Whistleblowers' Action Group (Qld) Inc.

Gordon Harris
President

30 July 1999

The Secretary
House of Representatives Standing Committee
On Environment and Heritage
Parliament House
CANBERRA ACT 2600

Dear Mr Dundas

SUBMISSION TO THE INQUIRY INTO CATCHMENT MANAGEMENT

Outline

The Whistleblowers Action Group (Qld) (WAG) wishes to bring to the attention of your Committee the unofficial policies followed by public authorities in Queensland – and by the Government of Queensland – which are negating the best efforts of responsible persons and organizations to improve Queensland's catchments and water resources. These unofficial policies, previously brought to the public notice by two State inquiries and the national media, include:

- The unofficial policy of non-enforcement of environmental regulations essential to the health of Queensland's catchments.

- An unofficial policy of expulsion, from Queensland public authorities – including the Queensland Public Service – of officers who make public interest disclosures to those same public authorities, including officers who have made disclosures concerning the non-enforcement of environmental regulations. This expulsion policy impacts on the viability and survivability of environmental professionals

involved in catchment management in Queensland, who carry out their duties with integrity and in the public interest. The acknowledged ethics and professional integrity of practioners who have reported maladministration in this area has not been sufficient to encourage the bureaucracy to change their policy of expulsion.

- An unofficial policy of inaction towards the expulsion policy, by the watchdog authorities charged with the overview of the public administration of Queensland. The public administration of Queensland has been captured by those entities generating the threat to Queensland's catchments, and has no longer the capacity to resolve these problem without intervention.

These non-enforcement policies have been followed by Queensland bureaucracies under alternative Governments. The Queensland political system has capitulated before the enormity of the problem, and is no longer capable of taking the appropriate correcting action itself.

The demonstrations of these policies described in this submission provide cause for public concern that the objectives of Commonwealth funding provided for the management of certain catchments in Queensland may be negated by those interests that have achieved regulatory capture over the management of those catchments. This concern will continue until such time as the Queensland administration can demonstrate a reversal of its unofficial policies and takes action to correct the past effects of these policies.

The Unofficial Policy of Non-enforcement

Queensland has one of the largest mining industries in the world and some of the largest individual mining operations on any part of the world's landscape.

Prior to 1991, and particularly from the early 1960's, there was little enforcement of legislation such as the Sludge Abatement Act and the Clean Waters Act in Queensland. Not surprisingly, this neglect has left a legacy of uncontrolled mining impacts in various catchments.

The effects of this neglect were disclosed by Mr JimLeggate to his Chief Executive Officer (CEO) in the Department of Mines, through a report describing 44 affected mine sites. Subsequently, the matter was investigated by Queensland's Criminal Justice Commission. The main catchments affected were the Herbert, Walsh, Palmer, Isaac, Dawson, and Don Rivers.

Since 1991, despite national media exposure of the impacts of this legacy on Queensland's rivers and streams, continuing non-enforcement has allowed many mines to become even greater hazards to the environment. The non-enforcement of Special Agreement Acts has allowed mining operations at the following sites to become potential sources of major pollutant outflows into Queensland's waters:

- Weipa
- Goonyella

- Saraji
- Moura
- Mt Isa
- Greenvale

Non-enforcement of the Mineral Resources Act (EMOS and Plans of Operation requirements) has resulted in significant potential for pollution to arise from the following sites:

- Oakey Creek
- German Creek
- Collinsville
- Mt Larcom
- Ipswich coal mines, and others

Only public expenditure of hundreds of thousands of dollars – taxpayer-provided funding – has prevented the following abandoned mine sites from causing damage to Queensland's environment, through the pollution of its water bodies:

- Agricola
- Horn Island
- Chariah
- Croydon
- Herberton, and
- Mt Morgan

There are three overlapping jurisdictions answerable for mine sites and their mining operations in Queensland. They are administered by:

- The Department of Mines (names include Mines & Energy, Resource Industries)
- The Department of Natural Resources (previously Water Resources Commission)
- The Department of Environment (previously Environment & Heritage)

The principal water-borne contaminants arising from mines include:

- Salinity (chlorides and sulphates)
- Sodicity from sodium
- Acid and heavy metals in solution
- Cyanide,
- Sediments, and
- Turbidity

Several catchments in Queensland would be in much better health had particular mining companies met their legal obligations. Current estimates of the outstanding mine rehabilitation bill to protect the long term health of Queensland's water bodies begin at $1.6 billion.

