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31 May 2010

W.A

Committee Secretary
Review of Parliamentary Committee System
Parliament House
George St
BRISBANE Q 4000

Dear Sir

Below please find the public submission to the Queensland Parliamentary Review of the
Parliamentary Committee System.

Yours faithfully

G. M. McMahon
Secretary, Whistleblowers Action Group



SUBMISSION
TO THE
QUEENSLAND PARLIAMENT'S REVIEW OF ITS PARLIAMENTARY
COMMITTEE SYSTEM

from

Whistleblowers Action Group Qld Inc

Introduction

This public submission seeks to address the performances of the Parliamentary Committee system in identifying and arresting the failures of watchdog authorities within the system of Government in unicameral Queensland.

It identifies some of the major failures of principal watchdog authorities, and discusses the reasons for those failures as may pertain to the responsibilities of the relevant Parliamentary Committee.

Some specific examples of the performance of Parliamentary Committees in this regard are given in the public interest.

Purpose

This submission seeks to argue the factors that are undermining the performance of the Parliamentary Committee system in turning around the failure of watchdog authorities in the Queensland Government.

Failures by Watchdog Authorities

Hospital Care and Management.

The failure of the **Bundaberg Hospital** and of the Health Department in responding to disclosures of its staff about the treatment of patients has been dealt with by the Davies Commission of Inquiry into Queensland Public Hospitals. That Inquiry found systemic corruption of the management of the Health Department, including a culture of cover-up that was integrated even into the processes of the Queensland Cabinet (regarding FOI exemptions).

What was not recognized by that Davies Inquiry or by the Queensland Parliament was the failure of the Office of the Ombudsman ("**OmbO**") and Office of the Information Commissioner ("**OFOI**"), as well as of the Crime and Misconduct Commission / Criminal Justice Commission ("**CMC**"), to address and arrest the systemic corruption of hospital treatment and health management.

Other watchdog authorities whose credibility has been affected by the disclosures made to Commissioners Morris and Davies are the current Health watchdogs.

It ought to be of major concern that the whistleblowers involved in forcing these matters to be addressed showed no confidence in these watchdogs but went instead to a member of Parliament, who, in the first instance, was ridiculed himself when making the disclosure on the floor of Parliament.

The situation within Queensland Health was often reported to the CMC, OmbO and FOI by staff and whistleblowers well before the Davies Inquiry. One of the Queensland whistleblowers at the time of the Senate Inquiry into Whistleblowing, in 1994 and 1995, was a nurse from the Bundaberg Region.

Other disclosures upon the same matters addressed by the Inquiry include those made by [redacted] that featured in the public media.

All watchdogs consistently failed to act or act with any effect on the matters disclosed to them.

So little inspection has been placed upon these watchdogs for their lack of performance. An immediate shudder of concern occurred from the community of whistleblowers when one of those bodies, the OmbO, put itself forward as the organisation to administer whistleblower protection.

Payroll Project Fiasco.

The current failures in managing the Queensland Health \$22 million payroll project were also a prediction that could be made from forewarnings given to these watchdogs.

A whistleblower with a record of success in major project management roles disclosed that, when the whistleblower went for a project management role in Queensland Health, the selection committee rated the whistleblower's demonstrated project management skills at 3 out of 10.

The position was given to a candidate who, in the application stated that they had had no experience in project management, but undertook, if given the position, to do the best that they could. This candidate was rated at 8 out of 10 regarding demonstrated project management skills.

Not one of the watchdogs took any action on this disclosure.

The failure to select persons on merit in project management roles, and worse, the selection of persons *without* the training, experience and skills into project management responsibilities, has developed a community of untrained, unskilled, inexperienced

project managers within Queensland Health who, while purportedly doing their best, are nevertheless rendering or over-sighting a major continuing detriment on others.

Payroll systems have been efficiently rolled out into large organisations since the beginnings of the British Empire trading companies, and it has been done with computers for the last 40 years, but in Queensland Health, in 2010, it has been a conspicuous continuing debacle.

