on suicide watch), devoid of the support of their union and actively pursued by their employees in a system riddled with injustice.

Our research reveals that process, procedures and actions of the D of E are flawed to the extent that parents and teachers generally, and especially teachers who stand firm on rights, funding, process and treatment of students, in many schools, students with learning difficulties, are rendered powerless and vulnerable.

Character Assassination and Abuse of Power

Many of the actions evidenced are appealable in the courts, relating to defamation and character assassination, procedural fairness, and to departmental regulations, case handling, protocol and assessment generally. Other matters are covered by Workers Compensation (appeal), OH&S and Fair Work Acts etc.

The caring, conscientious, empathetic, qualified employees at all levels in some schools are subject to disgraceful bullying, threats, abuse of power and systems which deny natural justice and procedural fairness.

Victims should not have to go to court (intimidating and costly).

Promotion Procedures Must be Reviewed

The key matters the committee is investigating expose people who should not be in positions of authority.

Comment

As the Committee is aware, I successfully moved in the Legislative Assembly for a Royal Commission in to the NSW Police Force.

There are striking similarities in this situation.

1. The then Police Internal Affairs Branch behaved as does the Employee Performance and Conduct Unit (EPAC). Despite excellent service, police were targeted and discredited by a closed, biased, intimidating and unjust process, selectively leaked scuttlebutt, disregarded evidence, tailored evidence and “stitched up” victims.
2. The promotion system was in some instances incestuous, subject to distortion to stifle dissent, openness, and accountability, and deny equal opportunity to worthy candidates. A network gave the chosen ones a leg up. This I believe is so in several instances in
3. Networking protected those involved in illegal and improper practices.

EXAMPLES UNCOVERED BY OUR TEAM'S RESEARCH

1. Students with disability denied duty of care, support staff funding and empathy.

EPAC investigation biased and unprofessional

- The triviality of so-called evidence
 - The enormous EPAC and D of E resource devoted to a biased and unfair investigation.
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- Primary school children, years 5/6, interviewed without parental knowledge or consent, without independent (of the Dept of Ed) witness (even police can't do that) and their written statements used in disciplinary action against a teacher

This practice was condoned in writing by the Dept of Education.

- Statements/evidence untested.
- Selective witness interview.
- Uncorroborated evidence (even that which EPAC had previously dismissed) used against a teacher.
- Targeted teacher denied full knowledge of allegations against them, witness identity and supporting evidence.
- Education employees involved to try to deny teacher compensation.
- Alleged bully put in charge of the disciplinary process inflicted on the teacher.
- The glowing testimonies and performance reports and high academic qualifications counted for nothing in an atmosphere of 'get the teacher'.
- Resignation of two lots of P&C Executive.



The shameful neglect of bullied staff by the Teachers Federation

Union Agreement Neuters Union Representation

Note: The Teachers Federation has signed an agreement with the Dept of Ed to abide by a demonstrably unjust process, in particular, the EPAC one-sided inquisition. (If the Committee has not seen this agreement, it should obtain a copy.)

The Teachers Federation represents principals as well as teachers. If a principal is a bully, teachers are on their own. Genuine complaints are crushed by lack of procedural fairness and ruthless retaliation.

Confidentiality

The Dept of Ed stifles dissent, knowledge essential to a targeted teacher's defence by a completely closed process, yet does not punish the persecutors who peddle scuttlebutt inside knowledge and intimidate potential witnesses.

Failure to follow guidelines

Dept of Ed guidelines are blatantly broken by Dept of Ed process. Confidentiality is one-sided.

Intimidation

We believe the Parliamentary Committee's work will confirm that teachers, teachers' aides and parents feel so threatened and thus intimidated that they remain silent. Truth will emerge, but many potential witnesses are too intimidated to assist.

The P&C was not respected as independent with rights afforded to citizens at large.

Abuse of power

Abuse of power by some Dept of Ed employees is truly shocking.

