

# Whistleblowing: Opportunity or Threat? Victorian and Local Government

## Wayne Bruce STOPline Pty Ltd

### Introduction

This paper focuses on how individuals and public bodies can further protect and improve their agency's performance and reputation and protect the group of individuals that serve the people of Victoria and Australia – the agency's employees.

We all have a relatively new tool to achieve this challenging endeavour – the Victorian Whistleblowers Protection Act of 2001. While some may feel threatened by this legislation, it offers individuals the opportunity to greatly improve the governance of the state.

### Government Opinion

When introducing the Act to Parliament the Attorney General, Rob Hulls said:

*.....it's about "ensuring accountability of public organizations and officials for their actions and leads to higher standards and performance, and increases public confidence in the public sector" He also said "... it will become an important cornerstone of open and accountable government"*

Only last month, the Minister for Local Government, Candy Broad said in relation to the Surf Coast Shire Inquiry:

*"No council can afford to be complacent, nor can councils ignore dysfunctional or inappropriate behaviour within council, or between councillors and staff, that may jeopardise the effective operation of the council.*

*"We have been fortunate that the critical problems confronting the Surf Coast Shire were identified before they completely undermined its financial viability and the remedies are being put in place to respond to them".*

To successfully introduce the Whistleblowers Act, public bodies must have processes in place that ....

- Encourages and facilitates disclosures of improper conduct by public officers and public bodies
- Provides protection for whistleblowers and those who may suffer reprisals and
- Provides for matters disclosed to be properly investigated and dealt with.

### Reporting

The legislation already requires departments to outline in their annual reports the results of how they have implemented the Act.

This is only part of the agency's reporting requirements to Treasury and Finance. Treasury and Finance now require departments to report on not only economic

## **Whistleblowing: Opportunity or Threat? Victorian and Local Government**

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impacts of the services of departments, but also on environmental and social impacts.

This Triple Bottom Line reporting is now even subject to review being designated by some as TBL plus 1. TBL+ 1 reporting is the reporting of economic, environmental, social factors plus good governance.

Federal government departments, agencies and the private sector have so far taken the path of self-regulation and limited legislation.

The Australian Stock Exchange Corporate Governance Recommendations and Guidelines, Standards Australia's new Corporate Governance standards and CLERP 9 - Corporate Law Economic Reform Program – Issue Paper No. 9 now guide the private and public sector.

While the Commonwealth public sector may eventually see Commonwealth legislation to protect whistleblowers, in Victoria, we have the Whistleblowers Protection Act. But what do Victorian Public sector employees think and believe about the application of the Act?

In a recent survey of the Victorian public sector, the Office of Public Employment found that:

- 97% of employees believed that those who report corruption are not troublemakers.
- 65% believed those that made the reports are likely to suffer as a result and
- 30% were not aware of the appropriate place to report the problem (...in spite of the introduction in Victoria of Whistleblower legislation and procedures on 1<sup>st</sup> January 2002.)

#### **Use of Hotlines**

There are existing hotlines for the reporting of a variety of issues. The Environment Protection Authority in Victoria receives thousands of calls relating to smoking vehicles and litter. There are national hotlines for the building industry and in relation to suspected terrorist activities.

You will immediately recognise the most successful “whistleblowing” program – Crime Stoppers. Last week the record results for 2002/03 of over 630 arrests, 3200 charges and the recovery of property and illicit drugs valued at \$7.0 Million were announced.

#### **Cost of Occupational Fraud and Abuse**

We are all aware that the cost to the community of violent, domestic or property crime is significant. But what of the cost to the community of corporate and public sector crime. The so-called “victimless” crime.

## **Whistleblowing: Opportunity or Threat? Victorian and Local Government**

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The US Association of Certified Fraud Examiners estimates that 6% of organisational revenue is lost through occupational fraud and abuse. If we apply this to the State Government budget of \$28 Billion, this equates to \$1.5 Billion. With local government controlling approximately \$9 Billion in revenue and grants etc it equates to \$540 Million. In Australia it is estimated that bullying costs between \$6 and \$13 Billion per annum or \$20,000 per occasion.

We are not proposing that occupational fraud and abuse is present at this level within the public sector. What we are proposing is that there is significant community cost and many have yet to grasp the opportunity to use the Act to address the issue.

The issue of occupational fraud and abuse continues to be a major problem for business and government.

For a moment let's consider the impact of the WorldCom collapse. Only this month in the USA, WorldCom was fined \$1.1 Billion. While the accounting fraud totalled \$16 Billion, the most significant issue relates to the estimated loss to WorldCom shareholders of \$300 Billion. That's the equivalent of the annual revenue of Australia's 15 largest companies....from BHP Billiton, National Australia Bank, Coles Myer, Telstra to Qantas.

Harassment and unsafe work practices cost corporate entities huge amounts in lost productivity as well as industrial and legal action. Detecting such misconduct and dealing with it promptly saves time as well as money and also creates a deterrent effect that reduces the unacceptable behaviour by others in the same workplace.

Through our independent STOPline service we have received and investigated a range of complaints from employees including:

- theft
- sexual harassment
- inappropriate partiality
- bullying
- sexual extortion and
- fraud

At all times the anonymity of the person making the complaint has been respected, providing the essential protection from direct and indirect reprisals.

#### **Implementation of the Whistleblowers Protection Act 2001**

In the public sector, the Whistleblowers Protection Act provides a prescriptive conduit for the message.

But are government entities really fair dinkum about promoting social reporting and legislation such as the WPA?

