

THE INDEPENDENT



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Whistleblower Protection Legislation

By John Mc Nicol

The need exists for:

- An independent statutory body
- Such a body should be headed by a Commissioner
- His or her appointment being made by a joint parliamentary committee and ratified by parliament
- A joint house committee to be set up to evaluate and review the statutory body
- Consideration be given to making the statutory body part of the Administrative Appeals Tribunal having been given investigatory powers
- This one-stop-shop body would provide a counselling service for whistleblowers and their families
- That the provisions of Article 19 of the UN Covenant on Civil and Political Rights to which Australia is a signatory be adopted without any form of restriction

INTRODUCTION

The Fitzgerald Report published in 1989, made the observation that "Honest public officials are the major potential source of the information need to reduce public maladministration and corruption. They will continue to be unwilling to come

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forward until they are confident that they will not be prejudiced". It is for these reasons that there should be whistleblower protection legislation which will safeguard public servants from being victimised, harassed or set up for retaliatory discharge.

There is something fundamentally wrong in bureaucracy when it is not prepared to deal with corrupt practices and where the hierarchy are prepared to seek to cover-up such wrong - doing.

The Gibbs Committee "Review of the Commonwealth Criminal Law" (1991) and EARC "Report on Protection of Whistleblower" (1991) favour protection for whistleblowers.

MEASURES REQUIRED

Whistleblower Protection Legislation should contain the following measures:

- ° Provisions that will ensure that a whistleblower who exposes wrong doing will be assured that his or her disclosures will receive proper consideration and investigation.
- ° That confidentiality will be maintained during the period of investigation.
- ° That the public's right to know that where an allegation has become known, that it has been fully investigated, and where the complaint has been substantiated, the offenders dealt with according to law.
- ° Where a false accusation has been made that the complainant be dealt with according to law.

IMPLEMENTATION

It is unacceptable for public servants to be employed in the administration of the legislation that applies to whistle-

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blowing involving other public servants. The suggestion that the Office of the Ombudsman, MPRA or the Auditor-General play a role in the administration of such legislation is not acceptable.

Concern has been expressed by many whistleblowers that once they hand over their documentation to other public servants they have no guarantee that anything will be done.

This view has been substantiated by matters presented to both the Ombudsman and MPRA.

ROLE OF THE MEDIA

The role of the media appears to be a major concern to governments and the fear of whistleblowers going public. The current whistleblower protection bills both in Queensland and New South Wales appear to imply a lack of trust on the part of the printed and electronic media when it comes to matters of blowing-the-whistle. The Australian Press Council is a most responsible independent body and they have produced an excellent paper on the subject of whistleblowing. Whistleblowers normally adopt a certain pattern, they will seek to adopt an informal approach which is usually followed by written complaints. If the employer seeks to ignore such approaches, as a very last resort the whistleblower will go public. Where this has taken place the media adopt a fair and honourable method in the treatment of the story. They give consideration to the stress which the whistleblower is experiencing and to the public interest. It is a false assumption that the media will do anything for a story, they won't. It does a great disservice to the media to suggest otherwise.

Let us never forget the debt of gratitude we owe to those who uncovered Watergate, the corruption in Queensland that led to the Fitzgerald Inquiry and to WA Inc to name but a few. We are a democratic country, we do not live under Totalitarianism.

If whistleblowers go to the media in search of justice they should not be penalised.

"We pride ourselves that we live in a democracy, a crazy hallucination which we assert the more strongly the greater evidence against it". -Sir Mark Oliphant 1978.

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WHY PEOPLE BLOW-THE-WHISTLE

Public mismanagement attributable to bureaucratic corruption is a fact of life. The trouble is we stand idly by when it takes place; few do anything about it.

Bureaucratic corruption is a particularly virulent form of bureaupathology. Once it enters the blood of the public sector it spreads quickly to all parts. If it goes on untreated it will eventually destroy public credibility and an organisation's effectiveness. Even if it is treated there is no guarantee it will be eliminated. The possibility of stamping it out altogether is remote, but an attempt has to be made to stem the tide.

Whistleblowers are ordinary men and women, they come from all walks of life, some have political and religious persuasions and some have none.

In my dealing with whistleblowers over a number of years, I never cease to be amazed by their honesty and desire for justice. They are this nation's unsung heroes, they seek nothing other than 'Putting Australia First'.

They save this nation through their disclosures hundreds of millions of dollars, in return they are not given protection, many have seen their careers destroyed, their family life broken up or disturbed, their health both physical and mental suffers and the monetary loss is mammoth.

Freedom of speech and freedom of expression is often spoken of by our politicians, for it is enshrined in Article 19 of the UN Convention, but when it comes to the workplace it is not acceptable.

WHISTLEBLOWERS ANONYMOUS stand for such freedoms and for whistleblower protection legislation.

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