WHISTLEBLOWERS ACTION GROUP (QUEENSLAND)
[redacted]

25 October 2018

The Honourable Kenneth Hayne AC QC
Commissioner
Royal Commission into Misconduct in the Banking, Superannuation
and Financial Services Industry
Owen Dixon Building
MELBOURNE VIC 3000

Dear Commissioner

RESPONSE TO THE ROYAL COMMISSION'S INTERIM REPORT

Overview

Reference is made to your Royal Commission's Interim Report and to the disclosures therein of alleged wrongdoing and the management of that alleged wrongdoing by various financial institutions and by authorities such as the Australian Securities & Investment Commission [ASIC], the Federal and State Police Forces and responsible financial management agencies and parliamentary committees / inquiries of the Federal and various State Governments.

Reference is also made to submissions by Qld Whistleblowers Action Group Inc, firstly, to a Senate Economics Reference Committee in February 2017, and secondly to your Royal Commission dated 28 April 2018.

QWAG submits that, based on the material before your Royal Commission, the Royal Commission may be able to:

1. Describe the level of wrongdoing in financial institutions, be it civil and / or criminal in nature, to be ***'systemic'***. Further, you may be able to attribute a descriptor to that systemic wrongdoing as being ***'integrated'*** within certain entities and as ***'optimised'*** within other entities [or with descriptors of equivalent meaning consistent with QWAG's definition given below and in appendix 1]
2. Describe the involvement of ASIC and other responsible watchdog authorities, depending on the instances before you, as ***'compromised'*** and / or as ***'captured'***.

QWAG advises that your Royal Commission may not have identified the largest of the alleged wrongdoing that may have been imposed upon the public with respect to financial products.

QWAG recommends that the Royal Commission:

1. Make findings upon certain wrongdoing as being ***'systemic'*** in nature, where this has been uncovered during the hearings conducted and submissions received;

2. Make findings characterising any degree to which ASIC and other watchdog authorities may have been ***'compromised'*** and / or ***'captured'*** by those corporations, over whose operations the watchdog authorities were required by legislation to be keeping watch; and
3. Recommend legislative amendments that provide a greater probability that whistleblowers may survive their action to make public interest disclosures against such powerful corporations and industries, not just against such entities in the financial sector, in order to ensure justice for those brave men and women, and encourage whistleblowers or others to come forward and disclose to government more aspects of wrongdoing by relevant financial institutions.

Systemic Wrongdoing

QWAG offers to the Royal Commission a framework below, against which the Royal Commission can describe and report, if found, systemic wrongdoing by financial corporations and their watchdogs.

Degrees of Systemic Wrongdoing. Figures 1 and 2 come from the Five (5) Tiers of Wrongdoing developed by QWAG and set out in Appendix 1

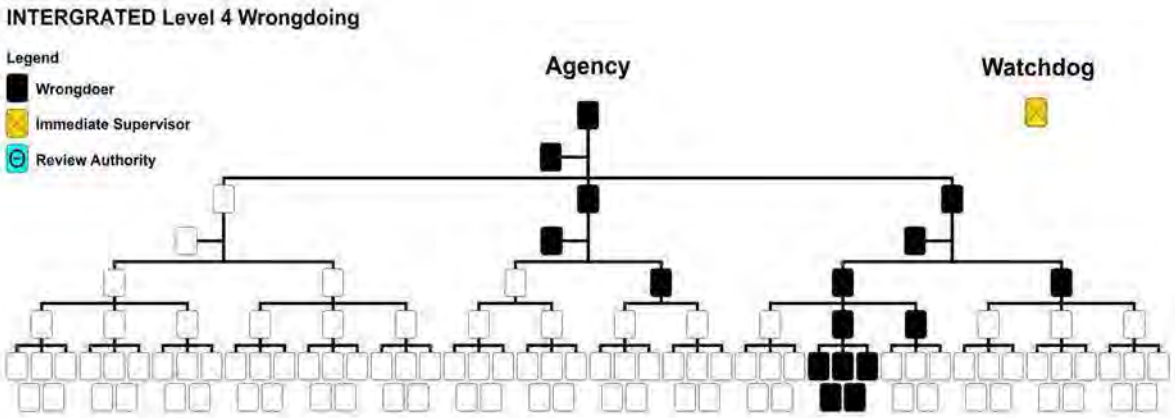

Figure 1: A Representative Mapping of Vertically 'INTEGRATED' Wrongdoing in an Entity

