

WHISTLEBLOWERS QUEENSLAND

WHISTLEBLOWERS ACTION GROUP QUEENSLAND (Inc)



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**POLICY POSITION
OF
WHISTLEBLOWERS ACTION GROUP
ON
THE DESIGN OF
WHISTLEBLOWER PROTECTION LEGISLATION
*"THE SWORD AND THE SHIELD"***

SUMMARY

The institutional framework established in any Australian jurisdiction to encourage whistleblowing needs to separate the two principal dimensions to any act of whistleblowing, namely:

- the wrongdoing disclosed by the whistleblower acting in the public interest
- the reprisals suffered by the whistleblower because of the disclosure by the whistleblower made in the public interest.

The principal plank of this policy position for the protection of whistleblowers is that an effective program to combat corruption and maladministration in public organisations needs two arms:

- one arm is needed to carry "**the sword**", with which to pursue and eradicate the alleged wrongdoing disclosed by whistleblowers. This is the role of the government Integrity Bodies or anti-corruption forces, e.g. Police, Royal Commissions, standing crime commissions, Parliamentary Inquiries, Ombudsmen, Directors of Public Prosecutions, Auditor General, and other enforcement bodies; and
- a second arm is needed to carry "**the shield**", with which to protect whistleblowers from the swords of those whose alleged wrongdoings are the subject of whistleblower disclosures, or from the swords of those who are threatened with disclosure arising from those allegations. This should be the role of the **Whistleblower Protection Body (WPB)**.

This separation of issues is important. This separation requires that, whatever set of institutions are tasked with the responsibility for investigating the wrongdoing disclosed by whistleblowers, there needs to be a distinct body, independent of those Integrity Bodies, charged with the responsibility for protecting whistleblowers from reprisals.

Three principal reasons for this separation of responsibilities, learned from experience with Australian Integrity Bodies, are:

- Firstly, the culture of "sword" bodies and their investigators, even those acting conscientiously in pursuit of the corrupt, tend to quickly lose interest in the welfare of

witnesses after the witnesses have given their evidence, after the whistleblowers have made their disclosures formally to the proper authorities;

- Secondly, authorities that have a higher position in the jurisdiction than the “sword” organisations, authorities such as Cabinets, Leaders of Governments, Parliamentary Committees, Ministers in Parliament and judicial authorities, can also act to impose reprisals on whistleblowers. The “sword” organisations can act in compliance with higher government direct instructions or behavioural ‘leads’, both actively and passively. Those Integrity Bodies cannot then be trusted to protect whistleblowers against government action; and
- Thirdly, the strongest tactic for overcoming corruption and systemic wrongdoing is to ensure that the whistleblower survives. If the whistleblower survives, so too does their disclosure. The likelihood for others coming forward, encouraged by the survival of the first, is greatly increased. The pressure on the “sword” organisations to respond properly to the disclosed wrongdoing, also survives and builds. The risks for the corrupt when the whistleblower survives is why priority is given by the corrupt and by those compromised by the disclosed corruption to the silencing of whistleblowers.

In 1993, whistleblowing was only emerging as a regional and national issue within the public sector of Australia. The first version of this Policy, then, needed to draw on the experiences of overseas jurisdictions which had attempted legislative provisions and had attempted the construction of integrity bodies to protect whistleblowers and their disclosures. For this second version of this Policy Paper, however, records and experience is now held as to how Australian efforts have fared over the last quarter-century in attempts to respond to corruption and to other forms of wrongdoing. The Australian experience has principally been in the public sector, including the regulation of legislated activities in the private sector and in not-for-profit [NFP] organisations.

The contributing roles of this WPB, assisted to independence by separation, should include:

- an investigatory role, with respect to reprisals against whistleblowers from any source, be it from the public sector or private sector or NFP
- a reporting role to Parliament, with respect to:
 - **allegations by whistleblowers of wrongdoing, referred by the WPB to appropriate agencies charged with responsibilities for investigating such wrongdoing;**
 - **allegations of reprisals against whistleblowers; and**
 - **investigations of reprisals.**
- A watching and open reporting role for responding to any irregularities, including defensive or adversarial actions, used by “sword” organisations or by higher authorities, in processes to address the disclosures made by whistleblowers, irregularities tending to show that the processes may not be proper, thorough and impartial;
- an advisory role, provided to individuals and organisations regarding disclosure processes, whistleblower protection, support services and programs, and such
- a supporting role, through provision of education programs, counselling, channels for disclosures, protection of witnesses, re-employment assistance, safeguarding of documents, legal aid (to qualifying cases), and full case management.

The WPB should be given the necessary powers to achieve its roles, including powers:

- **to ensure that the whistleblowers survive in their employment and in the continuation of their career, without reprisal or coinciding setbacks during a protection period;**
- **to overcome the active and passive defensive measures used by organisations in negating the disclosures by whistleblowers of wrongdoing and of reprisals;**
- **to provide whistleblowers with a fair contest in administrative and legislative procedures dealing with allegations of wrongdoing and of reprisals against whistleblowers;**
- **to provide remedies for whistleblowers against whom reprisals have been imposed; and**
- **To pass the costs of the WPB operations to those entities about which disclosures of wrongdoing or of disclosures have been reasonably made.**

OUTLINE OF THIS POLICY POSITION

This document describes the policy position of Queensland’s Whistleblowers Action Group under the following headings concerning the requirements of effective whistleblower protection legislation in Australia

- **The flaws with Integrity Bodies;**
- **The advantages of having an independent Whistleblower Protection Body;**
- **Mutual Support between the Integrity Bodies and Whistleblower Protection Bodies;**
- **Adversarial Measures used by Integrity Bodies in the Defence of "the System";**
- **Negating Adversarial Conduct by Integrity Bodies against Whistleblowers**
- **Effective Whistleblower Legislation;**
- **Providing a Fair Contest for Whistleblowers; and**
- **A Capacity for Healing the Wounds from Reprisals**

1. THE FLAWS WITH INTEGRITY BODIES

- 1.1. The flaw with integrity bodies is their vulnerability to instances or forms of wrongdoing that are accommodated by levels of authority above the level of the Integrity Body. This higher level of authority can be in the Legislative, the Executive or the Judicial arms of the particular jurisdiction.
- 1.2. The literature on corruption includes the terms of ‘white’, ‘grey’ and ‘black’ types of corruption to distinguish the different patterns of regard for wrongdoing held by a community versus the regard held by the community’s own government. Here the term ‘**Gorrption**’ is used to identify incidents of wrongdoing or forms of wrongdoing within a jurisdiction that governments at any