There is public concern that, given the regulatory capture of Queensland's public administration by some of the largest companies in the world, Queenslanders and other Australian taxpayers will have to pay these billions for rehabilitation.

The future of mining in Queensland is trending towards greater economies of scale in operations, introducing the threat of more mining waste per unit of mineral product as mining exploits lower grade deposits. The threat to catchments from mining pollution increases accordingly, as does the importance to the public interest of enforcing legislation to avert this threat. Unless preventative legislation is enforced, mining poses an unacceptably high risk to various catchments in Queensland. Under the current lax enforcement standards, uranium mining in Queensland would be out of the question.

In 1994, retired Supreme Court Judge Matthews conducted an Inquiry for the CJC into Unlawful Disposal of Liquid Waste. His report found that there was a serious threat to the environment from mining, and recommended that the issue be fully investigated.

Connolly and Ryan, in 1996/7, conducted an Inquiry into, inter alia, the effectiveness of the CJC in dealing with this matter. Counsel assisting the Connolly/Ryan Inquiry concluded that there was prima facie evidence of official misconduct that could have been investigated. The CJC accepted during argument before that Inquiry that a policy of non-enforcement existed, but argued that the policy did not constitute official misconduct because the non-enforcement policy had been well publicised.

In spite of this admission, the two principal parties to the matter – the Department of Mines and the Queensland Mining Council – both denied and continue to deny any non-enforcement.

Enclosed with this submission is a tape of national coverage given to Mr Leggate's disclosures by public affairs television programs.

The Whistleblowers

This submission outlines the treatment by the Queensland Public Service of two whistleblowers who have demonstrated meritorious service in the initiatives they have brought to the management of catchments in Queensland and Australia.

Mr Jim Leggate

Mr Leggate won national praise from the mining industry and from the Commonwealth Government for his role as Divisional Manager, Environment, at the Ranger Uranium Mine in the Kakadu National Park during the period 1983 to 1986. At Ranger, Mr Leggate directed the operations of one of the most sophisticated tailings dam disposal facilities in the world. He was responsible for radiation safety and water management on site, as well as mine rehabilitation. Mr Leggate is accredited as the professional most responsible for turning around the approach taken

by the Ranger Mine to the meeting its obligations for protection of the environment at the Kakadu National Park. The Ranger Mine, through Mr Leggate's leadership, was able to achieve the 'best practicable technology' condition under the Ranger Agreement.

The responsible Minister of the day placed Mr Leggate on a Roll of Merit of professional officers.

Recently, the past success of the Ranger Uranium Mine in avoiding danger to the Kakadu National Park was used by the Federal Government to underpin its arguments in a $1million lobbying project concerning the Jabiluka Uranium Mine before the United Nations World Heritage Committee. The Jabiluka Uranium Mine is also in the world heritage listed Kakadu National Park. Outcomes from responsible mining practices established at the Ranger Mine during Mr Leggate's time were used to avert a decision by the World Heritage Commission that the new Jabiluka Uranium Mine constituted a danger to Kakadu.

Mr Leggate's initiatives in establishing mine rehabilitation practices at the bauxite strip mining sites at Weipa are also widely acclaimed as best rehabilitation practice in Queensland. Many of these practices are emulated to this day by other mines in Queensland and in Australia.

Mr Leggate has been Chair of the Queensland Chamber of Mine's Environment Committee, and has worked as an environmental officer/manager for five different mining companies in Australia. He is widely published nationally, and his work on rehabilitation was published at the International Symposium on Surface Mining held at Bristol in the United Kingdom.

