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**Sent:** Tuesday, 7 February 2017 2:41 AM

**To:** Whistleblowers

**Subject:** Robina Cosser : Review of tax and corporate whistleblower protections in Australia.

I appreciate this opportunity to comment on the Review of tax and corporate whistleblower protections in Australia.

My comments are based on my experience as a Queensland public service whistleblower. I am a retired teacher. Since 2004 I have run websites to support teachers dealing with workplace problems. I am a past vice-president of Whistleblowers Australia (2010-2016).

My comments will be fairly general and will apply also to the Parliamentary Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors.

### **My whistleblowing experience suggests to me that we need -**

- 1) a whole-community commitment to reducing corruption and misconduct
- 2) one simple whistleblower policy
- 3) an independent national agency to deal with Whistleblower disclosures
- 4) a process, not just a policy
- 5) senior employees who can demonstrate awareness and comprehension of the policies
- 6) one responsible officer in each organisation
- 7) investigators who are able to demonstrate integrity
- 8) evaluation of investigation outcomes, identification of problem areas, development of new policies
- 9) to honour whistleblowers
- 10) a 'defined benefit' fund for whistleblowers

## **1) a whole-community commitment to reducing corruption and misconduct**

My whistleblowing experience left me with the impression that many senior public servants already knew about the corruption and misconduct I was trying to disclose, and that they did not care. They liked things that way. They did not want change.

They were able to hide behind public service strategies that blocked disclosures.

And my fellow workers were easily threatened, mystified, distracted or promoted into silence.

The allegations and made recently to the Royal Commission into Institutional Responses to Child Sexual Abuse suggest that there is a long-term cultural problem in Australia - senior officers seem to be very reluctant to deal with corruption and misconduct.

Any government inquiry will be a waste of public funds if there is no whole-community commitment to deal with corruption and misconduct.

Australians need to value whistleblowers. We need to recognise that Whistleblowers' disclosures may save the lives of Australian citizens, protect the quality of Australian lives and enable Australian taxpayers' funds to be used more effectively.

Whistleblowers may be Australia's most valuable workers. They do not "go with the flow". They see real problems that affect the lives of Australian citizens. They try to deal with these problems.

Australians also need to value professional discussion. Teachers, for example, should be able to talk about the numbers of children missing from the classrooms without fear of being attacked and driven into ill health and out of work.

We need to demonstrate that we are no longer a community of convicts who can be beaten into silence and submission.

## **2) one simple whistleblower policy.**

Because -

a) There are too many whistleblower policies and they are too difficult to understand.

Literacy levels in Australia are poor. In 2008 a survey by the Australian Bureau of Statistics found that 46% of the population of Australia could not read well enough to understand what is written in the newspapers.

And whistleblower policies are written in 'public service speak'. I have a Master's degree in applied linguistics and I find whistleblower policies difficult to comprehend.

Even the senior education department employees I was dealing with seemed to operate in an oral culture - they did not read the departmental policies, they phoned a more senior officer to get a simplified, oral version of the policies.

This 'phone-a-friend' oral culture diffuses the responsibility for the corrupt conduct. Junior officers feel confident that senior officers will de-rail any investigation into what is, essentially, their own conduct.

b) Whistleblowers soon become stressed and ill. They may find it difficult to think clearly, especially when the 'payback' process begins. Working their way through complex policy documents, trying to find the right person or organisation to report to in the right way is just too much for them.

c) Whistleblowers do not know whose oral advice they can trust. They may be given misleading advice, or advice may be withheld by 'staff welfare officers', their union and public servants such as CMC officers and ombudsmen.

d) Whistleblowers are soon reduced to poverty and cannot afford good legal advice. They have no way of knowing which of their local solicitors has the necessary skills. Whistleblowers have no hope against the amoral legal armies employed by government departments.

We need one simple whistleblower policy. And we need videos.

Videos may be more effective than written policies in communicating with the majority of Australians. Videos may also be more effective in changing community attitudes to whistleblowers. In schools, for example, a video could show a teacher making a disclosure of child abuse and a principal

responding correctly to the disclosure. The actors could model the correct words the principal and the teacher should use when discussing the disclosure, and the correct procedure for the principal to follow. The principal could play this video to the staff at a staff meeting and everybody would be quite clear about what they should do.

In other organisations real incidents of corruption and misconduct could be dramatised to demonstrate how the situation should be properly handled.

My experience suggests to me that these video role-models are needed if policies are to be properly followed.