Clearly, the prevalence of waste on Queensland Health Projects has been contributed to largely by the failure of watchdogs 'to draw a breath' on scandalous Human Resource procedures when these matters have been disclosed. This failure on a simple payroll project is the foremost of many and the first of the majors that will fall upon an organisation that has had 3 out of 10 regard for merit selections.

Fire Ants.

In 2003, a whistleblower made disclosures to the CMC that progress reporting on the fire ant problem was being misrepresented to Parliament and the public. The whistleblower advised the CMC that the fire ants were winning while the Department of Primary Industries ("DPI") was advertising their impending efforts to get the last ant. Subsequently, in 2005, the whistleblower advised that the fire ants had won.

In 2010, the DPI has had to acknowledge that the fire ants have reached Grandchester and are now moving into our fertile agricultural areas. It is not the victory of killing the last fire ant that we now face, but the prospect of a last impending picnic at Grandchester, and elsewhere.

A \$250 million program is necessary to try to overcome a problem that got out of hand because the truth spoken by the whistleblower was ignored by watchdogs at a critical time.

Water allocations.

The Federal Government is reported to be seeking to buy back water allocations from a major irrigator on the Border Rivers between Queensland and New South Wales. The figure quoted is in the region of \$100 million.

A whistleblower disclosed the practices of making water allocations in this geography, and about the allocations to this major irrigator to the OmbO and CMC in the mid-1990s.

Nothing was done about these allocations or about the practices and decisions made, except that the OmbO informed the organisation about whom the public interest disclosure ("PID") had been made in a way that was allegedly detrimental to the whistleblower.

Pollution from Mining Leases.

Whistleblower, Mr Jim Leggate, disclosed the failure by the Mines Department to enforce the conditions on mining leases during the early 1990s. His disclosures made it into the national media, and evidence from Leggate and his professional colleagues was given to the Matthews Inquiry.

The bill faced by the Queensland taxpayer, in rehabilitation works not completed by 40 named mines, was estimated at \$1 billion dollars in 1991.

The CMC (then CJC) argued that the failure to enforce the conditions of lease were not official misconduct because everyone knew that the lease conditions were not being enforced.

The CMC also did nothing when the Mines Department forced Leggate's transfer subsequently to a lower position in another Department, and adopted the view that that transfer did not give rise to a suspicion of official misconduct.

Since then, government monitoring of the pollution levels in Queensland streams showed increasing levels of pollution. Regional media started reporting spoiling of aquifers used for watering livestock, and we are informed that individuals sought audiences with the Premier for alleviation of these difficulties. Public concern caused the government to move the mine inspectors and / or their environmental responsibilities to another Department. The boom in mining activities, the prosecution and conviction of a Minister for taking bribes from a mining management associated with a mine named by Leggate, and the impact of mining on coastal rivers during the last two wet seasons, have caused the government to initiate, in 2009, prosecutions for breaches of environmental conditions by mines.

The rehabilitation bill is estimated now to be \$3 billion, an increase of \$2 billion. This \$2,000,000,000 increase in the bill faced by Queensland taxpayers is directly attributable to the failure of the CMC to arrest the non-enforcement, and to the failures by the CMC, OmbO and the Office of the Public Sector ("OPS") to protect the whistleblower and thus to encourage other whistleblowers to maintain a watch over these environmentally vandalous actions by mine and watchdog.

Police.

The investigations into police operations along coastal Queensland, from Palm Island to the Gold Coast, is another outcome that has come about because of decisions that removed policemen with proven records for honesty from positions which could influence honest policing in our State.

Col Dillon was the first police officer at the Fitzgerald Commission of Inquiry to make a PID on corruption within the Queensland Police Force. He broke the notorious 'code of silence' which otherwise had the potential to cripple that now-famous Inquiry.

Post Fitzgerald, Sgt Dillon overcame the disadvantages of being passed over for promotion, and then the alleged punitive transfer to a position reporting to a very much junior position occupied by a non-police person. A Review of the Police Service, led by Sir Max Bingham and a Committee containing representatives from the CMC, described the treatment received by him at the hands of those in authority in the police, as 'anomalous in the extreme'. No action was taken by the CMC to change his situation. Finally he was left in a corridor Gulag – no office, no desk, no phone, no computer, no duties.