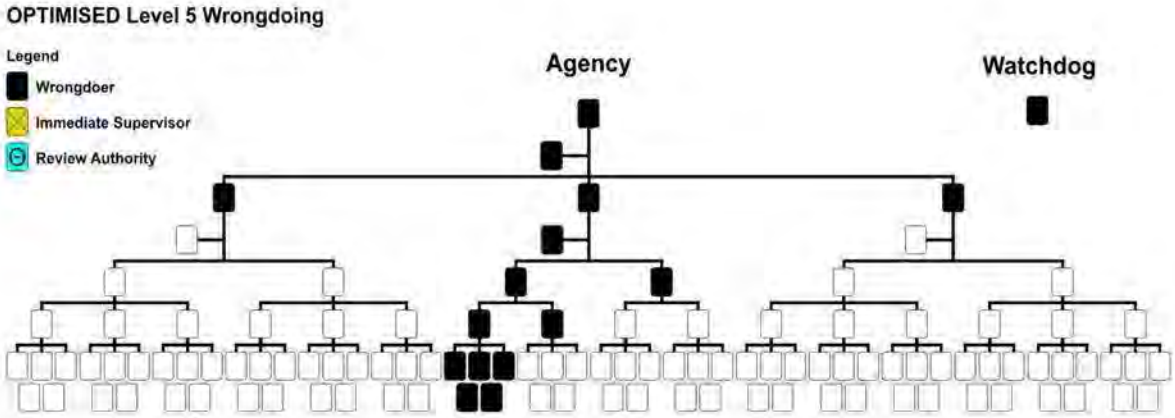

Figure 2: A Representative Mapping of 'OPTIMISED' Wrongdoing in an Entity

The essential difference between Integrated and Optimised forms is that, while, with Integrated Systemic Wrongdoing, the watchdog is compromised by wrongdoing that has developed in organisations under their watch, in the Optimised form of Systemic Wrongdoing, the watchdog authority has become itself involved, by commission or omission, in the wrongdoing. With respect to the experience of whistleblowers, ASIC and other financial watchdogs would show 'omission' by, say, having received disclosures, failing to investigate those disclosures. ASIC and other financial watchdogs would display 'commission' with respect to whistleblowing disclosures, by, say, informing the organisation as to who had made disclosures against the organisation, or by assisting in the cover-up of disclosed wrongdoing, or by making findings beneficial to the organisation against the weight of documentary evidence held, or by imposing token penalties, or similar, that acts to minimise a just outcome for parties affected by the wrongdoing.

QWAG submits that the information gathered by the Royal Commission is information tending to show that much of the alleged wrongdoing, uncovered from whistleblower disclosures and from testimony at the hearings of the Royal Commission, may have been part of the business strategy and part of the business planning of the organisations under inquiry, conducted with the knowledge of the Chief Officers and / or Officers of the governance units within the organisations (eg, Board Chair, Board, Chief Legal Officer, Chief Financial Officer, and / or Chief Auditor). For activities alleged to constitute wrongdoing, the alleged perpetrators were handsomely rewarded and the governance officers gained handsome bonuses.

It is in this sense that the alleged wrongdoing may have been integrated into the business processes of the organisation. QWAG submits that this type of wrongdoing, if found, may be the Integrated form of Systemic Wrongdoing.

It is in this sense that investigation and enforcement processes of the responsible watchdog authority may not have been fully and / or properly and / or impartially pursued by the watchdog, that QWAG Submits that this type of under-performance or non-performance of duties, if found, may constitute Optimised Systemic Wrongdoing.

Significance to Anti-Corruption Frameworks. A problem for fighting corruption in the financial industry is the fact that existing whistleblower legislation, and certain academic studies about whistleblowing with which legislators are being lobbied, assumes that corruption is not systemic. The legislation and the academic studies assume and assert that management is not ill-intentioned towards whistleblowers.

Legislation. For example, the *Public Interest Disclosure Act 2013* (PID 2013), which purported to facilitate disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector, included the following provisions in the design of that legislation that do not appear to contemplate that management will be planning and supporting and covering-up the wrongdoing. Where the executive are involved in the wrongdoing, by omission or commission, it is reasonably foreseeable, and can be reasonably expected, that the executive and subordinate managers will be ill-intentioned towards whistleblowers who attempt to disclose the wrongdoing.

> **s8 Definitions** provide a definition of **'internal disclosure'** but not of the **'external disclosure'**, a more dangerous avenue for the whistleblower. The lack of a comprehensive-cum-inclusive definition can discourage the potential whistleblower from this path. The

provision appears to assume that internal disclosures are safe, and that thus external disclosures will not be necessary.

s13 defines a reprisal in terms of actions taken by an individual. The more dangerous situation, where it is the organisation and its management that is effecting the reprisal against the whistleblower, is not contemplated by the Act. It is therefore open to argue that this flaw in the comprehensiveness of the definition tends to render the Act largely irrelevant regarding whistleblower protection in situations where the wrongdoing and the reprisals are being planned and supported by the management of the organisation.

s13(3) and **s14(2)** facilitates the taking of a reprisal by the organisation, by allowing the organisation to take administrative action that is reasonable to protect the whistleblower from detriment. So in one case it has been alleged that the agency suspended without pay a whistleblower for in excess of a year, with directions that the whistleblower was not to enter the workplace or attempt to contact any officer of the agency during work hours or outside of work hours, and this was justified in part – allegedly with the Ombudsman's clearance – by the fact that this suspension would prevent reprisals against the whistleblower.

s47 uses definite language to purport that disclosures must be investigated, but s48 provides a list of discretions by which an investigation can be avoided. In a case of systemic corruption, s47(1) directs that the allegedly corrupted agency must investigate. When the whistleblower seeks a review from the Ombudsman's Office of an allegedly self-serving 'investigation' lacking thoroughness, fairness and/or impartiality, the Ombudsman's Office can use s48(1)(e) discretion to refuse a review on the basis that there is already a completed investigation by the agency against which corruption is alleged. The provision appears to express trust in the organisation to investigate itself, which trust is not deserved when the wrongdoing is planned and supported by management.