- level in that jurisdiction are actively defending against investigation and prosecution, or are passively avoiding proper, thorough and impartial investigation and / or merited prosecution.
- 1.3. Reprisals against whistleblowers disclosing wrongdoing that may be occurring in these higher levels of government can be a primary example of a form of corruption that governments tolerate and defend in the experience of whistleblowers in Australian jurisdictions.
 - 1.4. The ‘accommodation’ can be active in shape. That is, an explicit direction to the Integrity Body not to pursue the matter. The ‘accommodation’ can also be passive, say, as a display of wilful blindness by omitting the wrongdoing from the terms of reference of an inquiry.
 - 1.5. Governments can influence Integrity Bodies to follow the government’s will, through changes in funding and by appointments. The Integrity Body, once compromised, is thereafter vulnerable to ‘capture’ by agencies under the Integrity Body’s overview, who pursue for themselves the same ‘accommodations’ with respect to their wrongdoing given by the compromised Integrity Body to higher level bodies in any of the three arms of government.
 - 1.6. This flaw then converts into a pattern. That pattern can be that any Integrity Bodies in Australian jurisdictions, outwardly seeking to combat corruption, waste and maladministration in its public service, accumulated instead a substantial record for destroying whistleblowers. If the whistleblowers do not survive, then ‘corruption’ and other forms of wrongdoing will thrive. The corruption becomes systemic.
 - 1.7. This turn in purpose by Integrity Bodies is now a recognised world-wide phenomenon, where anti-corruption cum pro-reform authorities, instead of defending witnesses and whistleblowers, and pursuing the disclosures made by “integrity workers” of major corruption and waste occurring in the system, turn out to act in defence of the system against those disclosures. The Integrity Bodies then pursue with vigour the most minor breaches of rules or protocols or policies by the whistleblowers making those disclosures.
 - 1.8. In this regard, Integrity Bodies in Australia have been perceived to be ‘touchable’ and adversarial, rather than ‘untouchable’ and independent. Ignoring wrongdoing can render one complicit in that wrongdoing, and the Integrity Body loses the trust of the public.
 - 1.9. The media appears to be the only force in the system with the power to influence any Integrity Body towards an avoidance of complicity in the investigation of any disclosure of ‘corruption’. When the media play at politics, the media too can become an adversary, a powerful adversary, against the whistleblower and the corruption or the Corruption that the whistleblower has disclosed.

2. THE ADVANTAGES OF AN INDEPENDENT WHISTLEBLOWER PROTECTION BODY

- 2.1. The advantages that come from a whistleblower protection or “Shield” function, managed by an organisation [WPB] that is separated from and is independent of any “Sword” organisation, arises from the WPB’s focus only on the survival of the whistleblower. This focus includes the elements:
 - i. **ANY reprisal for whistleblowing is upheld as unacceptable;**
 - ii. **allegations of reprisal for whistleblowing are treated as the organisation’s highest priority;**

- iii. **allegations of reprisal for whistleblowing are reviewed intensively for any feasible remedial or preventative action; and**
- iv. **every opportunity is used to make a public record of the WPB's assertive pursuit of corrective action (especially in whistleblower reprisal cases), both to encourage other whistleblowers, and to affirm the emphasis given to corrective actions by the WPB**

2.2. The WPB does not have a role in the investigation of the disclosure of wrongdoing made by the whistleblower - that remains the role of the relevant "Sword" organisation. The "Shield" WPB, however, does have a role itself to disclose any steps taken by the "Sword" organisation to conduct any investigation unreasonably, that is, in a manner that is not proper, thorough and impartial, such as may discredit the disclosure and thus act to discredit, unreasonably, the whistleblower.

2.3. The advantages of this separated and independent Shield WPB exist in different ways but related ways in the two situations that may be faced by the whistleblower and by the WPB:

- 1. **Where the Sword organisation is acting responsibly in the face of alleged corruption and any related 'Gorruption'; and**
- 2. **Where the Sword organisation is conducting its role in a defensive or adversarial way, whether by active or passive means, tending to discard the disclosures unreasonably and to discredit the whistleblower.**

2.4. A community benefit too comes from the contributions that the WPB can make to educating the community about whistleblowing. As above, there can be two directions to this benefit, one being an advance of knowledge about the phenomenon of value and benefit to all. The other direction is the need to correct misinformation about whistleblowing, being provided by Integrity Bodies driven by a publicity campaign that covers up the failures by these Integrity Bodies.

2.5. A case in point is research into whistleblowing. The Whistleblowers Study conducted by the University of Queensland team of Dr Bill de Maria and Cyrelle Jan has produced statistics on the lot of whistleblowers in one Australian jurisdiction at the hands of Integrity Bodies who purported to be protecting their whistleblowers.

- 1. **various Integrity Bodies were rated as fairly ineffective or very ineffective in dealing with disclosures by 78% to 100% of whistleblowers; and**
- 2. **71% of whistleblowers experienced an average of 1.5 official reprisals and 94% of whistleblowers experienced an average of 4.2 unofficial reprisals, at the hands of those Integrity Bodies.**

2.6. A combination of Integrity Bodies thereafter supported research by other universities which failed to address these issues. The performance of Integrity Bodies was simply assumed to be satisfactory and was not included as an issue in any of the extensive surveys conducted. The research was also summarised by the Integrity Bodies and by the universities as showing that mistreatment of whistleblowers was 'a myth', and claimed that accounts of past whistleblowing events were 'mythical tales'. The process followed by the research, further, removed from the survey all whistleblowers who had been terminated, who had been transferred, or who had resigned or taken redundancy or left their employment as part of a settlement. When the results of the research on acknowledged whistleblowers still in employment were adjusted for these exclusions, it was identified that whistleblowers experiencing alleged retaliation had risen from 71% to 83% (or by

12% points) in the 12 years since the whistleblower legislation was introduced into that jurisdiction.

- 2.7. The support for such research given by Integrity Bodies demonstrates the need for strength and for an absence of compromise to be shown by a WPB in facing up to the efforts made to negate whistleblowing. It also shows another perspective to the treatment of whistleblowers.
- 2.8. All perspectives to the treatment of whistleblowers demonstrate the need for the priority, intensity and pro-activity which any WPB must gather for the contest to protect whistleblowers and the public. ‘Gorruption’ is worse than any Australian jurisdiction to date has admitted to its public.
- 2.9. No Australian jurisdiction as yet has the advantage of a WPB, let alone a WPB enabled and allowed to be effective. That outcome may not have been by accident, it would appear from the Australian experience.

