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Committee Secretary
House of Representatives Standing Committee on Legal and Constitutional Affairs
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Dear Legislators,

**Inquiry into whistle blowing protections within the
Australian Government public sector**

I am aware you are currently conducting public hearings where discussion has occurred as to the most effective drafting of legislation and regulation for a proposed public interest disclosure regime.

You are examining the drafting of already existing disclosure regimes, and are being shown by some hearing witnesses what not to draft.

I advise that protection for people who make child protection reports in the employer related child protection regime in New South Wales is in effect hopeless.

This is despite the utmost effort to encourage and protect disclosure of risk of harm to children when the regime was conceived and drafted after the Wood Royal Commission in the 1990s and after its' publication of its volume V "The Paedophile Inquiry".

The New South Wales Ombudsman's office has responsibility for employer related child protection as per part 3A of the Ombudsman's Act 1974 (NSW). Section 29 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) attempts to protect a reporter in all cases whatsoever, providing she acted in good faith. This is a scenario that Theresa Hamilton of the New South Wales ICAC proposes.

However, I can tell you from experience that in New South Wales employer related child protection scenarios this protection does not work. No one in New South Wales, including the Judiciary, the New South Wales Police Force, the Director of Public Prosecutions, relevant ministers, or the executive government department concerned adhered to section 29 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) when I blew the whistle. They simply ignored it, or else they got it wrong. The New South Wales Ombudsman's office was particularly negligent, and I note that that office did not provide a submission to your inquiry despite its client being "the public interest".

I was instead flung into a situation of gag orders by the court and a need to spend my life savings on lawyers if I wanted to defend myself adequately against counter theories generated by the government department concerned.

Here is section 29 of the Children and Young People (Care and Protection Act) 1998 for you to peruse, expertly drafted from Justice Wood's recommendations, but sadly ineffective:

29 Protection of persons who make reports or provide certain information

(1) If, in relation to a child or young person or a class of children or young persons, a person makes a report in good faith to the Director-General or to a person who has the power or responsibility to protect the child or young person or the class of children or young persons:

(a) the making of the report does not constitute a breach of professional etiquette or ethics or a

29/10/2008

departure from accepted standards of professional conduct, and

(b) no liability for defamation is incurred because of the report, and

(c) the making of the report does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy, and

(d) the report, or evidence of its contents, is not admissible in any proceedings (other than care proceedings in the Children's Court, or any appeal arising from those care proceedings), and

(e) a person cannot be compelled in any proceedings to produce the report or a copy of or extract from it or to disclose or give evidence of any of its contents, and

(f) the identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed by any person or body, except with:

(i) the consent of the person who made the report, or

(ii) the leave of a court or other body before which proceedings relating to the report are conducted,

and, unless that consent or leave is granted, a party or witness in any such proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity or leading to the identification of that person.

(1A) A certificate purporting to be signed by the Director-General that a document relating to a child or young person or a class of children or young persons is a report to which this section applies is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a report.

(2) A court or other body cannot grant leave under subsection (1) (f) (ii) unless the court or other body is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice.

(3) A court or other body that grants leave under subsection (1) (f) (ii):

(a) must state the reasons why leave is granted, and

(b) must ensure that the holder of the report is informed that evidence as to the identity of the person who made the report, or from which the identity of that person could be deduced, has been disclosed.

(3A) The protections given by this section to a person who makes a report apply to:

(a) any person who provided information on the basis of which the report was made, in good faith, to the person, and

(b) any person who otherwise was in good faith concerned in making such a report or causing such a report to be made,

in the same way as they apply in respect of the person who actually made the report.

(4) Subsection (1) (f) does not prevent the disclosure of information from which the identity of a person may be deduced if the prohibition on the disclosure of that information would prevent the proper investigation of the report.

(5) A report to which this section applies is taken to be an exempt document for the purposes of the *Freedom of Information Act 1989*.

(6) In this section:

court includes a court exercising federal jurisdiction.

report includes a report under sections 24, 25, 27, 120, 121 and 122.