



The importance of effective public interest disclosures systems in NSW

CPN Breakfast event Museum of Sydney

30 August 2011

Bruce Barbour
NSW Ombudsman

Thank you Michael.

I am very pleased for my office to be co-hosting this event with the Corruption Prevention Network. We have a long and productive relationship, and I value the important contribution the CPN makes.

I am most grateful that the Attorney General was able at short notice to be here notwithstanding his busy schedule and thank him delivering the keynote address this morning. His strong statement of support for those who report wrongdoing is yet another encouraging indication that the government is committed to ensuring we have an ethical and open public sector.

I would like to acknowledge the Premier's recent memoranda to the public sector highlighting the importance of providing protection against reprisal for those reporting wrongdoing and restating his government's commitment to ensuring those who report wrongdoing are supported.

As I am sure many of you already know, the Protected Disclosures Act, now the Public Interest Disclosures Act, has been the subject of a range of amendments in the last six months. Without a doubt, this is important legislation, as it aims to encourage and facilitate the disclosure, in the public interest, of wrongdoing in the public sector. It is probably the most significant and comprehensive public interest disclosures legislation in Australia at present.

This breakfast event is more than just an opportunity to talk with all of you about the importance of public interest disclosures. It is also a chance to stress the importance and need for the right message to come from the top of an organisation. Many of you are heads of agency or very senior managers, and it is vital that your staff hear the right message from you. If they don't it's highly unlikely this important piece of legislation will achieve its stated object.

An amending Bill currently before Parliament will provide heads of agency with a range of responsibilities: ensuring internal reporting policies and procedures are in place, that staff are aware of the policy and the protections under the Act, and that agencies comply with the policy and the obligations under the Act.

Sometimes the best way to illustrate the importance and scope of disclosures and the risks and consequences of failing to handle them well – is by real example. There are many to pick from – but let me start by looking to Queensland.

In 2003, a nurse in a public hospital saw something she thought was wrong. She saw a doctor consistently providing his patients with what she felt was particularly sub standard care. Some had been put at a greatly heightened level of risk. Some had suffered unnecessary additional treatment. One young boy had to have his leg amputated. Others had died.

She was unsure about what to do, because this doctor was not only relatively senior within the hospital, but generally had a good reputation. She agonised over who to tell. She tried for over two years to try to raise the issue with her superiors, only to be told that it was essentially a 'personality clash'. In the end, she lost patience and approached a Member of Parliament.

The nurse's name was Toni Hoffman. The hospital was Bundaberg Base Hospital. The doctor was Dr Jayant Patel.

As I am sure most of you know, Dr Patel has subsequently been charged with and convicted of three counts of manslaughter and one count of grievous bodily harm. He is now serving a seven year prison sentence.

The investigation of these matters highlighted a great many failings.

A number of senior doctors and administrators at Bundaberg Base Hospital were shown to have responded very poorly. Queensland Health have made changes to their processes to ensure such gross patient neglect never goes unnoticed again.

In his final report, the Honourable Geoffrey Davies, who headed the Commission of Inquiry into Bundaberg and other related issues, said this about Ms Hoffman's actions:

She might easily have doubted herself, or succumbed to certain pressures to work within a system that was not responsive. She might have even chosen to quarantine herself from Dr Patel's influence by leaving the Base or at least the Intensive Care Unit. Instead, under the threat of significant detriment to herself, Ms Hoffman persistently and carefully documented the transgressions of Dr Patel.

Why have I started with this particular case?

Well quite simply, if Ms Hoffman had not come forward, and had not continued to push for action, there is no doubt more people would have been put at risk, suffered unnecessarily, and possibly died.

The Davies inquiry heard evidence from others who had strong suspicions and concerns around what had been happening at Bundaberg Base Hospital, but did nothing - said nothing - told no one. When approached by Ms Hoffman, one doctor told her that several doctors had concerns but did not 'have enough to stick their necks out with.'

There is no question that this example is at the most serious end of the spectrum. But there is still a risk that similar situations may arise in our agencies, and we have to ensure we have the systems in place to deal with them.

We each share a responsibility to ensure this sort of situation is handled correctly, because as Bundaberg shows, the consequences are great.

Staff report wrongdoing across Australia and around the world, in the public and the private sector. Here in NSW, a glance at the papers over the last few years gives up a number of examples of the impact of dealing with these disclosures badly.

At NSW Maritime, we saw a member of staff report suspected wrongdoing by their supervisor. The report was not handled well, and the matter ended up before the ICAC. The agency was the subject of adverse publicity, and dealing with the matter cost time, money and staff.

At Burwood Council, several staff came forward and reported what they believe to be inappropriate behaviour by their general manager. They were not supported, and appear to have been subjected to reprisals as a result of coming forward. Again, the matter ended with a public inquiry by the ICAC.

In Victoria, we saw an Ombudsman investigation into a whistleblower's allegation that police statistics had been released prematurely to suit the political cycle. While it was certainly not the only reason, the Ombudsman's final report was followed by the resignation of the Police Commissioner.

Most of the matters that come to my office only reach us because an agency has not dealt with them appropriately at first instance.

This morning's event is deliberately aimed at those in leadership roles within public sector organisations. It is clearly in our shared best interests and the interests of our organisations and staff for public interest disclosures systems to operate properly and transparently.