3. MUTUAL SUPPORT, WHERE THE INTEGRITY BODY IS USING REVIEW AND ENFORCEMENT PROCESSES IN ITS “SWORD” ROLE

- 3.1. The WPB plays an important role in identification of wrongdoings and in influencing Integrity Bodies to carry out their responsibilities in investigating wrongdoing and prosecuting all offenders. The part played by the WPB includes:
 1. acting as a disclosure channel for employees and former employees to report wrongdoings;
 2. providing an encouragement for others with relevant information to also come forward;
 3. requiring agency heads to investigate allegations if the WPB determines that there is a substantial likelihood that the information discloses wrongdoing;
 4. safeguarding documents that WPB are empowered to obtain and statements by witnesses that WPB are empowered to obtain in investigating reprisals, and making these available to investigations by Integrity Bodies or agencies where these are relevant; and
 5. reporting to Parliament (all Houses) and to the principal minister on the outcomes of investigations into wrongdoings carried out by Integrity Bodies, following referral to the Integrity Bodies of disclosures and information from the WPB.
- 3.2. The results achieved by WPB's involvement, albeit indirect, in the pursuit of the wrongdoings disclosed by whistleblowers, would be described in its annual report. For instance, the percentage, of disclosures made to the WPB that were judged to have sufficient basis to merit further action, and were referred to agencies or Integrity Bodies for investigation or review, and, the percentage of these cases, then investigated by agency of Integrity Bodies, which substantiated allegations in whole or in part, are examples of the information benefits that can be derived from a WPB. The onus thus put on agencies to investigate allegations properly, thoroughly and impartially would serve to reduce the volume of matters proceeding to Integrity Bodies.

3.3. In Australia, there is no Whistleblower Protection Body in any Australian jurisdiction, and little mutual support between the Federal and State Integrity Bodies and the Integrity Workers that are termed as “Whistleblowers”. The relationship instead is characterised by distrust and dispute, from which recurring calls for inquiries into the activities of the Integrity Bodies are a most prominent outcome.

4. ADVERSARIAL MEASURES USED BY “SWORD” INTEGRITY BODIES AGAINST DISCLOSURES, IN DEFENCE OF THE SYSTEM

General

4.1. The factors by which Integrity Bodies can lead administrative systems in the defence of systemic corruption and in the denial of ‘Corruption’, and in adversarial actions against whistleblowers rather than in the protection of whistleblowers and their disclosures, will not be overcome solely by the establishment of a WPB. Of equal importance is the sophistication of the legislation that empowers the Integrity Bodies and, separately, the Whistleblower Protection Body.

4.2. The sophistication of the legislation must be enough to counter the sophistication of the active and passive measures employed by agencies and Integrity Bodies in defending the system against unwelcomed disclosures by whistleblowers. Active measures include the usual, if not the inevitable, reprisals against the employment and professional careers of the whistleblower, but also include devices that undermine the proper, thorough and impartial response that should be made to *bona fide* disclosures. An understanding of the sophistication required of relevant legislation may need a map of those undermining devices used by Integrity Bodies and agencies, and how those devices operate to undermine the component processes of a proper, thorough and impartial response.

4.3. A beneficial set of processes for responding to a *bona fide* disclosure of wrongdoing will include:

- 1. The receipt of the complaint;**
- 2. The assembly of the evidence, both documentary and witnesses;**
- 3. The investigation, both the decision to investigate and the conduct of that investigation;**
- 4. The findings made;**
- 5. The provision of detailed reasons for any decision; and**
- 6. The notification to the public of the outcome and reasons**

4.4. These steps can be readily undermined by devices, examples of which are given below. Devices can be blunt uses of threat and force, but others can be designed for purpose.

Receiving the Complaint

4.5. Devices relying on a blunt use of power here include ignoring the complaint of a reprisal or ignoring a disclosure. Sometimes, an explanation or claim is made that the disclosure or complaint was not received in the first place, or was not signed (if sent by email), or did not use the correct form, or was otherwise defective, and thus was not addressed. More sophisticated devices include:

- 1. Requiring that complaints or disclosures be made to one’s immediate superior, even where the superior is involved in the matter, otherwise the matter will not be addressed or will not be addressed as a disclosure or complaint;**

2. **Treating disclosures made anonymously as unreliable, not meriting further consideration;**
 3. **Ignoring the vital or key parts to a disclosure or complaint, but following processes on other matters forming part of the disclosure or complaint, and then claiming that proper processes have been followed on all parts of the total disclosure or complaint;**
 4. **Disarming itself of the power to accept the disclosure, by applying a narrow interpretation of its jurisdiction or by a wide interpretation of certain restrictions;**
 5. **Investigating a different disclosure or complaint that has not been made, such that the complaint or disclosure actually made is not investigated, but then claiming that the matter that was investigated was the subject of the disclosure or the complaint.**
- 4.6. Devices based on the cooperation of two Integrity Bodies, or an Integrity Body and an agency, are the most sophisticated. For examples, there is the case where each of the two cooperating Integrity Bodies state that it did not investigate the matter because they believed that the other body was doing the investigation. There is another case where the crime commission dismisses the disclosure or complaint of a reprisal because the matter may constitute only maladministration, a matter for the Ombudsman, but the Ombudsman claims that any maladministration is associated with allegations of criminal activity, and thus needs to go to the crime commission. Each Integrity Body maintains its position while knowing the position of the other Integrity Body, and thus that no investigation will be conducted. This cooperation stops the allegation in its current form, and encourages the whistleblower to withdraw any allegation of reprisal or other criminal activity so that at least it may be investigated as maladministration.
- 4.7. A trilogy of such cooperations is the most sophisticated of such devices, where, say, the police will not take action without the authorisation of the crime commission, the crime commission will not recommend prosecution because that is the call of the Office of Public Prosecutions, and the Office of Public Prosecutions will not decide on any prosecution without a brief from the police.
- 4.8. A corollary to this cooperation is for the Integrity Body having power to investigate maladministration (such as an Ombudsman Office), and with an obligation by law **to refer** any suspected criminal breaches to the Integrity Body with the power to investigate criminal behaviour (such as a crime commission), to refuse or to fail to make this referral. The maladministration Integrity Body is able to recognise allegations of criminal behaviour, but claim that they are unable to form any suspicion that the allegations merit referral. The maladministration Body claim that they only read allegations for evidence of maladministration, and that, in order to form a suspicion of criminal behaviour, the maladministration Body would have to read the allegations again – but they would never do this because their jurisdiction is only to review maladministration. Much criminal behaviour is constituted by maladministration with a criminal intent. Any expectation by legislators that, in any initial assessment of a disclosure, the investigator would identify wrongdoing, and then search for evidence of intent in order to determine whether the alleged wrongdoing is maladministration or criminal behaviour, is not realised with maladministration Integrity Bodies which claim to follow the above intellectual processes.