Again in 2005 (internally) and in 2006 (to the public), Dillon made stringent criticism of the failures by the Queensland Government to provide a 'Duty of Care' to Aboriginal peoples, particularly those who are held in lawful custody.

Dillon criticised the various departments, who are bound by statutory requirements to provide a duty of care, for failing to observe the unambiguous requirements of the recommendations arising out of the Royal Commission into Aboriginal Deaths in Custody. He felt morally obliged to resign, publicly, from and sever his connections with the Queensland Government over its continued interference with statutory departments, namely, the Queensland Police Service, Crime and Misconduct Commission and the Office of the Director of Public Prosecutions, throughout the course of the investigations into the death in custody of Mulrunji Doomadgee at Palm Island.

Government authorities have never been able to turn Col Dillon from his duty. Government authorities should not be able to turn the Police and the CMC from theirs.

In 2007, Dillon again stated publicly that the corruption and wrongdoing within the Queensland Government was now worse than it was prior to the Fitzgerald Inquiry. As an example, he cited the unresolved Heiner Affair. The Police and the CMC dismissed his claims in the public arena, but fell silent when, in 2009, former corruption-fighter the Hon Tony Fitzgerald AC, in a landmark speech at Griffith University in late July 2009, made similar claims that Queensland was returning to its pre-Fitzgerald past.

It is open to suggest that it was Dillon who was providing the leadership on these issues and not the CMC (or the PCMC) who appeared to be following events rather than initiating appropriate actions.

One reason for this may be the quality of persons working for the CMC. When another policeman whistleblower to the Fitzgerald Inquiry, Nigel Powell, applied to the CMC for a position as an investigator, he was rejected.

The pattern here may be that the persons given leadership roles within the CMC and Police Department were largely persons who saw nothing wrong happening within the Police Force before the Fitzgerald Inquiry. Those that saw wrongdoing and reported it received extreme mistreatment and had their applications for positions rejected, it appears.

True to expectations, those that saw no wrongdoing before the Fitzgerald Inquiry was established, have continued to see nothing after Fitzgerald, even when Sir Max Bingham has formally reported the wrongdoing to them. The leadership in police work is now being exercised from outside of the police force and the CMC, rather than exercised by these organisations of government.

Systemic Issues and Impending Breakdowns

The types of disclosures being made by whistleblowers seeking assistance from Whistleblowers Action Group Inc (“WAG”) and Whistleblowers Australia (“WBA”) indicate that the breakdowns that may be about to come to the notice of the public are:

1. Assault of aged persons in care, as well as children and the disabled, and all persons in custody;
2. Assault of persons in the workplace, particularly in those government departments under sustained allegations of systemic wrongdoing; and
3. Disintegration of watchdog authorities.

Watchdog Disintegration.

The last mentioned may happen under the burden of an increasing gap between the number of PID’s received and the number of PIDs to which the watchdog appropriately responds.

The methods used to dismiss PIDs in the years following the Fitzgerald Inquiry included:

1. An exercise of a discretion not to investigate where the watchdog saw a prosecution as not being in the public interest (by the CJC then the CMC)
2. The wrongdoing was technical rather than ...*unstated* (by the OmbO and OFOI)

This treatment caused levels of wrongdoing to rise as public sector organisations realized the precedents for nil-consequences from such watchdogs when the agencies offended.

Both the CMC and the OmbO later took to the method of referring PIDs made to them about public agencies to those same agencies (termed the ‘post office’ method). This placed the whistleblowers at great risk.

The mistreatment and systemic wrongdoing grew to even larger proportions as the non-enforcement of wrongdoing by the watchdogs became clear and the betrayal of whistleblowers became largely assured.

Currently, the watchdogs appear to be cooperating in rationales that deny principal whistleblowing any avenue to an investigation. Two major rationales of this type are:

1. A Catch 22 rationale applied to alleged reprisals; and
2. A research program into whistleblowing.

The ‘Catch 22’ on Alleged Reprisals.