Mr Leggate's status as a whistleblower has been recognized by the Senate Select Committee on the Unresolved Whistleblowers Cases. He is featured as one of Australia's principal whistleblowers in Quentin Dempster's book, *Whistleblowers*. Queensland's CJC has recently – although informally - accepted Mr Leggate's whistleblower status, and regard his actions in making his public interest disclosures as having been vindicated by the findings of the CJC's Matthew's Inquiry into Unlawful Disposal of Liquid Waste.

In spite of this belated (and informal) recognition, Mr Leggate has been expelled from his career in Queensland's Department of Mines and from the role in which he was making a major contribution to the proper management of catchments in Queensland. He has been expelled because he disclosed misconduct by his superiors, by which they endangered the health of the rivers and water bodies in those catchments.

Significantly, the inquiry into mining practices that Justice Matthews recommended to the CJC has never been conducted. The evidence suggests that such an inquiry, if held would probably vindicate Mr Leggate's disclosures. This, perhaps, is the clearest indication of official motive in the action taken against Mr Leggate.

Mr Greg McMahon

At the time of Mr McMahon's expulsion from his career in engineering within the Queensland Public Service, in 1991, Mr McMahon was a Queensland and national authority on the management rivers and their floodplains. The analytical methods that Mr McMahon and a colleague developed on flood estimation were recommended by the Institution of Engineers Australia for use by professional practitioners. His treatise on methods of environmental and economic evaluation of development proposals were used by all State jurisdictions within Australia and were published at an International Symposium in Perth. Mr McMahon pioneered the application of numerical models and remote satellite imagery in the study of floodplains, and in the monitoring of land use changes in catchments.

During his years in engineering within the Queensland Public Service, Mr McMahon brought the Total Catchment Management initiative from New South Wales into the administration of local government responsibilities towards Queensland's catchments, negotiated the establishment of total catchment studies for four major coastal river systems, established the first environmental science team within the dam engineering divisions of the public service, and established the environmental coordination committee across the water resource groups within the Department of Primary Industries. Further, Mr McMahon introduced the economics of water-user industries into the planning regimes for water resource developments, and established the State of the Rivers initiative that continues to this day.

A year after his expulsion from engineering, Mr McMahon obtained a position in environmental science, still within the Public Service. Mr McMahon secured successive ratings of superior performance for his management of the scientific research teams in contaminant hydrology, mine stabilization and land rehabilitation, and drought forecasting. He established the Performance Management Reporting Scheme for reporting to Parliament on the $160million Natural Resource Management Program. In this work Mr McMahon derived unit costs for the full range of natural resource activities/outputs involved in catchment management (e.g. $ per catchment coordination committee, $ per 1000 hectares of reforestation, $ per Water Watch coordinator, etc), but was not permitted to publish. Mr McMahon also managed the formation of the Natural Resources Information and Education Unit within the Department of Primary Industries, and had established the Natural Resources Data Coordination initiative within the Department of Natural Resources. He was then expelled for a second time from the new career he was establishing within natural resource science.

Mr McMahon's public interest disclosures were not about environmental issues but were about breaches of Commonwealth Government legislation by Departments of the Queensland State Government. The legislation at issue was the Employment Protection provisions for Defence Reservists under the Defence Re-establishment Act. The Senate Select Committee on Public Interest Whistleblowing in 1993 identified Mr McMahon's treatment as one of nine "unresolved whistleblower cases" in Queensland, and recommended that an independent investigation be conducted by Queensland authorities into the treatment of Mr McMahon. The Queensland Parliament refused this investigation, after it was misled as to the existence and

findings of a Departmental investigation into Mr McMahon's complaints. This deception originated in information forwarded from the Chief Executive about whom Mr McMahon had made the disclosures to the Office of Cabinet, and was relayed to Parliament with one modification by the Attorney-General.

The Expulsions

Mr Leggate's and Mr McMahon's cases are linked by the fact that these officers were subject to the same tactic of punitive transfer by the same senior Queensland public servant.