The Assembly of Evidence

- 4.9. Blunt use of power here can see agencies and Integrity Bodies refuse to provide documents. They can also destroy documents, or make this claim while actually holding the records in a recoverable form, not discoverable by usual Freedom of Information processes or Legal Discovery processes because the documents are in files given a codeword. This codeword is not then given to Freedom of Information officers conducting searches for the whistleblower or whistleblower's representative, or made available for inspection during discovery procedures for court actions. Other action denying access or discovery include storing the documents at the offices of private

solicitors, at homes of human resource managers, in suspended computer databases, or in parallel files where the contents of one file are reduced for use in discovery purposes.

4.10. Further force can be shown where, upon investigation by police into claims that evidence wanted for court proceedings have been destroyed, the agency or Integrity Body can inform the police that no person from that agency or Integrity Body will participate in any interview with the police. Where the junior police officer then recommends that this refusal of the agency to allow police interviews with witnesses to the destruction of the documents be referred to the appropriate Integrity Body, senior police officers can reject that recommended referral, and the investigation of the alleged crime is terminated.

4.11. Other devices with more sophistication include:

1. **Claims that employment documents are the private documents of superiors until the documents have been shown to the whistleblower affected by those documents, and then handing those documents over to the personal possession of the superior as the superior's own personal documents;**
2. **Claiming that the whistleblower or the whistleblower's representative has admitted that the whistleblower or the whistleblower's representative committed a wrong, where these persons deny that any such admission has been made and there is no record of any such admission in the exchanges between the parties or in the transcript of proceedings – called 'verballing' when police make such claims.**
3. **Claiming in discovery proceedings that the document is subject to legal professional privilege, when the document does not meet the criteria for such attracting such privilege;**
4. **Directing mediation between the parties after the Integrity Body has received discovery of the whistleblower's documents but before the whistleblower has received discovery of the Integrity Body's documents;**
5. **Suspending the whistleblower for a long period, denying the whistleblower access to their workplace, during which time automatic archival and document destruction protocols are allowed to destroy all the whistleblower's employment documents on their workplace computer; and**
6. **Placing documents sought by Freedom of Information applications into the box of documents due for destruction in the next round of monthly automatic document destruction procedures under archival protocols.**

The Investigation

4.12. The tactics that can be used to undermine the investigation, where this vital process is forced upon an ill-intentioned agency or Integrity Body, can be designed so as to deny the disclosure or the alleged reprisal a proper, a thorough, and or an impartial investigation.

Denying a Proper Investigation

4.13. The following devices can be adopted to undermine a proper investigation

Using the Incorrect Jurisdiction.

4.14. The examples here come from the three arms of government, the Legislative Arm, the Executive Arm, and the Judiciary. Thus:

1. **Disciplinary matters or allegations of criminal offences that should go before a judicial process for any adverse finding and punishment can be dealt with by an agency or an Integrity Body that are a part of the Executive Arm of government; and,**
2. **Complaints about the judiciary that should be dealt with by processes defined in the Constitution, to go before the Legislative Arm, can be organised by an Integrity Body from the Executive Arm to be put before the judiciary**

Delay.

- 4.15. Delays in the conduct of an investigation can be sufficiently long to go beyond the time it takes for the agency to transfer and/or terminate the whistleblower (typically nine months if a redundancy action is being used), beyond the time line set by the Integrity Body for accepting complaints of reprisal or disclosures (typically a year), and beyond the time set by law for initiating legal proceedings (statute of limitations period – 3 or 6 years depending on the matter and the jurisdiction)). Reasons given can include transfer of the investigation officer, the volume of higher priority cases, documents have been misplaced, the complexity of the matters, the need to wait for the completion of the investigation of a subsequent event(s), or difficulty with contacting witnesses who have moved to new places of employment.

Denial of a Hearing.

- 4.16. A hearing can be bluntly denied. Alternatively, an interview is given to discuss matters in general with the promise of a detailed hearing of evidence later, but the detailed hearing is never given and the claim is made that the whistleblower was given a hearing via the interview on general matters.

Denial of Access to Witness Statements.

- 4.17. Any information from the investigation to the whistleblower about the evidence assembled by the investigation is available to him/her only through the filter of the investigation officer, minimising the whistleblower's opportunity for rebuttal of evidence given by others and accepted by the investigation. In short, procedural fairness is not guaranteed

Investigating the Whistleblower.

- 4.18. The investigation collects selected information from the career, from outside activities and from the life of the whistleblower, for finding fault and error, leading to summaries about the morality and/or mental state of the whistleblower. The purposes and intentions of such summaries can be boosted by falsehoods made about the whistleblower, opinions from persons lacking the appropriate qualifications and expertise, and by surmises unattached to any facts.

Pressure to Withdraw the Complaint.

- 4.19. Pressure can be applied to the whistleblower to withdraw a complaint of reprisal and the disclosure, by tactics such as:
1. **Requiring the whistleblower, with a disclosure of wrongdoing by his or her immediate superior, or a complaint of a reprisal by her or his immediate supervisor, to make that notification to the immediate supervisor, if the notification is to be regarded as having been properly made (that is, to have been made through 'the right door');**
 2. **Taking one of the whistleblower protections, say, a status quo rule that the whistleblower's work circumstances are not to be changed while the disclosure is being investigated, and applying this rule after the punitive actions are imposed on the whistleblower, and then using the protection provisions (here, the status quo rule), to**

keep the whistleblower in the punitive circumstances, claiming that this is being done in order to comply with the whistleblower protection rules;

3. Adopting processes that constitute a punishment to the whistleblower, such as an order not to come to work (effectively, a suspension without pay), or a transfer to a job without duties or to a section of the organisation about to be restructured or downsized, or to a new appointment reporting to a supervisor lower in position level than the level held by the whistleblower. The agency or Integrity Body then claims that this action has been taken in order to protect the whistleblower from unspecified risks in his or her original workplace; and
4. Using the decision by the whistleblower to apply for protection as the grounds for ceasing the investigation into the wrongdoing disclosed – where, say, the disclosure by the whistleblower is about discrimination or abuse being imposed on others, the whistleblower may be induced to withdraw from seeking protection so as to ensure that the disclosure of the mistreatment of others is continued, with the hope that the dangers to those others are reduced.

Using Parallel Investigations to Avoid Whistleblower Legislation Requirements.