In this regard:

- The CMC decides that the allegation of reprisal is not official misconduct but may be maladministration and thus comes under the OmbO, BUT,
- The OmbO decides that any maladministration is associated with an allegation of suspected official misconduct, and thus should be dealt with by the CMC, giving the result that
- Neither watchdog investigates the allegation.

Whistleblower Research.

The CMC and OmbO in Queensland led a so-termed ‘research’ program into whistleblowing. The methods used in the ‘research’ tended to give the program all the integrity of the discredited tobacco company research into addiction from smoking, in that:

1. The terms of reference for the research decided that the watchdogs were doing their role well, so this was ‘a given’ not to be itself researched;
2. The definition used for ‘whistleblowing’ allowed responses from large volumes of persons who were not whistleblowers into the study data;
3. The research used methods that excluded government whistleblowers who had been terminated from their employment, and then concluded that whistleblowers were unlikely to suffer loss of employment if they made disclosures as few terminations were found in the surveys;
4. The press releases about the results of the research claimed that only 22% of whistleblowers suffered disadvantages in their employment. The 22% figure was heralded even though the research reported that 66% of known whistleblowers (still in the government) suffered disadvantages in that employment. When allowance is made for persons whose employment had already been terminated, this figure of 66% became 80%;
5. This 80% figure, derived from a Review of the research by WAG, is supported by the same estimate derived by a presenter at the St James Ethics Institute, by a University of Queensland study that did include terminated whistleblowers in their analysis, and by the Western Australian survey of operations staff in the Anti Corruption Commission (“ACC”) in that State

More analysis of this research, and of the figures from it pushed into the media and academic discourse by the CMC and OmbO, is given in the attached Review document.

There appears little doubt that the misinformation provided from this research has also made its way to relevant Parliamentary Committees.

It is open to conclude that this type of spin and bravado by the watchdogs has reduced the degree of inspection being made of wrongdoing in the government workplace. Wrongdoing in government has largely lost most prospects of any consequence being imposed on the wrongdoer. As a result, wrongdoing is climbing in frequency and in the seriousness of the types of wrongdoing at issue.

Col Dillon identified this trend. Tony Fitzgerald recognized the trend from his chambers in New South Wales. The CMC and the OmbO should have recognized it as well

The first academic papers quantifying the abandonment by watchdogs of their original role have been published.

All these examples WAG herein gives without any description of the Heiner Affair, the prime example of systemic accountability failure in Queensland.

Outcomes by Watchdogs.

In summary, the outcomes from failures by watchdogs to respond to bona fide PIDs, outcomes that have recently come to the notice of the public, include:

1. Abuse of patients in Health care;
2. \$22million waste in the Payroll Project Fiasco;
3. \$250 million Fire Ant Failure;
4. \$100 million Water Allocations Failure; and
5. \$2000 million Mine Rehabilitation and Coastal River Quality Failure

Those fire ants, in particular, are honest, and they are organized. The truth of their spreading out-of-control existence is marching on the Queensland Government, on the CMC and on the OmbO, whose 'last fire ant' spin is now exposed as the myth it always was.

Less visible is the growing organisation of persons in agriculture who also are marching upon those causing environmental detriment to our food and food industries, our rural communities and way of life. The expansion of the gas industry appears to be repeating the failures of the mining industry in managing our environmental resources.

The children caring for aged parents, and the parents of abused disabled children, are also growing in organisation. The increasing incompetence of public service management and

their resort to bullying is spawning websites and other forms of resistance amongst ordinary people.

People, such as the Mr Doomadgee family, are not allowing the CMC to escape their responsibilities by delaying investigation until the whistleblowers forgets or gives up their cause for complaint.

The Role of Parliamentary Committees

This submission asserts that Parliamentary Committees (“PC”) have a Watchdog-over-the-Watchdogs role. This is specifically the case with the Parliamentary Crime and Misconduct Committee (“PCMC”).

All PCs, however, need to raise concerns about the performance of relevant watchdogs when they identify major and continuing failures by agencies in their purview.

We submit that Parliamentary Committees, including the PCMC, are either not performing this role or are not performing this role effectively.

