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Submission for the

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"Inquiry into
Whistleblowing Protections
within the Australian
Government public Sector."

By Merrilyn Bulder

6/8/08

The Secretary of the Committee
Dear Sir / Madam

I write this submission from the perspective of a former Queensland Public Servant & Whistleblower.

A teacher of more than 20 years experience, I was employed by Education Queensland until August 2006, when I was medically retired from teaching as a direct result of work-related stress. The cause of this "stress" was my "experience" of being an advocate for students which resulted in me becoming an Education Queensland Whistleblower.

I would like to contribute comment to this inquiry in relation to the Inquiry Terms of Reference which deal with :

- (4) the scope of statutory protection that should be available &
- (5) Procedures in relation to protected disclosures.

In 2004, Education Queensland was required by law to implement a number of policies, procedures & directives which were associated with my "Whistleblower experience". These included the:

1. Public Service Act ;
2. Education Queensland Code of Conduct ;
3. Public Service Grievance Resolution Directive 04/03 ;
4. Whistleblower's Protection Act (1994) ;
5. Education Queensland's LL-13 "Management of Public Interest Disclosures Under the Whistleblowers Protection Act ;
6. Qld Department of Employment & Industrial Relations "Prevention of Workplace Harassment Code of Practice 2004 "

In early 2004, I made a number of public interest disclosures to the District Director of Education Queensland's Regional Office, . The focus of these public interest disclosures were :

1. official misconduct,
2. maladministration,
3. compromised student safety &
4. the improper management of public funds

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These public interest disclosures were also breaches of the Education Queensland Code of Conduct.

After making these disclosures to the District Director, at a meeting with him at District Office on March 3 2004, I was not offered Whistleblower Protection at any time by any EQ officer in the lead up to the May 2004 internal EQ investigation into my allegations.

A subsequent Crime & Misconduct Commission audit of my EQ file determined that **"In relation to failure to inform Mrs Bulder of the possible application of the WPA, unless your department has any policy requiring such information to be given, it is not considered failure to notify Mrs Bulder would amount to official misconduct..."** (34. P7 CMC Audit Report)

Recent Crown Law access to documents on my EQ file revealed that an email dated 4 May 2004 was sent from EQ Ethical Standards Principal Ethics Advisor, to District Office regarding Whistleblower Protection being extended to me, prior to the commencement of this investigation. chose not to provide me with Whistleblower Protection.

Because I was not afforded Whistleblower Protection by EQ District Director, I was subjected to relentless, ongoing workplace harassment & victimisation following the announcement of the May 2004 internal Education Queensland investigation.

Similarly, any member of staff who did not agree with or participate in the harassment action led by the principal, or who gave evidence to the investigation in support of the allegations I had made, were also subjected to workplace harassment. This resulted in one member of staff contemplating "ending it all" & another EQ officer's applications for future acting & promotion positions being rejected by District Office.

This occurred despite the implementation of the Queensland Government's Workplace, Health & Safety "Prevention of Workplace Harassment Code of Practice 2004".

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The "Prevention of Workplace Harassment Code of Practice- 2004" identifies the legislation covering workplace harassment & clearly sets out a Workplace Harassment Risk Assessment Process.

Education Queensland District Office District Director,
failed to :

1. Implement this Code of Practice :
2. Implement the Workplace Harassment Risk Assessment Process;
3. Protect me & other members of staff from ongoing workplace harassment in accordance with Education Queensland's obligations under the "Workplace Health & Safety Act 1995".

Education Queensland Corruption

During the course of my "whistleblower experience" EQ carried out four internal investigations, one internal review & at the direction of the Crime & Misconduct Commission, an external review.

Education Queensland's internal investigations were corrupt & aimed at covering up a number of serious allegations that I had "blown the whistle on". For example :

- Witnesses that I had requested be interviewed were not interviewed;
- Allegations that, if proven, would have been deemed "official misconduct" were left out of investigation terms of reference;
- Other "official misconduct" allegations were deemed by EQ investigators to be "...Outside the parameters of the investigation..." and were not investigated ;
- Allegations that were substantiated were "left out of the Final Investigation Report";
- Witness statements for the first investigation were not recorded;
- Some key witnesses for subsequent investigations did not receive copies of their witness statements, yet others received their statements after the investigations were finalised;
- A number of witness statements in support of EQ were unsigned;
- Some allegations were deemed by EQ investigators to be "unsubstantiated" despite the fact that only the person who was interviewed was at the centre of the allegation .

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- EQ withheld documentation from the Crime & Misconduct Commission Audit of my file. ...and so it goes on ad nauseam. I can provide you with further details & documentary evidence of Education Queensland's corruption if you require it.

The external investigation was initiated by EQ at the direction of the CMC. This Investigation Agency investigated one allegation that had already been substantiated in the first investigation (but not reported! I have the documentary evidence.) and three other allegations which had been investigated by EQ internally several times.

The three remaining allegations were substantiated by the external investigation agency. It should be noted that:

- EQ refused to give me access to the outcome of this investigation
- EQ failed to report the external investigation findings to the CMC.
- No disciplinary action was taken against those EQ employees for "official misconduct" & other breaches of the EQ Code of Conduct.