The tactic was to transfer these officers to lower level positions, and/or to temporary positions (thus rendering these public officers surplus and open to retrenchment when the temporary purpose of the position expired), and/or to positions in professional areas isolated from the areas in which the officers had most knowledge and expertise. In the case of Messrs Leggate and McMahon, the areas from which they were isolated and expelled had duties directly related to the management of Queensland's catchments.

The tactic kept the officers at the same pay level. However:

- the lower levels of responsibility given to the officers, and/or
- change from a permanent position to one that had limited life and/or was known to be subject to impending restructure; and
- the move to a professional area separated from the area in which the officers had built their careers,

still had a punitive impact on the public officers, their prospects for promotion and challenging work, and their careers.

Further, forcing officers to transfer to lower level positions was a breach of Section 24 of the Public Sector Management and Employment Act, and was contrary to the Public Sector Management Commission Standard on Staffing Options to Manage Organizational Change.

In February and May 1991, Mr McMahon was directed by the Senior Officer to transfer to a lower level position in another part of the engineering group, which position disappeared in a restructure before the investigation into Mr McMahon's complaint about the transfer was completed. The transfer to a lower level position was unnecessary as there was an 'at level' vacancy in the position, Manager Catchment Management, for which Mr McMahon had experience and expertise. Mr McMahon was instead employed in selling cotton and other duties in the Department's Agribusiness Group.

In 1992, Mr Leggate was forcibly transferred by the Director General of Mines out of the Department of Mines. The only option given Mr Leggate for continued employment was in the same Department as Mr McMahon, namely Primary Industries. Mr Leggate held a position at the Mines Department in the Professional Stream Level 4 (termed PO4), but arrangements made by the Senior Officer to employ Mr Leggate at Primary Industries placed Mr Leggate in a lower Level 3 (termed PO3) position in the Forestry Division. After three years of frustration in these duties, Mr Leggate resigned from the Queensland Public Service.

In 1993, under a new Chief Executive, Mr McMahon obtained a position managing research scientists in natural resource management.

In 1994, the Senior Officer who had previously acted against Mr McMahon, again became Mr McMahon's Chief Executive Officer. Mr McMahon at the time held an Administrative Stream Level 8 (AO8) position, but was singled out for long term secondment to an AO7 position. Then in 1995, Mr McMahon was singled out for transfer to an AO6 position in the same Forestry group to which Mr Leggate had been sent. Mr McMahon was further marked for redundancy. It should be noted that, during this time there was an opportunity for employment 'at level' for Mr McMahon. This was the position of Principal Policy Officer Catchment Management. Securing this position would have protected Mr McMahon from redundancy. However, he was denied the position.

The investigation into the allegations by Mr McMahon of maladministration and reprisals by the CEO concerning the Catchment Management position was terminated by the CEO after the Investigating Officer, the Deputy Director General of Health, found in Mr McMahon's favour regarding another position also denied to Mr McMahon.

The Department then redesignated the Principal Policy Officer, Catchment Management, position to Manager, Catchment Management, and advertised it for permanent filling.

The General Manager implicated in the allegations of maladministration concerning this position under its previous title was selected to chair the new selection panel. Mr McMahon was rated second – behind the same officer who had benefited from the alleged maladministration and from the CEO's decision to terminate the investigation by the Deputy Director General of Health into those allegations.

In 1996, Mr McMahon was forcibly transferred to a lower level, temporary position in land administration (land titles, valuation, etc), an area in which Mr McMahon had had minimal experience. In forcing this transfer, the CEO denied Mr McMahon at-level transfers to a number of positions, including the vacant Catchment Processes position which Mr McMahon had supervised with successive ratings of 'superior performance.' In open merit selection procedures for the other position in which Mr McMahon had supervised to a superior standard, as well as for other positions, Mr McMahon did not obtain an interview when rated against officers who were on classification levels two and three levels below Mr McMahon's classification level.

In 1999, Mr Leggate secured a selection panel recommendation for appointment to an environmental officer's position within the Department of Mines. The Mines Department thereupon decided not to go ahead with the position, thereby denying Mr Leggate a return to his career, and denying Queenslanders the return of his special expertise and professional integrity to the management of catchments in the state.