4.20. The tactics applied here act to shift the disclosure and complaint by the whistleblower to processes other than the processes required by Integrity Body and Whistleblower Protection legislation. Examples include:

- i. **'Doorway' Justice.** Here, the agency or Integrity Body provide proper processes only if the whistleblower comes through 'the right door' with their first disclosure or complaint. If they come through 'the wrong door', the agency or Integrity Body does not allow the whistleblower to go back out that 'door' and come through the correct 'door' on a second notification of disclosure or complaint. The penalty imposed for coming through 'the wrong door' can be a process using, say, management prerogatives, rather than the processes required by relevant legislation; and.
- ii. **Performance Reports.** Here, the disclosure and the application for protection draw criticism or other consequences in the next Interim or Annual Performance Report on the whistleblower, or in a Special Performance Report. A complaint by the whistleblower that such matters should not be included in the Performance Report is directed by the agency to a Representation Process used with managing the Performance Reporting Process. The Representation Process does not have the standard of processes required by the Integrity legislation and by the Whistleblower Protection legislation. The outcome from the Representation Process negative to the whistleblower is then used to replace the proper processes or to influence the outcome of the proper process. The tactic is enhanced by the Integrity Body instructing or recommending to the agency and to the whistleblower that the Representation Process should be used, by delaying the proper process while giving priority to the Representation Process, and by drawing the whistleblower into the Representation Process with offers of legal assistance or relief from suspension or relief from other disadvantage.

Tricking the Whistleblower.

4.21. The many tricks that rely on falsehoods and/or deceit include:

1. **Tricking the Whistleblower into Participating in a biased process.** The Integrity Body informs the whistleblower that the investigator will be independent, say, a judge from another jurisdiction, in order to obtain all aspects of the disclosed wrongdoing known

by the whistleblower, but then using a conflicted person, say, a judge from the same jurisdiction, to conduct the investigation into a brother or sister judge

2. **Tricking the Whistleblower out of Detailed Reasons for a Decision to Dismiss a Complaint.** The agency dismisses the whistleblower's complaint of reprisal but does not give reasons as the processes require. The whistleblower complains to the Integrity Body that the agency is refusing to give reasons for its decision, thus making it difficult to seek a review of the agency's decision to dismiss. The Integrity Body refuses to hear the new complaint about the refusal to give reasons for dismissal of the original complaint, but decides to review the agency's decision on the original complaint, arguing that such a review is necessary in order to determine whether or not the agency should be required to give reasons. This vertical cooperation between the agency and the Integrity Body acts to deny the whistleblower the reasons required to be given by the process for the decision on the original complaint, the reasons needed by the whistleblower in order to make a more effective application to the Integrity Body for a review of that agency's decision to dismiss the original complaint;
3. **Tricking the Whistleblower into Making their Complaint or Disclosure through 'the wrong door'.** For example, if the correct 'door' is deemed to be through the whistleblower's immediate superior, the agency's Human Resource Manager can ask the whistleblower directly for information that, if not in the original complaint or disclosure, can later be deemed to have been given through 'the wrong door'. The Integrity Body also can demand, through direct communications with the whistleblower, information be sent to the Integrity Body with the threat that otherwise the Integrity Body's review will be terminated. When the whistleblower complies, that passage of information direct to the Integrity Body can be used by the Integrity Body to later claim that the information was given through 'the wrong door'.

Denying a Thorough Investigation

4.22. Tactics to deny a thorough investigation into the complaint of reprisal or into the disclosure of wrongdoing include:

1. **Witnesses nominated by the whistleblower are not interviewed, or are interviewed, many years later when honest witnesses must admit to any loss of memory over the period of the delay to investigate;**
2. **The contents of documents nominated by the whistleblower are not inspected; and**
3. **An in-house and / or unseen legal opinion is used to claim that the disclosure does not constitute a breach of the law, or that a provision of the legislation does not require what the legislation states that it does require, or questions the current law without resolving those questions, and claiming that thus the matter is in doubt. The investigator then fails to collect evidence against each of the elements of the written law that has in reality already been confirmed by the High Court or by another legal precedent.**

Denying Impartiality in the Investigation

4.23. The tactics used to undermine the impartiality of the investigation can include:

1. **The appointment of persons to the investigation that have a conflict of interest in performing this investigatory role. Thus the subject of a disclosure of wrongdoing and**

immediate superior of the whistleblower receives the disclosure and rejects it as a properly written disclosure, or refers it to higher management but then investigates the disclosure themselves using a temporary appointment at that higher management level, or is appointed to plan the process for investigating the disclosure but uses that appointment instead to investigate the matter and dismiss it, and, when the whistleblower complains about the use of a conflicted person in these reviewing roles, the immediate supervisor suspends the whistleblower without pay or orders their removal from that section or imposes another disadvantage on the whistleblower's employment;

2. **Changing investigator if the first investigator opens up the lines of inquiry on particular complaints, interviewing particular witnesses, and/or seeking to inspect particular documents; and**
3. **Tasking persons to be the investigator who only have acting status in their current role and can be removed easily from that role, or persons who only have standby employment status and may not be given a further employment tasks if their investigation is not the result desired by the agency or by the Integrity Body**

Receiving Detailed Reasons

4.24. The requirement to give detailed reasons for decisions to dismiss disclosures or complaints of reprisals is the most powerful mechanism for driving integrity into the agency response and into the response by the Integrity Body. The power of this requirement dissipates, however, if it is not enforced.

4.25. The power is identifiable because of the extent of effort by agencies and by Integrity Bodies, separately and cooperatively, to get around this requirement. False statements of reasons get the decision-maker into risk of being subject to disclosure and complaint themselves. Refusing to give reasons is an action contrary to the stated requirements, and for serious matters, may involve the decision-maker in allegations of cover-up.

4.26. Several examples of efforts to escape the requirement to give detailed reasons or to conceal that this has occurred, have already been described above:

Individual agencies or Integrity Bodies can

1. **Redirect complaints of reprisal and / or disclosures to a parallel process that does not require that detailed reasons be given;**
2. **Rely on unseen, unrecited, unrecorded and / or rogue legal opinion in lieu of providing detailed reasons;**
3. **Investigate a different complaint or disclosure that has not been lodged, and provide reasons for dismissing that other complaint or disclosure that the whistleblower did not lodge;**
4. **Investigate and give reasons for only parts of the complaint or disclosure, and assert that partial reasons constitute compliance with the requirements;**
5. **Destroy and/or dispose of the evidence, and then claim as the reason that there is insufficient evidence in support of the complaint or disclosure before the decision-maker;**