Furthermore, a Benchmark Test Cheating incident in 2004, to cover up the lack of teaching by the principal of _____, was substantiated at District level. This incident was subsequently covered up by Senior officers of the Education Queensland's Workforce Standards & Performance Unit who deemed that "they would not record the matter as an incident" (I have documentary evidence, which I received through Crown Law access) and the Director of the EQ W.S.P.U. lied to the Crime & Misconduct Commission about this.

Despite the fact that these inaccurate test results were some 200 points above the State Mean, these test results were reported to the Federal Government's MYCEETA, parents & the community. It should be further noted that two of the students involved in the test cheating incident had received literacy learning support for their entire school career.

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The Queensland Department of Employment & Industrial Relations reported in the 2005-06 Annual Report that "...During 2005-06, the department received no public interest disclosure under the **"Whistleblower Protection Act 1994.."** No comment about whistleblower disclosures was made in the 2006/07 Annual Report.

From my experience & the experience of others I know or who have been referred to me, I believe that the systemic corruption within the Queensland public service ensures that public interest disclosures made by public service "Whistleblowers" are never reported to the Queensland Department of Employment & Industrial Relations.

The Queensland Teachers' Union legal advisors - Macrossans Lawyers, Brisbane regularly advises EQ teachers suffering from work-related stress that **"...94% of EQ teachers work related stress claims are thrown out by WorkCover.."**

The reason that is given for this outcome is that as long as Education Queensland carries out an "investigation", no matter how corrupt that investigation is, this is deemed by WorkCover to be "reasonable management action taken in a reasonable way".

I spent in excess of \$20,000 on a team of Brisbane Barristers, in order to prepare my case for an Industrial Magistrates Court hearing in September last year. Two days before the Court hearing was due to commence I withdrew from the proceedings on the advice of my Barristers.

I was advised by my team of Barristers that **"...it is not the role of the Industrial Magistrate to determine whether Education Queensland's "Investigation process" is corrupt, but rather the Industrial Magistrate Court would determine whether EQ had taken reasonable management action in reasonable way..."**

Similarly, the Crime & Misconduct Commission advised me that if Education Queensland has carried out an investigation, and that process is deemed to be flawed, all the CMC can do is **"... make recommendations to EQ for the future..."**

Please be advised that I am not the only one in this position. You may like to "Google" "Education Queensland Whistleblowers" and

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view the "Bad Apple Bullies" site. Much of what appears on this site mirrors my own "whistleblower experience". I know of a number of other excellent teachers who have also "challenged the system" & who, like myself, have suffered "consequences" for taking this action.

Education Queensland is characterised by a culture of bullying & workplace harassment if an employee dares to "challenge the system" or chooses to be an advocate for students & becomes a whistleblower. Excellent teachers are scared to make a stand because they are all too well aware of the systemic corruption within Education Queensland.

My own "EQ whistleblower experience" has devastated many facets of my life. I have lost a career I once loved, my income source, my health and my family's future. The stress I have suffered as a direct result of this experience has negatively impacted on all my relationships, my self esteem & confidence and I rely on a high dose of Prozac each day to survive.

If I had known the implications associated with being an Education Queensland whistleblower, I would not have placed myself, my career, my health, my relationships & my family's future at such great risk.

Recommendations to the Inquiry

Future Whistleblower Protection legislation needs to:

1. Legislate that the Public Service is required to provide all employees with regular training on the "Whistleblowers Protection Act 1994" & Public Service Grievance Processes;
2. Legislate that Whistleblowers are clearly advised of their rights in relation to the "Whistleblower Protection Act 1994" at the time of making a public interest disclosure;
3. Legislate that failure to manage public interest disclosures under the Whistleblowers Protection Act is deemed to be official misconduct that will result in serious penalties;
4. Legislate that failure to implement legislation associated with Public Service Workplace Directives & Codes of Practice is deemed to be official misconduct that will result in serious penalties;
5. Be standardised across all States;
6. Seriously consider establishing an independent federally

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- appointed, non-political body to oversee the implementation of Whistleblower Protection legislation training & education in all public service bodies throughout Australia;
7. Seriously consider establishing an independent federally appointed, non-political tribunal to manage & investigate public interest disclosures by whistleblowers. While ever public service bodies, such as Education Queensland, are responsible for investigating public interest disclosures about themselves ...the systemic corruption will continue.....
 8. Establish mechanisms that ensure that whistleblowers receive the highest level of protection possible against victimisation, discrimination, discipline or employment sanction and significant compensation for breaches of this protection;
 9. Ensure whistleblowers receive immunity from civil law suits such as defamation & breach of confidence.
 10. Initiate a media campaign to increase public awareness of the importance of whistleblowing, the Whistleblower's Protection Act, & the rights & responsibilities of the public service & public servants and the process for making a public interest disclosure.

May I also suggest that the announcement of this inquiry received very little media coverage in Queensland & that the time frame for making a submission was too short.

Furthermore, I believe that it would have been prudent to take steps to ensure greater public awareness of this inquiry, in order for the inquiry committee to ascertain the full extent of the difficulties experienced by public servant whistleblowers.

I appreciate the opportunity to contribute this submission to this inquiry. Please do not hesitate to contact me for further information or copies of documentation referred to in this submission.

Yours faithfully
Merrilyn Bulder
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