It is in these ways, with illegal transfers, maladministration that denies legal transfers, exclusion from interviews, termination of investigations which appear to be going in

favour of the whistleblower, and termination of appointment procedures when the whistleblower is recommended for appointment, that the treatment of these two whistleblowers is summarised by the term ‘expulsion.’

Response by Watchdog Authorities

To Mr Leggate’s knowledge, Queensland’s Criminal Justice Commission never, over a seven year period, investigated his disclosures to the CJC about the reprisal imposed on him through the enforced transfer. The illegality of that transfer from the Mines Department (which was subject to his allegations of regulatory capture by the mining industry) into the Department of Primary Industries (at the hand of the senior manager of the water and dams administration which also has environmental regulatory powers over mining operations) never drew even the working suspicion of the CJC necessary to trigger official action.

This seven year period of inactivity by the CJC constitutes complicity in the punitive nature of Mr Leggate’s transfer, as Mr Leggate suffered the punishment for three years in a forlorn expectation that the CJC’s investigation would give him reinstatement. The CJC’s inactivity is consistent with the CJC’s apparent policy of non-enforcement of its own Act, the Criminal Justice Act, in not pursuing for official misconduct those permanent heads of the mining, dams, water, and water pollution administrations of Queensland for non-enforcement of their respective legislation. The non-enforcement by the CJC of its own Act regarding the non-enforcement of legislation by other authorities, demonstrates the entrenched condition of official misconduct in Queensland’s public administration where Queensland’s principal industry, mining, is concerned.

The CJC’s non-enforcement of its investigatory responsibilities regarding the transfer of Mr Leggate also allowed the Senior Manager involved at the DPI end of that transfer to use the same oppressive tactics against that Senior Manager’s own whistleblower, Mr McMahon, and allowed most recently the Department of Mines to maintain its expulsion of Mr Leggate against the recommendations of those officers of integrity who recommended his appointment.

Mr McMahon took his complaints regarding his treatment to the Queensland Office of the Public Service (OPS). However, this process was prejudiced at the outset by a conflict of interest, because the Public Service Commissioner (PSC) at the time had previously been the CEO of the Department of Mines.

Mr Leggate had alleged (and his allegations have been shown to have substance) that a sequence of CEOs from the Department of Mines had failed to carry out their duties. One of these CEOs subsequently became the PSC, after Mr Leggate was forced into the Department of Primary Industries by a senior officer of the Department of Primary Industries. Now another whistleblower was making a complaint against that same senior officer of the Department of Primary Industries, and the PSC responsible for determining the matter was a former CEO of the Department of Mines. It is arguable, at least, that the PSC had a common interest with the senior officer of the Department of Primary Industries in the demise of Mr Leggate, and therefore a conflict of interest

in dealing with Mr McMahon's matter. More generally, all authorities in the Queensland Government who wanted to put an end to Mr Leggate's reports of environmental breaches and his allegations as to the existence of unofficial government policies not to enforce regulation on the environmental management of mines, had cause to be thankful for the actions of that particular senior officer to rid the Mines Department and the Public Service of Mr Leggate.

The senior officer concerned was by now CEO of the Department of Natural Resources (DNR) and the response of the Office of the Public Service to Mr McMahon's allegations protected him from the allegations. Examples follow.

Mr McMahon lodged an appeal against the appointee to the Manager, Catchment Management, position in DNR. The OPS requirement is that officers lodging such appeals must first demonstrate that they have an 'arguable case'; once the appellant demonstrates that an arguable case exists, the appeal will 'proceed to a hearing to be attended by all parties' (PSC Directive on Promotion Appeals). Documents obtained under Freedom of Information show that Mr McMahon was successful in demonstrating that an arguable case existed with respect to grounds of both 'merit' and 'deficient process' in his appeal. But the OPS never gave Mr McMahon the full hearing of the appeal to which he was entitled. Eighteen months later, a new Commissioner for the Public Service forcibly retrenched Mr McMahon out of the Public Service, and then used the fact that Mr McMahon was no longer a public officer to dismiss his promotion appeal regarding the Manager Catchment Management position.