The cost of the videos could be reduced if trainee teachers / police etc. prepared the videos as part of their pre-service training.

### **3) an independent national agency to deal with Whistleblower disclosures**

Dealing with whistleblowing on a state level does not seem to be working (with the possible exception of IBAC).

State organisations are too vulnerable to corruption by political parties.

The Queensland CCC, for example, has been described as "a coven of Labor lawyers".

It would be so much simpler for whistleblowers if there was one Australian agency they could turn to - an agency that was independent of political parties.

A national Whistleblower agency could be funded by closure of all ethical conduct departments and state bodies like the Queensland CCC and Ombudsman. My experience suggests to me that these bodies are a waste of public funds.

### **4) a process, not just a policy**

Writing a new whistleblower policy, then another new policy, then another new policy is a waste of public funds unless it is part of a whole process.

During my own whistleblowing struggle I phoned one department (I think it was the Queensland Department of Industrial Relations) to tell them that a policy they had written was not being followed. An out-of-patience public servant told me "I have told you this before! Our responsibility is to write the policy. It is NOT our responsibility if departments are not

following the policy!".

This write-a-policy-and then-throw-it-into-a-void practice is a waste of public funds.

My experience suggests to me that the authority that writes the whistleblower policy must also be held responsible for making sure the policy is understood *and followed*.

## **5) senior employees who can demonstrate awareness and comprehension of the policies**

Senior employees / officers must be required to demonstrate that they are able to read and to comprehend whistleblower policies.

They must also be required to demonstrate that they are willing and able to apply the policies to their own behaviour.

These abilities must be demonstrated *before* employees are promoted.

## **6) one responsible officer in each organisation**

There is a need to identify an officer (possibly the director-general) in each organisation who will be held responsible for -

- a) ensuring that whistleblower policies have been understood and followed.
- b) Liaising with the national whistleblower agency concerning the findings of any investigations.

We need to evaluate the performance of these officers. Have they dealt effectively with the issues raised by whistleblowers? Are whistleblowers satisfied with the outcome of the process? Have whistleblowers been effectively protected from reprisal? How has the organisation benefited from the whistleblower's disclosure?

## **7) investigators who are able to demonstrate integrity**

My experience suggests to me that Queensland public servants have developed a quick and easy 'Investigations 101' way to deal with whistleblower disclosures -

A senior officer who was involved in the corruption or misconduct is asked to write a 'Briefing For The Minister'. The documentary evidence is falsified (sometimes simply by being 'lost') and the senior officer claims to

'find' the disclosure unsubstantiated. The senior officer makes no mention of their own conflict of interest in the situation, or of political conflicts of interest that may be affecting the situation. The senior officer advises the minister to declare the investigation 'finalized' and to delete all further letters or emails from the whistleblower. The minister and senior public servants all sign the Briefing and agree to delete any further correspondence from the whistleblower.

It has to stop.

We must demand that investigators demonstrate their integrity.

a) All documents used in preparing an investigation report must be listed at the end of the investigation report. Copies of these documents must be filed with the report. This will ensure integrity. It will also speed up, and reduce the cost of processing Right to Information applications. It will discourage investigators from simply fabricating the evidence to support their findings, then claiming that this documentary evidence has been 'lost'. It will prevent CCC officers, for example, from simply claiming that they 'cannot remember' what documents they used in preparing their reports.

b) Every investigation report must carry a statement that the investigator a) has no conflict of interest in the situation and b) is aware of no other conflict of interest that may be affecting the situation.

c) Investigators should also be properly qualified. It is abusive to select an unqualified, junior employee who struggles with standard English literacy to 'investigate' a disclosure.

It also suggests to me that the amoral legal army employed in government departments already know all about the systemic corruption or misconduct and do not want to be held responsible for 'finding no evidence'.

It is not acceptable for an investigator to be closely supervised by one of the people named in the disclosure.

And it is not acceptable for an investigation to be turned into a 'review' when it becomes obvious that an *investigation* - in which questions could be asked - would substantiate the disclosure.

d) I also have concerns about what public servants term "procedural fairness".

In my experience "procedural fairness" consists of the corrupt employee being allowed to lie about their conduct. Their lies are simply copied into an 'investigation report' without being checked and the disclosure is then found to be 'unsubstantiated'. The person making the disclosure does not

have the opportunity to respond to these lies (or to any falsified documents).

This so-called "procedural fairness" seems to me to facilitate corruption.