## **Whistleblowing: Opportunity or Threat? Victorian and Local Government**

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The Victorian legislation is the most powerful of its type in Australia. It is a reference point for Standards Australia and indirectly the ASX Guidelines. In NSW, one must be an employee of the public body and be overt when making the disclosure. Anonymity is not available. In Queensland, one must be an employee of the public entity but anonymity is available.

The Victorian Whistleblowers Protection Act allows anonymity and is available to any person to report improper conduct within the public sector.

It is leading edge legislation. It provides what we believe is extremely important – the right to anonymity. It highlights and enforces confidentiality, provides for support and protection of whistleblowers and has well defined processes. In addition, the Act is supported by extensive guidelines established by the ombudsman who provides a review role.

#### **The Current**

But how are these rights of the individual being communicated to Victorians?

In December 2002, the Sunday Herald Sun undertook a survey relating to the implementation of the Whistleblowers Protection Act. The survey found that 45% of public bodies surveyed could not provide any details of the legislation. Only two out of nine hospitals were able to provide details. No schools they contacted could provide information.

Dr Barry Perry, the Victorian Ombudsman described the survey results as *“appalling”*. He said... *“Its not good enough if public bodies have not implemented procedures they’re supposed to implement”*

Rosemary Barker of the Department of Human Services said in the July 3, Business Review Weekly that the Whistleblower Protection Act has *“most definitely”* encouraged people to speak up. The DHS has 10,800 employees and a \$1 billion budget but had fewer than 80 complaints and only 14 investigated and awarded protection under the Act.

While some would say that ONLY 14 protected disclosures were received, I would argue that 80 persons who did not feel comfortable with other complaint processes, chose to use the Whistleblowers Protection Act. That 14 were serious enough to potentially warrant criminal charges or termination of employment is significant.

The Department of Human Services won an award for internal promotion of the legislation, but our experience is that their level of commitment has not been shown in other state public bodies.

Many public sector managers responsible for encouraging and facilitating disclosures have not been as proactive as DHS. For example:

- Was there ever a press release or any other campaign to alert the general public?

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## **Whistleblowing: Opportunity or Threat? Victorian and Local Government**

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- One major public hospital group sent an email to all staff on their network advising them of the legislation. To achieve maximum impact and readership it was sent on Christmas Eve
- At recent discussion groups with Victorian public sector accountants, only two out of 36 were aware of the legislation. This is legislation that is one of the most powerful platforms for internal control. There is ample evidence to demonstrate that by increasing the perceived chance of detection for corrupt conduct, entities can effectively reduce the incidence of occupational fraud and abuse.

In a small straw poll, I examined 3 metropolitan and three regional council's websites to check on the promulgation of the Whistleblowers Protection Act.

These councils represented over 700,000 Victorians or approx 15% of the state's population. Only two had references to the Whistleblowers Protection Act.

At one site, the only brief references were to council minutes of early 2002. The second site had a cover page, plus further reference to the ombudsman's guidelines.

It states....

*"There is now new legislation to protect council employees who suspect improper behaviour on the part of councillors or their colleagues. If you think someone is acting inappropriately by (examples of improper behaviour) then you should report them to the CEO."*

Several questions and concerns are raised:

- What rights does Joe Citizen have? Reading the website - apparently none, the WPA is for council employees only.
- Does the council employee have any alternative to making a report to the CEO when making the report – apparently not ...What about the ombudsman?
- Corrupt conduct by councillors must be reported to the CEO? – not according to the legislation.
- Where is the reference to anonymity, a key to maintaining confidentiality?
- And what are the examples of improper behaviour? – where are they?

Let's also consider how the initial impact of the Justice Department's "Refer it to the referee" program has been embraced. One needs to look no further than the promoted whole of Government 1300 366 356 number.

The recorded message is convoluted, not specific to the Whistleblowers Protection Act and provides little confidence as to confidentiality.

We tested the system. After a string of musical interludes we finally reached the contact point for local government – 8 mins 25 secs after the beginning of our call... only to be advised that the person responsible was ill that day and could we ring back tomorrow.

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Our experience from Crime Stoppers and at STOPline is that you may only get one opportunity. The whistleblower may not come back.

**The Future**

We would recommend individuals and public bodies should search for best practice.

- Examine the DHS approach.
- Seek external support.
- In a world of electronic media, the publication of such important rights for citizens should appear on websites. For detailed information one should check [www.justice.vic.gov.au](http://www.justice.vic.gov.au)
- The Building Commission have published a simple brochure, others have undertaken education seminars.
- William Angliss TAFE has made the Whistleblowers Protection Act part of their required annual professional development for ALL staff along with OH&S and EEO.

Encouragement and facilitation is achieved through education and awareness.

**Purpose of the Whistleblowers Protection Act**

The purpose of the Act was

- To encourage and facilitate disclosures of improper conduct by public officers and public bodies
- To provide protection for whistleblowers and those who may suffer reprisals.
- To provide for matters disclosed to be properly investigated and dealt with.

Yes, the legislation provides protection. Yes, the legislation has processes in place for proper investigations and outcomes.

But are public bodies encouraging and facilitating disclosures? I'll let you be the judge.... for without information about the process of making a disclosure, there can be no protection, no investigation and no rectification.

Clearly, public body employees and the community do have a significant role and interest in the reduction of crime and corruption as well as the enhancement of ethical conduct. But they can't act if they don't know how!

The Victorian State Public Sector has a powerful tool, the Whistleblowers Protection Act that will greatly enhance good governance which ultimately protects the public's assets, its employees and the reputation of the sector.