Some consequences

- Teachers' aides/Teachers working as casuals
A bullying principal supported by an uncaring dept can inflict heavy punishment on teachers' aides and casual staff and deny them employment simply because they exercise their rights to a fair go.
Hours are cut or teachers' aids sacked or isolated

NB: Teachers' aides are members of the PSU.
Note: School admin managers are under the direction and control of the principals, and, with teachers' aides and casuals, know what is happening. The Committee, I am sure, has tapped this vital knowledge and the money trail in schools where there is evidence of diversion and misuse of funds.
- Teachers Federation or staff reps can be bullied and intimidated, unlike when I was a teacher and the Union rep was respected, effective and supported.
- P&Cs pressured
Spouses of teachers who are active P&C members can be pressured to neuter complaints or P&C actions with which the principal disagrees.
In regional NSW where jobs are scarce, teachers' aides, casuals and permanent teachers are especially vulnerable.

Teachers and teachers' aides know the reality of kangaroo court procedures to suppress truth and accountability

Citizen rights in a democracy

The right to:

- know the detail of the allegations
- access to all the evidence
- have evidence professionally collected, investigated and tested by an impartial investigator
- have all matters tested in a judicial way, ie -
witness examination
evidence evaluation

- decision by an independent person as part of an independent process.

Federation Law (firm) Neutered

Those in authority acted uncaringly and inappropriately, able to do so because, as stated by a lawyer from Federation Law “the Principal is always right”.

WHAT CAN BE ACHIEVED

Public Service Employees Integrity Commission

- Complaints by the public against principals, teachers, teachers’ aides, and D of E employees generally, which affords natural justice under the rule of law.
- After unsuccessful mediation, referral to the Dept and independent valuation, complaints by the public can be dealt with externally with independent judicial process to ensure impartial, proper just and fair process for all parties (a model which could apply also to, for example, the Dept of Health, where anecdotal evidence is that bullying is endemic.)
- Unions Conflicted
With police, the rank and file union is separate from ‘the Commissioned Officers Assn’.
Principals and teachers can benefit from such a structure.
The Teachers Federation is conflicted in representing both principals and teachers, thus the “compact” between the Teachers Federation and D of E which neuters the union and “suppresses” teachers in vital cases. Targeted teachers are on their own.

I wish to stress that principals as well as teachers, faced with the many social problems of modern society, do an amazing job by and large.

Cover-up, excuses, obfuscation & no action

Dr Bailey and John Hatton have been personally involved in meetings with:

- a principal, teachers, and teachers’ aides;
- senior Dept of Ed regional officer
- D of E consultant former D of E employee (suggest research).

Vital Statistics

I strongly recommend that (if not so) committee staff ascertain:

- the extent of the ‘revolving door’ of senior staff in the
(‘musical chairs’ shunts the problems);

Regional Office

- the number of teachers across NSW under investigation who resigned/took extensive stress or sick leave;
- the number of principals who (as the Royal Commission found with police in the past) were given a hospital or retirement pass when things became uncomfortable for the Dept of Ed

Dept of Education process – a disgrace – retaliation and targeting

Notes of meetings, numerous letters, faxes, emails and reports, copies of rules, regulations and procedures support this conclusion.

Please inform me if any of this evidence is needed.

The D of E Must Protect Genuine Whistleblowers

It is imperative that a strong message be conveyed in writing by the committee chair that retaliatory action against whistleblowers assisting the committee will not be tolerated.

Dept. Heads Held Personally Responsible

This message needs to be made public, and conveyed in writing to Dept heads.

My experience with enquiries into police and the then Dept of Motor Transport is that whistleblowers suffered retaliation.

Ministers

Politically, ministers are held responsible when serious issues arise in departments at the state level – education, health and community services, where the wellbeing of individuals is involved, especially so.

Political Sense

It makes political sense to have, as with ICAC and police, a structure of referral, independent investigation, and report through the minister to parliament. The establishment of these bodies dramatically reduced public and parliamentary criticism of ministers and government.

The minister can refer matters and be seen to be on the front foot, confident that accountability, efficiency and improved process will result.

In my view a government would be wise to innovate this reform.

A fallback position is to divert the resources from EPAC to an independent body, but this when only applied to Education will surely stimulate employees of other depts to seek reform.

One body, funded by savings and servicing a number of departments, is a much more efficient option.