6. **'Verbal' the whistleblower or their representative (supporting supervisor, appointed case manager, union advocate or solicitor/barrister), and base the decision on the false evidence thus manufactured;**
 7. **Terminating the whistleblower, such that the whistleblower is no longer eligible for participation in the complaint or disclosure process, and no decision is required; and**
 8. **Pressuring the whistleblower to withdraw.**
- 4.27. Integrity Bodies and agencies can act cooperatively in avoiding the need to give detailed reasons. Devices already described include:
1. **Coaching agencies to use the Representation Process for Performance Reports in lieu of the proper complaint or disclosure process**
 2. **Using the 'Catch 22' device, each of two or three Integrity Bodies claiming that the other Integrity Body has the jurisdiction, such that no investigation is held, such that the need for giving detailed reasons never arises; and**
 3. **Integrity Bodies adopt processes that trick the whistleblower into going through 'the wrong door'**

New examples include:

1. **The Integrity Body refuses to intervene in how the agency is responding to a complaint or disclosure, until all the agency investigation and review processes have been completed. These processes are delayed for years, by the end of which little or nothing may be left of the whistleblower's career, profession, or employment; else, the whistleblower has departed due to a loss of confidence in the justice system, or bad health or breakdown in relationships;**
2. **The agency (or a lower level Integrity Body) fails to address the complaint or the disclosure, and, when this goes before a higher level Integrity Body for review, the review Integrity Body decides that the absence of a decision or the absence of detailed reasons suggests that the agency did not accept or agree or support the complaint or disclosure – the agency has not stated this, the review Integrity Body is not stating this, the finding is based on an inference which the review Integrity Body then uses to terminate the complaint or the disclosure without detailed reasons ever being given; and**
3. **A lower level Integrity Body fails to address a complaint or a disclosure or fails to give detailed reasons for rejecting the submissions made. When a complaint is made about this breach of process to a higher level Integrity Body for review, the review Integrity Body can refuse to address the breach in process because the complainant has not introduced any 'new' argument – the issue as to whether the refusal to address a complaint is compliant or is non-compliant with the requirements for investigating complaints, is displaced by whether the arguments and evidence used to show that the refusal is non-compliant are 'new' or have already been used.**

Outcomes

- 4.28. Where findings of wrongdoing cannot be avoided, proper outcomes can still be denied to the whistleblower and the public through justifications for doing nothing in response to the wrongdoing, or by silencing the whistleblower. Justifications for doing nothing in response to unavoidable findings of wrongdoing include:

1. The belief is expressed that the wrongdoers would not act with the intention to harm the whistleblower or others, and the wrongdoers just need training or education or experience to perform properly next time. A corollary is the claim that the wrongdoers acted (to break the law) in good faith;
2. It would not be in the public interest to pursue the wrong-doers before the Courts, augmented by statements such as 'enough blood has been spilt' or similar;
3. Everybody knew that the law in the particular area was not being enforced, the practices of non-enforcement are 'long established', so the failure to enforce the law or to discipline persons who did enforce the law is not wrongdoing;
4. The wrongdoing is 'technical' in nature, and the law was not intended to be applied to the current set of circumstances;
5. The practical realities - running public service departments or exporting into particular countries require some flexibilities, OR, there is a need for preserving management prerogatives or the status of commanders, OR, officers need to be politically sensitive in meeting role responsibilities

Silencing the whistleblower can be attempted through devices that include:

6. Applying parliamentary bylaws that can bind the whistleblower to confidentiality for life, or else be found in contempt of the parliament;
7. Prosecute or threaten prosecution of professionals, subject to registration and discipline under legislation, concerning evidence given or services provided during government inquiries into disclosures or complaints of reprisals;
8. Moneys paid to principals for confidentiality on particular disclosures;
9. Non-disclosure or confidentiality provisions attached to settlements; and
10. Conducting inquiries or Royal Commissions into disclosures, which investigations scape-goat or sacrifice certain groups of wrongdoers but bypass wrongdoing by other groups, and bypass failures by Integrity Bodies

5. POTENTIAL OF WPB FOR NEGATING ADVERSARIAL CONDUCT BY INTEGRITY BODIES & AGENCIES AGAINST DISCLOSURES

- 5.1. By enforcing effective laws protecting whistleblowers, the powers of the WPB will increase the potential for the whistleblower to survive the attentions of rogue agencies and adversarial Integrity Bodies. **If the whistleblower survives, so too does the disclosure survive.** So too then will the pressure remain upon the Agency and the Integrity Body to enforce the law, or to produce valid evidence with detailed reasons for dismissing the disclosure and upholding adverse action taken against the whistleblower.
- 5.2. The building blocks then are effective protection provisions in the legislation including sufficient powers given to the WPB, and a will to enforce those provisions. Those powers need to protect the whistleblower from reprisals from all levels of government, and the powers to remain free of the

constraints and restraints that have neutered and corrupted the Integrity Bodies that may oppose the WPB.

- 5.3. The ambit of the WPB should not be extended into investigation of disclosures of wrongdoing that do not involve a reprisal imposed upon a whistleblower. Nevertheless, the WPB should be empowered to investigate, prohibit and report openly upon irregular investigatory processes being used by an agency or an Integrity Body that are contrary to the legislation, or are otherwise adversarial towards the whistleblower's disclosure. The WPB should be empowered to ensure the opposite, namely to ensure that investigations are properly, thoroughly and impartially conducted. Such interventions should be limited to ensuring that those processes are returned to lawful and independent processes. The WPB should not be empowered to take over those failing or problematic investigations.
- 5.4. The WPB needs to be protected from the mistakes made by and pressures yielded to by previous Australian Integrity Bodies, that have led to the ineffectiveness of those Integrity Bodies and to the growth of an adversarial approach towards whistleblowers and their disclosures.
 1. **Funding.** The funds used by the WPB, above direct funding to the WPB for routine administration, need to be transferred for payment to the agencies or Integrity Bodies requiring interventions or other efforts by the WPB. The incentive for agency managers to meet budget will provide an extra force for change in approach towards whistleblowing, and give momentum for the maintenance of proper, thorough and impartial processes in responding to whistleblower disclosures.
 2. **Appointments.** Appointments at the WPB should not be on the career paths of professionals having had related agency roles or Integrity Body experience or political roles or political membership. Consultants who have had agencies or Integrity Bodies as clients should not be used in consulting roles for the WPB. Such appointments can import networks, attitudes, beliefs and values into the WPB that may also be adversarial to whistleblowers and to their disclosures.
 3. **Delay.** The WPB response to breaches of proper, thorough and / or impartial investigatory practices needs to be immediate rather than delayed until after those rogue processes have been taken to completion. Powers to lodge injunctions and direct show cause requirements are important in this respect.
 4. **Preventative Strategies.** Any intervention undertaken is a statistic showing that that any preventative strategy, regarding protection of whistleblowers and their disclosures, put into operation by the Integrity Body, has not worked. Integrity Bodies that take on a preventative strategy can thus put themselves in a conflict of interest circumstance when a whistleblower disclosure, if responded to, means that the Integrity Body has been unsuccessful with its preventative strategy. Preventative strategies need to be the province of agencies and public sector commissions and Corporation Boards. The WPB should limit its inputs to reporting and report-based education.