After Mr McMahon's success at the arguable case hearing for the Manager Catchment Management position, Mr McMahon was denied an opportunity to complete the arguable case hearing processes for his promotion appeals against appointments of more junior officers to other positions within the natural resource science area.

The documents show that the OPS had referred Mr McMahon's complaints about the Manager Catchment Management position to the CJC for the CJC to investigate whether there had also been a reprisal against Mr McMahon. The CJC came to a negative conclusion on this question without ever taking evidence from Mr McMahon or his witnesses, and then denied Mr McMahon access to the CJC's reasons for this decision by claiming a legal privilege exemption for the documents under the Freedom of Information Act.

The CJC did, however, report to the OPS that any misleading of Parliament could only be investigated by the Speaker of the House, and that other allegations by Mr McMahon may have constituted maladministration within the jurisdiction of the Ombudsman. The records of the OPS show that the OPS did not refer relevant issues to the Speaker or to the Ombudsman.

Regarding the Principal Policy Officer Catchment Management position and other positions, Mr McMahon lodged Fair Treatment Appeals to the OPS over the Department's failure to investigate his claims in accordance with the OPS Standard on Grievances. In particular, the Department had failed to take evidence from

Mr McMahon and his witnesses, and had failed to give him a determination as to the results of the 'investigation' allegedly conducted by the Department.

The OPS refused to order a proper investigation of Mr McMahon's complaints if all Mr McMahon could show was prima facie evidence that the treatment that he received was unfair. Instead, the OPS required Mr McMahon to produce prima facie evidence that the unfair treatment was deliberately designed by the Department to be unfair to Mr McMahon, before it would order an investigation of the unfair treatment. This requirement was alien to the wording and usual application of the OPS's own directive on unfair treatment. The directive requires only that the individual suffers unfair treatment. Proving motive for the unfair treatment is not a prerequisite for obtaining access to a Fair Treatment Appeal.

During the hearing, the OPS refused Mr McMahon's request for Mr Leggate to give evidence, and refused Mr McMahon the opportunity to present information on the relevance of Mr Leggate's evidence. The OPS stated as a reason for this refusal that the OPS did not want the hearing to be turned into a 'WAG session' (a reference to the Whistleblower's Action Group and, apparently, an acknowledgement that the matters concerned public interest disclosures). These exchanges are recorded on tapes held by the OPS.

In the lead up to the hearing, the OPS required the Department to provide performance reports held on Mr McMahon. During the hearing, Mr McMahon produced evidence and the testimony of witnesses pointing to the existence of those performance reports. However, the reports were then being withheld from the OPS by the Department, and the OPS acquiesced in this by withdrawing its requirement for the documents to be produced. It is believed the documents would have assisted Mr McMahon's case. However, when Mr McMahon claimed that he was still entitled to access to the documents under a Public Service Regulation – and cited Crown Law and QC opinion given to the Queensland Government in another whistleblower matter that it was an offence to deny such access – the OPS refused to direct production of the documents for the reason that the OPS hearing was not a 'WAG session.'

Mr McMahon was placed in a very difficult position. He had to refuse to participate in any Fair Treatment Appeal into the matters that were the subject of the Departmental grievance 'investigations' before he had the opportunity to lodge appeals on these matters with OPS, and he could not lodge his appeals with the OPS until he was given the determinations on the Departmental 'investigations' to which he was entitled by natural justice and by the OPS Standard on Grievances. This same predicament had been forced on Mr Leggate when Mr Leggate's CEO had refused to give Mr Leggate the CEO's determinations of Mr Leggate's Departmental grievance, and the OPS (then titled the PSMC) made appeal findings on the treatment of Mr Leggate before Mr Leggate had been given these determinations. The official strategy appears to be deny natural justice by moving to an 'end process' in a sham proceeding so that a determination can be made without effective input from the appellant.