Internal accountability

Funds allocated for particular purposes, such as special education and staff development, can be and *are* diverted.

Random auditing

Surely the principals must sign off annually on special purpose funding

The allegation is that staff development funding is used for other purposes. Failures in funding expenditure, bullying of staff and P&C, and reduction of positive engagement to harness community support must compel censure (demotion and dismissal in serious cases).

CATCH-22

CEOs Can Be Sacked!

A serious breach of obligations under the Code by an executive could result in removal from his or her executive position, or in disciplinary action.

Clause 8 in the Contract of Employment for Public Sector Executives requires executives to comply with the Code of Conduct and Ethics for Public Service Executive and to “ensure that employees do the same”.

Employees Performance And Conduct (an instrument of and acting on behalf of CEOs in breach of the Code):

- ignores key Code of Conduct and Ethics provisions
- has quasi-judicial powers of investigation and punishment
- fails in due process, natural justice, impartial professional investigation.

Unions

Duty to represent members and safeguard and improve working conditions etc of members.

Teachers Federation

- Represents principals and teachers.
- Has an agreement with D of E not to interfere (even in unjust process).

Conflicted!

Federation Law

Constrained – represents both sides, principals and teachers.
Admits/accepts D of E position of “the Principal is right”.

Public Service Union

Represents some, if not all, EPAC employees not represented by the Teachers Federation. Represents both sides. Conflicted!

PRECIPITATE ACTION BY MINISTER (WITH BACKING FROM LEADER OF THE OPPOSITION)

Minister and Parliament on the front foot

OBJECTIVES

- Discover
- Restore confidence by effective action
- Minimize cost
- Plan to engender bipartisan cooperation
- Use existing powers with option of ramping up as required.

ACTION

(A) Disband EPAC.

Advantages

Immediate action.

Clear signal to victims, D of E employees, parents, students etc.

- Remove the source and power of suppression of truth and threat of retaliation.
- Thus facilitate information flow, confidence and cooperation.
- Use existing power of intervention, not invigilation
- Bipartisan sub-committee: no more than five MPs, preferably three members of the committee with MLAs, to advise, and work with the Minister – ie, use the committee knowledge to facilitate effective action and bipartisan cooperation.
- Initially, no special powers needed, no invigilation, no compulsion to give evidence.

Introduction

Over many months of detailed work, John Hatton has been paying for secretarial expenses and interviewing and encouraging disempowered, downtrodden, fearful victims to provide evidence. With no special powers, a small team exposed:

- scandalous misuse of power, a closed, self-serving system and a denial of basic rights
 - tangential evidence of networking to game the system.
- Note – Networks: John Hatton and Dr Bailey express grave concern re the danger of “influence peddling” within self-serving networks.

Lessons learned from John Hatton’s experience

The Police Royal Commission took years because of information control, fear, misuse of power and regulations (to ensure containment).

John Hatton’s network of whistleblowers (meetings in private) greatly expanded evidence, and the Royal Commission ensued.

Parliamentary Committee: John Hatton had access to whistleblowers; a member of the Committee of both Houses inquired into the relationship of Police Minister Pickering and Police Commissioner Lauer.

In Parliament, John Hatton presented 96 statutory declarations, photographs and documents supplied by nine whistleblowers – private meetings.

Inquiry revealed shocking corruption.

TIMELY MINISTERIAL ACTION

Minister on front foot: Sydney Water Board (John Hatton’s allegations in Parliament).

Minister Tim Moore immediately on front foot; his actions revealed waste, corruption of process etc without formal inquiry.

Disbanding EPAC and having Minister and Leader of Opposition “on the front foot” with a joint press conference will greatly facilitate exposure.

COST SAVING

Evidence EPAC 31 staff.

The Conduct and Performance Unit Blatantly Breaks the Rules

Mountains of paperwork – expensive misuse of resources. Loss of talented, innovative, professional collegiate and caring teachers.

CEOs ASLEEP AT THE WHEEL – MINISTERS VULNERABLE

The following extracts and pointers to relevant sections of the Code support the view that “some are asleep at the wheel”

Two key points

Ministers, especially of Education, Health and Community Services are vulnerable when senior Executive Service and departmental heads do not fulfill their **contractual obligations**.