## **8) evaluation of investigation outcomes, identification of problem areas, development of new policies**

### **a) evaluation by whistleblowers**

7867 complaints were received by the Queensland Ombudsman in 2005. The ombudsman found that only 117 of these complaints "required formal investigation".

I would like to know what the 7750 complainants who were turned away by the Queensland Ombudsman in 2005 thought of their experience.

The performance of the national whistleblower authority and the public service departments in handling Whistleblowers' disclosures should be publicly evaluated by whistleblowers in the way that hotels are evaluated by guests on tripadvisor.

A *Whistlebloweradvisor* website would also provide very useful information to Australians who are thinking of "blowing the whistle".

It would be inexpensive to run.

And it would be a way of getting the Australian public service working in the public interest rather than for the political party in power.

### **b) evaluation by independent researchers.**

I am concerned that, at the moment -

a) researchers tell me that they cannot get permission to conduct investigations into sensitive issues, and

b) much valuable university research does not seem to be leading to change.

For example, in 2007 researchers at UNE found that 99.6 per cent of Australian teachers had been bullied at work by school principals, parents or fellow teachers. You would expect that such a shocking research result would lead to significant change, but there was none of which I am aware.

Three years later a Queensland teacher suicided after making a workplace bullying complaint at one school and then being transferred to a school with a long, substantiated history of workplace bullying complaints. The UNE research into workplace bullying did not seem to have led to change. I would suggest that research that does not lead to change is a waste of public funds.

A national whistleblower agency could liaise with researchers working in universities to conduct *independent* research into the outcomes of new whistleblower policies, to identify problem areas, and to refine the policies.

I would not consider the "Whistle While They Work 1 and 2" projects to be truly independent because they seem to have been funded by the organisations that they were supposed to be investigating.

We need independent research -

a) to find out if the new whistleblower policy is being understood and applied to employees' own conduct.

b) to gather statistics that would suggest how effectively the new whistleblower policy is working. For example, we could find out how many whistleblowers in each organisation were still being driven into ill health and out of work.

c) to accurately identify problem areas in the new whistleblower policy and to prompt change.

d) to understand different cultural attitudes to whistleblowing in Australia. If one community group - say the Aboriginal community - has a view that whistleblowing is wrong, do we have the right to impose different cultural values on this cultural group?

And how do we deal with these cultural differences when organising investigations? For example, should we ask an Aboriginal person who holds traditional anti-whistleblower cultural values to conduct an investigation into a white Australian whistleblower's disclosure of child abuse?

e) each time a senior officer in an organisation is found to have engaged in corruption or misconduct, we need to closely investigate how that officer was promoted into power. What went wrong with the selection process? How is the promotion process failing the organisation and the community?

**9) to honour whistleblowers**

Organisations need to demonstrate that they value whistleblowers.

Each organisation could establish an "We honour employees who speak up about corruption and misconduct" board at the entrance to their building.

The board could list the names of those employees who have blown the whistle on corrupt practices.

Whistleblowers who have saved organisations money could have the sums saved listed by their name. They could be awarded a 10% career-long pay rise in recognition of the money they have saved the company.

Whistleblowers could be given priority status when applying for promotion.

When organisations are seen to honour whistleblowers, corruption and misconduct will be discouraged.

### **10) a 'defined benefit' fund for whistleblowers**

If effective policies are developed and implemented, Australian whistleblowers will be able to continue with their career in the normal manner.

They may even be valued for their courage and integrity and for the valuable part they have played in the effective running of the organisation.

But, in case the new whistleblower policies fail and whistleblowers are still being driven into ill health and out of work, they should to be protected with a 'defined-benefit' type of whistleblower protection policy that ensures they will have an income for the rest of their lives.

The benefit should be automatically paid to any employee who blows the whistle on corruption or misconduct and is then driven into ill health and out of work.

A whistleblower protection policy would reduce legal costs.

Each organisation would need to take out whistleblower insurance. Organisations would be motivated to reduce the number of whistleblowers being driven into ill health and out of work in order to reduce their insurance premiums.

I would hope that any new whistleblower policy will value and protect all Australian whistleblowers, not only those who save the government money.

The quality of the lives of ordinary Australian people is important.

A nurse or doctor who blows the whistle on dangerous medical practices is as valuable to the Australian community as a tax whistleblower.

No Australian whistleblower should be driven into ill health, out of work and into poverty.

While Australians can still see whistleblowers being driven into ill health and poverty, we will still systemic corruption and misconduct in Australia.

Robina Cosser