We submit that the reasons for this include:

1. PCs have become politicized in their operation and decision-making, rather than bipartisan;
2. PCs are adopting procedures that are denying the PC information about what is happening in government and in the community. Particular procedures include:
 - a. Rulings that misrepresentations and false statements, made to the PC by a Minister, do not constitute serious wrongdoing;
 - b. Denying community stakeholders access to PC hearings on matters in which the community group have an interest;
 - c. Ruling off the agenda of the PC matters that the PC has considered at an earlier stage;
 - d. Accepting self-serving and erroneous assertions from watchdog authorities that have not been subjected to review.
3. PCs can become engaged in the wrongdoing or in the cover-up of the wrongdoing, thereby limiting public debate on issues that are in the public interest

Politicisation v Bipartisanship.

By definition, a Government cannot be in the business of government, under the rule of law, if that Government is engaged in the denial of bona fide processes that will establish the criminality or otherwise of the Government's past actions. The turnover of our concepts of the public interest by assertion, maintained only 'by the numbers', that investigation of criminality by government is contrary to the public interest, is lethal to all understandings of legitimate government in a democracy, particularly if government by the rule of law matters.

Keeping the PC Informed.

We recall the decision that false statements by a Minister to a Parliamentary Committee did not constitute serious wrongdoing by the Minister. It is a matter of concern that such an abuse of the PC system would meet with such little consequence. The decision reduced the PC processes to a show of shallow public relations spin, and a show of little importance to any public interest purpose.

WAG is a known community group with a legitimate role in justice issues before any PC. It is a matter of record that WAG has not been invited to give evidence at hearings during recent triennial reviews of the CMC by the PCMC. It is on the public record that WAG now receives invitations to make submissions to these triennial reviews because of media coverage of one review where we did not receive such an invitation.

WAG has information that will often contest the truthfulness, accuracy or completeness of the information coming to PCs from self-serving watchdogs who are failing in their role and appear to be trying to cover-up this failure.

We attach a review of the research into whistleblowing led by the CMC and OmbO, as a primary example of the spin that watchdogs can deliver in their own interests, and the analysis that community groups can provide bringing balance to a PC's deliberations so that Parliament and the public interest is better served.

The examples of these failures that are described in this submission are longer term processes whose impact is multiplied only with the passage of time.

Early disclosures on the Fire Ants, for example, were about the deceptions and bad practices occurring with inputs and management processes applied to the Fire Ant problem. The bad outcomes were always going to take time, and further time will magnify the impacts further. For a PC to consider the Fire Ant issue once, and veto a second consideration of the issue over time, only acts to promote the tactic of 'the big lie' before the PC. In 2004 and 2005, the whistleblower was saying that the ants were winning, and the CMC and the DPI were allowing the world to believe that the last ant was in their sights, indeed that it may be the first global victory against this blight. It has taken time for those resolute little ants to show that the whistleblower was right and that the CMC was and is useless on this issue.

Time and the build up of visible environmental harm are showing that it was the water resources whistleblower who acted in the public interest, not the CJC.

Time and the build up of visible environmental harm are showing that it was whistleblower Jim Leggate who acted in the public interest, not the CJC.

PCs need to allow the truth that outcomes bring to many issues into their continuing consideration of public interest issues if accountability is to be achieved.

PCs Engagement in the Cover-up.

Conclusion

We submit that the worsening volumes or wrongdoing within public agencies have been caused by two decades of non-enforcement of laws and regulations by watchdogs, and non-investigation of disclosures made in the public interest.

The level of non-enforcement by watchdogs now has evolved into a tacit endorsement of many forms of wrongdoing by those watchdogs, further increasing the incidents of reported and actual wrongdoing.

The failure by the watchdogs to fulfill their role is thus systemic, and it is a responsibility of the Parliamentary Committees, if not Parliament itself, to address this sorry state of affairs relevant to their particular portfolios, lest they become part of the entrenched wrongdoing.

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G HARRIS
President
Whistleblowers Action Group Qld Inc

ATTACHMENT

Blowing the Whistle on the Whistleblower Project

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