P 12-13: A SACKABLE OFFENCE

Sanctions

“Contract of Employment requires executives to comply with this Code of Conduct and Ethics for Public Sector Executives. Any breach of the Code will represent a breach of contract.”

Senior Executive Service

Public Service Commission Obligations of Executives

CODE OF CONDUCT AND ETHICS

Some relevant extracts

General – p. 3, 1.3

- Integrity
- Impartiality
- Responsiveness to public interest
- Accountability
- Honesty

P. 4, 2.1

- i. Impartiality, Objectivity, Integrity etc
- iii. Fairness and honesty – dealings with the general public.

2.2

- v. Workplace – discrimination, harassment etc
- viii. Encourage staff members to exercise similar qualities etc.

2.3

- ii. Social equity – disadvantaged etc.

P.2, 2.1: Staff must report.

- 3.0: Workplace planning to ensure reporting of incidents.

P.3: Incident Reporting, OH&S, Safety & Security, Employee Performance and Conduct.

Workcover

All other incidents.

P.4: Allegation of Child Protection Nature

All of the above required to be reported within 24 hours.

In the D of E, EPAC, the policing body, has ignored key elements of the Code and should be sacked.

The Secretary of D of E and other Senior Executive Service (SES) members are directly implicated.

The D of E must act or CEO be sacked.

The Employees Performance and Conduct Unit:

- is a construct of the D of E
- is an internal quasi-judicial body with powers delegated by Dept heads.

The D of E heads are members of the Senior Executive Service. They and by extension all who work under them are bound by the Code (see relevant extracts below).

Non-compliance with the Code is breach of the contract binding SES, for which a CEO can be sacked.

Thus actions or omissions by EPAC which breach the Code must compel sanction as provided by the Code.

MINISTERS ARE VICTIMS

Ministers responsible as well as public sector employees and 'clients' of the respective services are all victims.

Ministers and governments are responsible for policy and overall budget. It is farcical that the relevant minister can be pilloried due to failings of administrators, exceptions being the most serious matters and where government and ministerial policies and budgets are directly involved.

It's the CEOs Who Must Face the Press

Senior executives and managers at all levels and in all departments, must be subject to independent oversight and accountability, and be held personally and publicly responsible for failings.

Lessons from the past – value of independent watchdogs

Before the Office of Public Prosecutions, the Ombudsman and ICAC were established, it was a necessity to “detonate a grenade” on the floor of Parliament; a prerequisite of action.

Eg, the Police Integrity Commission (PIC), the result of the Police Royal Commission, dramatically changed the experience of the Police Minister on the floor of the House. The Commissioner is in front of the camera saying, “The buck stops with me.”

D of E Officers Not Accountable

Existing processes do not hold the well-remunerated officers, rather than the Minister, *personally* responsible, especially for actions of office-holders tasked by job description (which must include obligation to abide by the Code of Conduct and Ethics).

Public Complaints – Key Indicators

- Key indicators of performance – a valuable tool for CEOs and protection for Minister, able to ensure timely remedial action rather than escalation.
- Mechanisms for impartial, non-threatening mediation.
- Just process – just outcomes.

EPAC: the classic example of failure.

Unions

Unions tasked with representing “both sides” are conflicted and, as witnessed by the agreement between the Teachers Federation and the D of E, neutered.

PSU represents members of EPAC as well as the least powerful teachers’ aides, special assistants etc. Conflicted unions are a recipe for abuse of power by EPAC and the D of E.

The General Public (Trust – Independent Option)

The keys are:

- Judicial process (not adversarial but investigatory) in which the complainant and those subject of complaint can have trust.
- Protection of sincere complainants and respective office holders against unfair process, retaliation and vexatious complaints. Vexatious complainants must likewise be accountable within a fair system.

PARENTS

Result of Present System:

- abuse of children with disabilities
- parents powerless

- D of E employees seeking justice and professional empathetic care, education and opportunities for students with disabilities are stressed, often targeted, powerless and, in unacceptable numbers, lost to the service.