In the OPS determination of Mr McMahon's Fair Treatment Appeal concerning the investigatory processes used by the Department, the OPS directed the CEO to provide Mr McMahon with the determinations of eight grievances that Mr McMahon had

made to his CEO. Then the OPS described Mr McMahon's appeal as 'dismissed,' even though by directing his CEO to produce the determinations it had substantially upheld the appeal that Mr McMahon had lodged. It is clear from the tape recordings that what the OPS was dismissing were what it deemed to be the 'appeals' on the original complaints that Mr McMahon had been unable to lodge or to participate in until he had his CEO's determinations on the 'investigations' into those original complaints. Those determinations, according to the OPS's own Fair Treatment Appeal Directive, are pivotal to the proper and fair processing of any Fair Treatment Appeal, which

> *must be lodged in writing with the commissioner before 5.00 p.m. on the 21st day **AFTER** the day the employee received written notice as to the decision of the chief executive in relation to the grievance*(emphasis added)

Further, Section 99 (1) of the Public Service Act requires that 'the commissioner must decide an appeal by reviewing the decision appealed against.' Clearly, the OPS was refusing to declare the upholding of the appeal actually made, preferring instead to dismiss an appeal never lodged with the OPS – and an appeal in which Mr McMahon, by written submission at beginning of the hearing, and by oral assertions recorded on the tape during the hearing, refused to participate without the required documents, in the face of consistent bullying to do so by the OPS.

However, armed with very brief reasons for the CEO refusing Mr McMahon's grievances about the Catchment Management positions and related matters (reasons provided to Mr McMahon in accordance with the OPS determination of the Fair Treatment Appeal actually lodged by Mr McMahon) Mr McMahon then lodged Fair Treatment Appeals against the CEO's decisions within the 21 day time limit set by the Appeal Directive.

The Public Service Equity Commissioner, who had twice previously withdrawn from matters pertaining to Mr McMahon's situation because of perceptions of bias, took over the hearing of Mr McMahon's Appeals. In what amounted to a guillotining of the Appeals, the Equity Commissioner:

- Used the fact of the 'dismissal' of the Fair Treatment Appeal under which Mr McMahon obtained his CEO's decisions with reasons, to refuse to hear the Fair Treatment Appeals on the CEO's decisions, unless Mr McMahon could show that the first Appeal had not allowed him to advance evidence of unfair treatment, or could produce new evidence of unfair treatment. This again demonstrated that the OPS regarded the first appeal as a hearing of the original grievances, in spite of Mr McMahon's protestations and refusals to participate in any such hearings until after Mr McMahon was given his CEO's determinations of those Departmental grievances.

- Refused Mr McMahon the opportunity to advance new evidence in the form of the performance reports on Mr McMahon – reports which Mr McMahon was entitled to under OPS Regulation. The Queensland Cabinet's refusal to give such access to another public officer had been held by the findings of a QC's Report commissioned by the then Premier of Queensland into another of Queensland's

Unresolved Whistleblower Cases, to be an offence under Queensland's Criminal Code.

- Gave Mr McMahon 'say, two weeks' to contact his office about proceeding with Fair Treatment Appeal on this basis, and then closed the file on the appeal because he deemed Mr McMahon to be a day late in meeting the 'say, two weeks' deadline.

- Falsely stated that the Equity Commissioner had not received any response from Mr McMahon in the 'say, two weeks' period when, in fact, eight days before the deadline Mr McMahon had provided detail of the evidence, in writing and face-to-face to the Equity Commissioner, that an expert witness was prepared to give to any hearing regarding Mr McMahon. This evidence would contradict reasons given by Mr McMahon's CEO for denying Mr McMahon transfer to at-level positions, and would implicate the CEO in breaches of further OPS Regulations. These reasons for certain decisions by Mr McMahon's CEO were not known at the time of the first OPS hearing. The false statement by the Equity Commissioner also omitted reference to discussion with Mr McMahon, eight days prior to the deadline, on the failure of the first hearing to allow Mr McMahon to advance evidence of unfair treatment received. The first hearing had steadfastly restricted Mr McMahon to evidence only of motivation by the Department to deliberately mistreat Mr McMahon. Evidence of this restriction was on the tapes of the hearing. Mr McMahon was seeking access to these tapes from the Equity Commissioner's Office through the Freedom of Information Act, so as to present the tape recorded evidence of what had not been considered, along with legal and administrative opinion as to the significance of the material excluded from such consideration.

