

NSWCCL

New South Wales  
Council for  
Civil Liberties

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## Inquiry into whistleblowing and the public service.

Replies to questions on notice asked on 27 October, 2008 by the House Legal and Constitutional Committee

1. We were asked whether we knew of any case law in which the phrase 'improper motive', as used in the New South Wales Protected Disclosure Act had been interpreted. It was asserted that the criterion is subjective.

A careful search has not identified any reported cases in which the phrase has been interpreted in the context of the Protected Disclosure Act. It would appear that if the issue has reached the courts, it has not been considered noteworthy.

CCL does not take a position on the metaethical issue of whether moral assertions are subjective or objective. We note, however, that they are typically defended by rational, non-arbitrary, argument—and a subjectivist view must be able to give an account of this. It can be quite clear that a person has done the right thing for the wrong reason, or taken a defensible action for improper motives.

2. We were asked whether there ought to be a particular agency within the Commonwealth Public Service with the responsibility for whistleblowing within the public service.

Such an agency might take a role in encouraging the reporting of misconduct and in creating a climate of openness. It is important however that there is more than one route which a whistleblower can take to having a wrong corrected. Reports to the head of an agency should be protected, and also reports to the Ombudsman or to other oversight bodies.

3. We should like to clarify our position in relation to the security and intelligence services. We recognise that public whistleblowing by members of these agencies may imperil lives. Except in extreme cases, therefore, public whistleblowing is not appropriate and should not be protected.

However, the absence of the option of going public creates a need for extra opportunities for internal whistleblowing. We have read the submission of the Inspector General of Intelligence Services, that whistleblowing with these agencies should be done to him—and we assume that those who give him information would be protected. However, an IGIS may be co-opted by the intelligence and security agencies, and so not be trusted with revelations of wrongdoing. There should therefore be alternative means for the members of these services to give information and be protected in doing so. The IGIS is

an appropriate person to be the recipient of information about wrongdoing, but he should not be the only one available.

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Civil and Indigenous Rights Subcommittee,  
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