6. EFFECTIVE WHISTLEBLOWER LEGISLATION

- 6.1. Effective whistleblower legislation must enable the responsible authority, the WPB, to overcome both active and passive measures undertaken to defend the system against whistleblowers. The legislation needs to have the sophistication to match the sophistication of the devices that can be used to defeat whistleblower protection measures.

6.2. Both the WPB and the Integrity Bodies, to be effective, need to show anticipation of the tactics that the highest administrations in the nation may use against whistleblowers, and provide for powers, checks and flexibilities that enable the WPB to defend whistleblowers. For example, the legislation needs to:

1. **make provisions for where government agencies failed or refuse, or are about to fail or refuse, to comply with the provisions on protection of employment**
2. **make provision for the case of disobedience of the subpoena with respect to subpoenas issued by the investigating authority, requiring the production of documents or the attendance and testimony of witnesses**
3. **empower the WPB to investigate the appointment and promotion of Senior Executive Service (SES) officers. In the Australian Public Service and particular State administrations, there are no appeals allowed against appointments within the SES. This "no appeal" provision has been used to refuse investigations introducing criticisms of selection processes as evidence of reprisals and discrimination against whistleblowers.**
4. **empower the WPB to identify, investigate and prosecute the more sophisticated forms of reprisals and discriminations, for example:**
 - a. **deception or obstruction of the right to compete;**
 - b. **attempts to secure withdrawal from competition;**
 - c. **arbitrary or capricious withholding of information requested under the Freedom of Information Act/Right to Information Act**
 - d. **unauthorised preference or advantage granted to improve or injure the prospect of employment of any person;**
 - e. **discrimination on the basis of conduct not related to job performance; and**
 - f. **reprisals for exercise of an appeal right.**

6.3. It is in these ways that the WPB will be enabled to combat not only the wrongdoers whose activities whistleblowers disclose, but also to break through the barriers that the system uses to defend itself against the repercussions that whistleblower disclosures have on the public reputations of corporations and administrations, administrators and chief executives.

6.4. Federal and State authorities in Australia do not appear to have reached the same depth of understanding of this "defend the system" syndrome as is currently held by overseas jurisdictions. Australia has no WPB. The cultures of existing Integrity Bodies share a belief, disproven by their own research, that agencies are well-intentioned towards whistleblowers. There is no-one in Australian jurisdictions to stand beside the whistleblower as an advocate before the public sector authorities and/or the courts. In considering the outcomes of principal whistleblower cases in Australia, the question must be asked whether current outcomes would have been different if Australians had whistleblower protection bodies like the Office of Special Prosecutor in the USA empowered by the type of legislation at work in US jurisdictions.

6.5. The whistleblower protection legislation and the legislation empowering Integrity Bodies need several specific provisions in order to negate the devices that have been used in the last quarter

century in Australia to defeat existing legislative provisions. Considering those devices described earlier in this policy –

1. **Allowing disclosures and complaints of reprisals to be made through the WPB could negate ‘the wrong door’ device used by agencies and Integrity Bodies, and could ensure that complaints made anonymously are assessed by agencies and Integrity Bodies on their merits. The power of the WPB to interview whistleblowers while maintaining their anonymity to the agency and Integrity Bodies would assist effectiveness of investigation into wrongdoing – the tactics based on delay would be largely overcome – while assisting in the protection of the whistleblower;**
2. **Allowing disclosures and complaints of reprisals to be made through the WPB could negate difficulties where agencies and Integrity Bodies insist on whistleblowers, making disclosures or complaints about their immediate superiors, to submit those complaints or disclosures to that immediate superior;**
3. **Allowing disclosures and complaints of reprisals to be made through the WPB could negate cooperative tactics such as the ‘Catch 22’ device, where each Integrity Body claims that the matter is the responsibility of the other Integrity Body, each knowing that this is happening, but neither refers the matter to the other. A referral of a disclosure from the WPB to one or all cooperating Integrity Bodies with the WPB’s assessment as to whether there is a case to answer or reasonable suspicion or whatever is required by the Integrity Body legislation, would add to the risk taken by the cooperating Integrity Bodies in refusing to do their own assessment and investigation;**
4. **Empowering the WPB to secure documents or copies of documents and safeguard this evidence, relevant to the disclosure or the complaint of reprisal, will safeguard the availability of a thorough investigation. Empowering the WPB to secure all available reports on the performance of the whistleblower and the whistleblower’s employment records, up to the time that the disclosure or the complaint was made, will provide a benchmark for responding to subsequent claims of poor performance by the whistleblower, and prevent destruction of the whistleblower’s records, that may be used to support adverse actions against the whistleblower and minimise the whistleblower’s ability to respond;**
5. **Empowering the WPB to interview witnesses and inspect documents nominated by the whistleblower in support of their complaint or disclosure, where the agency or the Integrity Body refuses to take this evidence, will assist investigations to be more thorough;**
6. **Empowering the WPB to intervene where the agency or the Integrity Body:**
 - a. **Proposes to investigate a complaint that has not been made, or only part of the complaint that has been made;**
 - b. **Fails to provide access by the whistleblower to the statements made by persons interviewed by the investigation, or fails to provide the whistleblower with an opportunity to give detailed evidence (or tricks the whistleblower out of this opportunity) or otherwise denies the whistleblower natural justice; and**
 - i. **Fails to provide detailed reasons for the decision made on each matter that is the subject of the complaint or disclosure**

where the WPB has the instruments of intervention including application for judicial review, injunction, and / or a requirement to show cause; and,

7. **Obligating the WPB to issue an annual report with relevant statistics, and to make public reports of concern where the WPB is required to exercise any of its powers in support of a whistleblower or of a disclosure meriting a proper, thorough and impartial investigation.**