Independent Complaints Unit which:

- conforms to SES Code of Conduct and Ethics
- delivers due process
- provides completely independent, qualified (QC, magistrate, judge), impartial, competent investigation
- delivers justice.

Bullying, the substitute for competence, is in my firm view rife in the D of E. In Dr Bailey's experience with the D of E and as a doctor in numerous hospitals across the state, as with that of many health professionals, indicates appalling failure of existing structures.

Cost

It's a no-brainer that these outcomes dramatically improve service delivery and yield cost benefit.

Financial: Disbanding the current complaints structures in favour of a reformed system which holds employees and decision makers accountable will yield dramatic savings in workplace efficiency (professional conduct and harmony) and consultative and cooperative management.

In the short term, EPAC disbandment cost saving will be offset (unknown) with redundant workers' rights and entitlements an offset; however, relocation within the D of E is an option. Investigations may well uncover evidence which warrants dismissal or court action.

RISK MANAGEMENT

Safety: OH&S protocols and practices work well in many environments, but to succeed the worker must be valued as a participant in a welcoming, cooperative model, reporting to supervisors with independent oversight.

Children in relevant schools are at risk.

It should not be up to the Worksafe coroner to reveal serious omissions, especially where bullying, controlling practices and ineffective protocols and management are the norm.

Most concerning is that the D of E duty of care of thousands of students does not enforce **effective** risk management procedures and protocols to serve the best interests of pupils.

Let's be clear – there is no evidence of which I am aware of pedophile networks in the D of E. However, the networking, promotion protocols, the cover-ups and abuse of power uncovered within the system must be a red alert, and screams out for reform.

Overall, child abuse, a scourge of society, has increased (or been uncovered) by 20% since 2012.

Urgent need to review promotion (protocols & procedures)

Promotion procedures must be reviewed. The key matters the committee is investigating expose people who should not be in positions of authority.

Can Do!

The political reality is that under *all* ministers the abuse, cover-up and self-serving, ineffectual process has occurred.

A relatively new director and bipartisan recognition of the problem dictates and facilitates the urgently needed bipartisan action.

Committee Transcripts and Reports Redacted

Name and Shame

The problem with all parliamentary committees of inquiry is time and cost.

Fairness dictates that the accused must be informed and afforded the right of reply. I understand, therefore, the redaction of names, schools etc; however, the terrible experience, the cruelty, the loss of employment and the loss of caring, competent teachers must be addressed.

After careful research as an MP, I have not hesitated to name names and expose disgraceful behaviour and defective process on the floor of Parliament.

The motion “that the committee report be noted”, the opportunities for MLCs to do so, if they have the evidence and the courage.

Use of parliamentary privilege is a necessity but can be a blunt instrument. The Director of Education *must* take action to root out the malevolent influences within the Dept.

The Police Royal Commission saw 381 officers leave the force, and dramatic change.

The Minister, I'm sure, will attack the entrenched failures. Without independent watchdogs, failures are bound to recur. In this case, with powers confined to matters the purview of employees and D of E office holders is, we believe, a must. Where warranted, appropriate referral of matters to ICAC.

A judicial inquiry is expensive but with wide terms of reference (victims given a voice).

CABINET DISCUSSION – CRAFTING A MODEL

Dr Bailey and Mr Hatton are confident that existing defective systems in a number of portfolios are a running sore for government and a gift in Opposition and an embarrassment when they attain government.

This inquiry can and must set the stage for Cabinet discussion of reform across a number of portfolios embracing Human Services (eg, Health, Community Services).

When Premier Greiner established the Senior Executive Service he was careful to set high standards in the Code of Conduct and to make serious non-compliance a sackable offence (breach of contract).

When SES officers condone practices, set up structures such as EPAC in deliberate defiance of the Code, they must be held personally responsible.

This is the best safeguard, and that of the Minister and the Government. Cabinet should, in our view, discuss reversal of the “protect the Dept” dynamic, not just in government departments but applicable also to managers in local government.

Ref: Code of Conduct and Ethics, Public Sector Employees, Cl. 13: SANCTIONS.

Ref: Government Sector Employment Act 2013.