I am not speaking as someone on the outside looking in. I am in the same position as you. My office, like any other public sector organisation, is required to comply with the Public Interest Disclosures Act.

I have to ensure staff within my office are aware of the systems in place for reporting wrongdoing. I have to ensure they are not only informed but also they feel comfortable coming forward. I have to do my best to make sure they are free from reprisal when they do so.

There are many reasons why it is important for us to ensure our organisations have effective systems in place to allow for and encourage staff to report wrongdoing. None will come as a surprise but all are worthy of reinforcing.

The most important – yet simplest – is that something that is wrong can be prevented from continuing.

Identifying something that is wrong can also present you with an opportunity to make the changes and improvements needed to make sure it either cannot - or is much less likely – to happen again. Improvements can even come from matters where the initial allegation is not substantiated.

We are all working in a time of increasing financial challenges. We are all looking to find efficiencies in our operations. To do more for less, but to still maintain high standards and quality. Being told about problems – or at the very least potential problems – within our organisations and then having the opportunity to fix them ourselves, can help to save money in a number of ways.

Firstly, unhappy staff are unproductive staff. Reports of wrongdoing often create bad feeling. When they are handled badly, they can take hold in an organisation, taking time, energy and resources that should be going elsewhere.

Secondly, a badly handled disclosure can result in a loss of staff. Time and again through our investigation of disclosures we have seen the relationship get so bad in the workplace that people have felt they had no option but to leave. At the very least, some staff will go out on extended periods of sick leave as a result of the stress they are made to feel after reporting wrongdoing.

•
And finally, dealing with investigating or oversight agencies or another form of public inquiry can be a time consuming costly, embarrassing and damaging process. I strongly believe that offices such as mine and the ICAC have an important role to play, but it should only be necessary for us to become involved when there is no other option. If an agency demonstrates a willingness to deal with an issue properly, it is unlikely we will investigate.

One of the themes for this morning's breakfast is our responsibilities. We are responsible for ensuring our organisations are effective, and that we work in the public interest. This includes making sure we act ethically.

Almost a year ago, I spoke at the CPN Annual Conference about the importance of living up to public sector standards. I stressed the importance for the public sector and government of gaining and keeping the public's trust. It is vital to the delivery of effective services and once it is lost, it is very difficult to get back.

Recently both the Premier and the Director General of the Department of Premier and Cabinet Chris Eccles have spoken about the creation of a 'network of trust'. As Mr Eccles noted:

The vision is for: citizens to be able to trust public institutions and to defend their interests; politicians and ministers to be able to trust that the public service will give them objective, high quality and

fearless advice; public servants to trust government to do what it says; and, public servants valued by government and citizens for their integrity, impartiality and expertise.

Undoubtedly, these are all very important. But there is another trust relationship that is equally important to the public sector, and that is the trust of its members. Public servants need to trust one another, and they need to have trust in the organisations in which they work. Put simply, they need to trust their organisation to do the right thing by them and for the community. In the Dr Patel matter I first spoke about, Ms Hoffman lost trust in her Department and in her colleagues to do the right thing and deal with a major problem. That is why she felt no alternative but to seek out an MP.

It has always been my experience, and I am sure it is shared by many of you, that those you work with will be far more effective, productive, and committed to their work if they are respected, treated fairly and feel comfortable in the workplace.

The opposite is also true. If you do not trust or are afraid of your employer or your colleagues, you are unlikely to be doing your job to the best of your ability. When staff feel this way, they simply don't want to be in the building, let alone do their work.

The Premier spoke at this year's IPAA Conference about the importance of innovation in the public sector. He identified innovation as the key to creating opportunity and informing the way public services are delivered in the future.

Innovation is built on passion, it is built on looking to do more than the bare minimum. It is built on consistently challenging the way we do business, and looking for opportunities to do more, to do better, to be better. If staff are not committed to their job, innovation simply will not happen.

In a moment, my Deputy Ombudsman Chris Wheeler will be speaking to you about the changes that have been made to the Act in the last six months and what they mean for your organisations, as well as our office's expanded roles and responsibilities.

I would like to take this opportunity to recognise the substantial contribution Chris has made to this area in the last fifteen years. He has lobbied for reform to the legislation, been a leader in research and supported and provided advice and guidance to staff and agencies.

I also recognise the importance of our role and am committed to getting it right. I have established a dedicated unit within my office to perform our functions. The unit's objectives are to:

- Increase awareness of the procedures for making public interest disclosures and the protections provided by the PID Act.
- Improve handling of disclosures and the protection and support for people who make them.
- Improve identification and remedying of problems and deficiencies revealed by disclosures.
- Ensure an effective statutory framework is in place for the making and management of disclosures and the protection and support for people who make them.

We will not be successful in achieving these objectives if we do not work in partnership with public sector organisations. This is important legislation, and its success is reliant on all of us. I look forward to working with all of you to ensure NSW has the best system for making public interest disclosures possible, and I thank you for attending this morning.

NSW Government Publication
© NSW Ombudsman, May 2009

This work is copyright, however material from this publication may be copied and published by State or Federal Government Agencies without permission of the Ombudsman on the condition that the meaning of the material is not altered and the NSW Ombudsman is acknowledged as the source of the material. Any other persons or bodies wishing to use material must seek permission.