- Refused Mr McMahon a revision on the deadline, which Mr McMahon requested because of delays caused to Mr McMahon when the tape recording of the first OPS hearing, given by OPS to Mr McMahon under the Freedom of Information Act, was faulty and required replacement by OPS.

It is with respect to:

- the failures to investigate,

- failure to interview complainants and their witnesses in the conduct of 'investigations,'

- termination of potentially successful appeals,

- breach of appeal and investigatory procedures and of the Acts of Parliament establishing those procedures,

- improper denial of grounds for appeal,

- false statements given as reasons for refusing to hear appeals,

- employing trivial technicalities to guillotine appeals involving major allegations of breaches of legislation, and

- in blatantly allowing Departments to behave in this manner and in other ways known to breach the Criminal Code,

that the Whistleblowers Action Group describes the watchdog authorities of Queensland as showing complicity in the expulsion of these public officers from the Public Service.

In particular, the refusal of the CJC over seven years to investigate the forced transfer of Mr Leggate, leaving him for three years in oppressive conditions, and the OPS decision to forcibly retrench Mr McMahon while the OPS had been sitting for eighteen months on multiple promotion appeals by Mr McMahon (in at least one of which Mr McMahon had established an arguable case on both grounds of merit and deficiencies in the selection process) is information tending to show complicity by the CJC and the OPS in the expulsion of the whistleblowers that these organisations are supposed to protect.

These watchdog authorities gave, in effect, unfettered license to particular CEO's in Queensland to deal with whistleblowers by punitive transfer. One of the CEOs used this license in turn to destroy the career of Mr McMahon in water engineering, to assist in the destruction of the career of Mr Leggate in the environmental management of mining, and then to destroy Mr McMahon's career again in natural resource science, all of which careers were making beneficial contributions to catchment management in the State of Queensland.

Conclusions

There is an enormous long term problem in the management of catchments in Queensland, caused by non-enforcement of environmental regulations governing the mining industry.

One public officer making public interest disclosures to appropriate authorities concerning these long term problems and the unofficial non-enforcement policy giving rise to these problems, has been expelled from his career and from the public service.

Another whistleblower with high levels of achievement and expertise in catchment management has also been expelled from his career and from the public service, because of public interest disclosures of breaches of Commonwealth legislation.

These whistleblowers have been subject to another form of non-enforcement, namely non-enforcement by watchdog authorities of the procedures for the protection of whistleblowers and for the promotion of integrity in Queensland's Public Service. In passing, the Whistleblowers Action Group (Qld) notes that, despite Queensland having whistleblower protection legislation, no whistleblower in the state has ever

received protection under the Act, and all public sector whistleblowers have been expelled from their public employment by one means or another.

For the purpose of the current Inquiry, it should be noted that Commonwealth funds provided to Queensland for the management of catchments may be negated by State authorities paying lip service to the goals of catchment management, while allowing powerful mining industry interests to ruin catchment rivers and aquifers, habitats and stock waters. Public sector CEOs may also remind their catchment management professionals of the fate that was meted out to Messrs Leggate and McMahon should any other professionals consider repeating any of the behaviours of these two officers in making public interest disclosures.

The disgraceful standard of conduct evidenced by these watchdog authorities in the expulsions of these public sector professionals is a clear demonstration that the system of public administration in Queensland does not have within itself the capability, the will or the intention to establish proper husbandry either of Queensland's catchments or of the funds given by the Federal Government for that purpose.

Thus there is a need for the Whistleblowers Action Group (Qld) to disclose these matters to the Federal Government through your Committee.

Yours sincerely

Gordon Harris
President
Whistleblowers' Action Group (Qld) Inc.