7. PROVIDING A FAIR CONTEST FOR WHISTLEBLOWERS

- 7.1. The description provided above of the WPB and its powers demonstrate measures incorporated into legislation and into procedures to ensure that a whistleblower's efforts to defend himself or herself against reprisals is a fair contest. These measures include:
 - i. **provisions of powers and procedures to secure the evidence of reprisals (documents and statements of witnesses);**
 - ii. **provisions of legal representation, supported with investigations by experienced investigators, for whistleblowers before administrative Tribunals and before District Courts and Courts of Appeal; and**
 - iii. **categorisations of forms of improper practices against whistleblowers that include the more sophisticated forms of reprisals of which administrations have shown themselves to be capable.**
- 7.2. These measures are said to provide a fair contest in as much as they match or equate to the powers, resources, and categorisations of improper staff behaviour that have always been available to agencies and Integrity Bodies.
- 7.3. The provisions of legislation that make a major contribution to securing a fair contest concern the onus of proof and the standard of proof associated with proving reprisals. The requirements placed on whistleblowers can range from requiring the whistleblowers to prove the alleged reprisals, to whistleblowers having to show that their disclosures were a "substantial" cause of the alleged reprisals against them, to whistleblowers having to prove that their disclosures were a "contributory" cause of the detrimental treatments imposed upon them. The term, "a cause of any significance" has also been recommended by a reformist Integrity Body that no longer exists.
- 7.4. Whistleblower legislation in overseas jurisdictions have included a presumption or given that any disadvantages, imposed against whistleblowers in the first 12 months after the disclosure is made, are reprisals because of the disclosure, and the burden of proving otherwise lies with the agency or employer.
- 7.5. The USERRA(1994) requires only that the whistleblower show that the disclosure was "a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of" such disclosures.
- 7.6. There is also a precedent from past Australian legislation for establishing a fair contest with respect to the onus and standard of proof. The *Defence Re-establishment Act (DRA) (1965)*, now superseded, provided for the protection of the civilian employment of national servicemen and Reservists. In proceedings under the DRA, the Reservist has to prove the disadvantage he or she had suffered in their civilian employment, but the burden of proof fell on the employer to prove that the disadvantage was imposed for reasons other than the obligation to render defence service.

- 7.7. Even an admission that the disadvantage was because of the complaint may not be enough, however, with current Australian Integrity Bodies. For example, a manager against whom a disclosure of misconduct and a complaint of reprisal has been made, could write to the whistleblower noting the complaint that has been made, and suspending the whistleblower until the manager decides otherwise. The whistleblower complains that the he/she has been suspended without pay because the whistleblower made the earlier complaint, an alleged reprisal. The Integrity Body, however, issues Terms of Reference for an investigation into a different complaint, namely, whether it was a reprisal for the whistleblower to be suspended for the period of the investigation into that earlier complaint – a different rationale, a different time frame from that written in the manager’s letter acknowledging the complaint and notifying of the suspension.
- 7.8. Overall, Australia’s understanding of whistleblowing would benefit from an assessment of the absence-of-a-fair-contest on the failure to resolve so many whistleblowers cases in Australia, and whether any contest was rendered unfair because of the destruction of evidence, the heavy burden of proof, the absence of legal resources, a combination of these factors, or other barriers such as those described in this policy document.

8. A CAPACITY FOR HEALING THE WOUNDS FROM REPRISALS

- 8.1. The concept of "healing" is understood with respect to the administration of public sector units following a corruption inquiry. Certain authorities in Australia have part time or contract officers who move into administrative units after the units have been investigated for corruption, waste, etc, and have had corrective actions ordered. Those officers assist those administrative units to comply with those orders and/or cover any temporary short falls in skills or capacity caused by those corrective actions.
- 8.2. Whistleblowers and their careers and reputations are also deserving of a healing process, this policy advocates. Should Australian authorities find truth in the allegations of reprisals made by whistleblowers, the question might be asked how are the situations, now held by these vindicated whistleblowers, to be healed.

The US jurisdiction again gives a lead.

- 8.3. The Office of Special Counsel [OSC], for example, was able to be both pro-active and reactive in effecting a healing process for vindicated whistleblowers.
- 8.4. The pro-active abilities of such WPB stem from their power to stay administrative practices being made against whistleblowers until the WPB’s investigations are completed. WPBs, with a primary focus on whistleblower protection, give their highest priority to the investigation of reprisals against whistleblowers. The wounds to whistleblowers and their families are caused by inordinate delays in investigations, while the whistleblower is on no pay or on reduced duties. Such detriments can be minimised through powers and procedures available to the WPB.
- 8.5. The strength of a WPB’s reactive strategies stem from the flexibilities incorporated into the WPB’s powers that enable the WPB to generate remedies and solutions to the wounds inflicted on whistleblowers. These powers include the ambit to:

- 1. facilitate settlement agreements, the components of which can include:**

- a. **revision of performance appraisals;**
 - b. **awarding of promotions retroactively (including SES);**
 - c. **payment of legal fees;**
 - d. **payment of cash performance awards;**
 - e. **withdrawal of memoranda;**
 - f. **resumption of former duties;**
 - g. **arrangements for an arbitrator acceptable to the whistleblower to resolve further disputes;**
 - h. **removal of the employee responsible for the harassment (including through voluntary retirement);**
 - i. **expungement of termination, allowing the employee to resign with back pay and a satisfactory reference for future positions; and**
 - j. **through legislative provision, arrange for a position of like seniority status and pay at another agency or corporation;**
2. **conduct prosecutions before the tribunals or the courts as appropriate of individuals identified by WPB investigations as likely to have initiated improper practices against a whistleblower as a reprisal to the latter's disclosures of wrongdoing.**

8.6. An indication of future measures that may further improve the effectiveness of whistleblower protections provided by WPBs may lie in the powers that can be given to WPBs with respect to officials engaged in prescribed reprisal activities. The WPB can apply, in the case of government officials found to have violated the whistleblower protection legislation, for an order withholding funds from agencies failing to remove or acting to continue with those practices.

9. CONCLUSION

- 9.1. Whistleblowers Action Group (Qld), with other whistleblower organisations and their members, have been largely responsible for the establishment of several Parliamentary inquiries into public interest whistleblowing, and for State Government commissions of enquiry into State Integrity Bodies.
- 9.2. For what has happened to individual whistleblowers in the past, we direct the authorities of all Australian jurisdictions to the many submissions - too many given the painful experiences expressed in them – the many submissions that these inquiries have received from whistleblowers.
- 9.3. For the future of Australia's public administration, we request an acceptance of these propositions for the reform of the legislation and for the reform of the institutional framework related to Whistleblowing in Australia. Those propositions, offered in good faith and based on first-hand experiences, distil the practical lessons

learnt through the pain of individual whistleblowers, their interactions with respective jurisdictions, and their determination to succeed in their efforts to combat corruption, waste and maladministration in their public organisations, and in private sector corporations, for the overall good of the nation.

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THIS DOCUMENT MAY BE TREATED AS A PUBLIC SUBMISSION.