

Submission No.....	50
Date Received.....	M.R.

Submission by Dr Andrew Stewart to the *Inquiry into whistleblowing protections within the Australian Government public sector* by the House of Representatives Standing Committee on Legal and Constitution Affairs 2008.

RECEIVED
28 SEP 2008

Summary Recommendations of this submission:

BY: LACA

1. That Public Interest Disclosure Legislation be established to apply to all agencies and authorities of the Commonwealth Government.

2. That a national Universities Ombudsman be appointed, funded by the Commonwealth, after consultation with the states and national representative bodies concerned with higher education, including staff and students, and that such an office have the power to investigate matters relating to the functioning and reputation of universities, the welfare of their staff and students, to investigate, conciliate and resolve complaints and to make recommendations.

I address Term of Reference 1 of this Inquiry: the categories of people who could make protected disclosures

1. Whistleblowing: an experience

I report events at the Australian National University (ANU) where, from 1980 until 2005, I held a salaried academic position.

In 2000 and 2001 students in my department were subjected to practices carried out by senior academic staff. My view was that the practices were, at best, inappropriate and degrading.

After I failed to have the matter addressed at the local level, the staff union of the university (the National Tertiary Education Union) wrote to the Deputy Vice-Chancellor of the ANU to ask about the rights of staff who made complaints of the sort that I was concerned about. The Deputy Vice-Chancellor replied that any staff member who consults in confidence, and in good faith, with an appropriate Officer of the University, regarding their rights, would be protected against penalty against such consultation.

I spoke to the Deputy Vice-Chancellor in confidence. He initiated an inquiry into the matters I told him about and, as a result of that inquiry, he issued orders that the practices that I had reported should cease.

One might have hoped that the matter would have stopped there.

However, following the subsequent confirmation by the Deputy Vice-Chancellor to the perpetrators of the practices that I was the complainant, action was taken against me by local academic managers. I received an unfavourable performance review, being told that I was disruptive. This was the first step in a process that could lead to dismissal. I appealed against the ruling and it was quashed summarily and unanimously by an internal committee of appeal.

Next, I was transferred against my wishes out of my existing department into a virtual department (i.e. one that had no physical presence). After a few years of that tenuous existence I decided to accept an offer of early retirement. I agreed to this on the condition that I would receive a letter from the Vice-Chancellor commending the actions I had taken to protect the interests of students and apologising for the way I had been treated. In order to obtain this letter I was required to give an undertaking that I would not take legal action against the University over the matter.

My assessment of the events that took place is that I was pressured into early retirement as a result of reporting senior academics who were mistreating students.

2. Public Interest Disclosure

I consulted the Commonwealth Ombudsman about aspects of the situation related to Public Interest Disclosure. The Ombudsman found that he would not be able to investigate most of the matters as they fell under Section 5(2)d of the Ombudsman Act 1976 which does not authorize the Ombudsman to investigate matters related to employment by a prescribed authority such as the ANU.

I was advised that there was no Public Interest Disclosure *legislation* that applied to the ANU either then or now, as it was covered neither by the Public Service Act of 1999 nor by the ACT Public Interest Disclosure Act of 1994. After the events I describe above, the ANU did establish a Protected Disclosures *policy*. However a policy does not have the same force as a law because the latter is less easily ignored or circumvented. This is the reason for the **primary recommendation (1)** of this submission to establish **Public Interest Disclosure legislation** that covers the ANU and other Commonwealth agencies.

The task of investigating public interest disclosure claims is likely to be undertaken by some sort of Ombudsman function. My second **recommendation (2)** is to increase the resources available to the overall national Ombudsman function by establishing a national **Ombudsman for Universities**.

This would be an independent investigatory body that is knowledgeable about the functioning and culture of Australian universities and that would act as a mechanism for their quality assurance in the realm of ethics. Its remit would include matters relating to Public Interest Disclosure and to Academic Freedom. It could be associated with the office of the Commonwealth Ombudsman in order to share resources, but would be independent of it.

I made this suggestion in my recent submission to the *Inquiry into Academic Freedom* by the Education, Employment and Workplace Relations Committee of the Australian Senate 2008. This inquiry is investigating concerns that had been expressed about academic freedom in Australian universities and schools.

The establishment of such a national University Ombudsman body was first suggested by the 2001 Senate Inquiry *Universities in Crisis: Inquiry into the capacity of public universities to meet Australian's higher education needs*. The suggestion was received favourably by the government of the time but has yet to be implemented.

Andrew Stewart 28 September 2008
<http://grapevine.net.au/~a-stewart/index.html>