s49 excuses watchdog authorities with their own investigative powers from compliance with the PID Act regarding the investigation. The legislation clearly assumes the situation will not arise where the watchdog authority has been captured or has become itself compromised by the disclosures and the wrongdoing.

s52 sets time limits for investigations. Three months is quoted, but s52(3) allows the Ombudsman to extend the time limit by a period in excess of 90 days. The Office of the Ombudsman has allegedly taken a year to decide to refuse to act on a disclosure, and to have accepted justifications by agencies for taking more than five years to complete investigations. Effectively, this tends to mean that there is no time limit to investigations. This is just another aspect of procedure that agencies and the Office of the Ombudsman ignore or treat as unimportant or unenforceable behind the exercise of a so-called "discretion". Again, the legislation clearly assumes the situation will not arise where the watchdog authority has been captured or has become itself compromised by the disclosures and the wrongdoing.

s53 allows investigations to be conducted as the agency thinks fit and proper. This provision allegedly has allowed investigations to avoid evidence, or to show wilful blindness to disclosures, if the agency thinks this is fit and proper. The legislation simply trusts that the agency and its management will act properly when investigating disclosures of systemic wrongdoing in that agency.

s59(3)(a) requires that the principal officer of an agency must take reasonable steps to protect public officials who belong to the agency from detriment, or threats of detriment, relating to PIDs by those public officials. As explained previously, in practice, with the acceptance or non-interference of the Office of the Ombudsman, reasonable steps may

include suspension without pay of the whistleblower and banning of the whistleblower from all contact with work colleagues for periods in excess of a year.

s78(c) may be the mark that goes to the character of the PID Act. It allows liability for any detriment imposed upon a whistleblower to be avoided by the agency where the agency has acted in "good faith". This good faith exception has allegedly allowed agencies to impose reprisals upon whistleblowers based on internally generated, rogue legal opinions that are incorrect in the law. Basing the reprisal on the legal advice, albeit that the legal advice is erroneous, may have allegedly been taken as acting in "good faith", but the law determined by the High Court is that ignorance of the law is no excuse for a criminal act (See Ostrowski v Palmer). This application of the legislation as alleged may thus be a demonstration of legislation being designed on an assumption that management will be well intentioned towards whistleblowers. This thinking does not appear to contemplate that management may be planning and supporting the wrongdoing.

Research. For example, the Whistle While They Work (WWTW) survey based research project conducted by Griffith and other Universities (GUS I, 2008 to GUS IV, 2009) found that:

Finding A: 71% of respondents had witnessed or had direct evidence of wrongdoing, and 61% witnessed wrongdoing that was somewhat serious and occurred in the last 2 years [GUS II, p28-30]. Is such a high figure more likely where wrongdoing is **ad hoc** or where it is **systemic**? Would so many persons witness wrongdoing in an Ad Hoc wrongdoing scenario?

Finding B: 61 % [GUS II, p31] of public servants who observed wrongdoing did not report the wrongdoing. This is the Whistleblower Silence Situation. Why would so many hesitate in the employ of a well intentioned agency? Is it a lack of ethics amongst the employees, or a culpability within agency management, that may have caused so many to turn away from making disclosures?

Finding C: :80% of public servants who did not report wrongdoing that they saw decided to remain silent because they expected that nothing would be done about the disclosure or about protecting them from reprisals [GUS I, p49]. Is this consistent with an agency management that is well-intentioned towards whistleblowers?

Finding D. Also, 82 to 91% of public servants, who gave fear of reprisal as their reason for not reporting, were referring to a fear of reprisals from senior managers [GUS II p73-74]. For these public servants, is this fear factor not consistent with a systemic wrongdoing or 'black sky' (see Appendix 1) scenario and / or inconsistent with the fair and open or 'blue sky' scenario?

QWAG put it to the Griffith University that an explanation for these figures was the case that agency management was ***'ill-intentioned'*** towards whistleblowers. The WWTW deflected the suggestion by considering that the ***'ill-intentioned agency'*** descriptor referred only to the processes used by the agency (GUS II, p254), and not to the managers who were deciding on whether or not any processes would be followed, and whether or not whatever process was followed would come to a reasonable outcome.

The WWTW had not reported any questioning in the survey about whether the parent organization of the respondee exhibited systemic wrongdoing. The analysis of the results from the questions that were asked appears to assume that an open and dutiful management regime - the so termed 'blue sky' scenario described in Appendix 1 - dwelt above the whistleblower. Problems experienced by the

whistleblower, WWTW presumes, had to be the result of education, communications, resources, processes, perceptions and the like.

The watchdogs too were favourably treated by WWTW. They were termed ***'integrity organisations'***, and were not categorised or analysed. Only when questioned by QWAG, about the 'Well-intentioned-Agency' versus the 'Ill-intentioned-Agency' assumption, did the WWTW add one comment upon its analysis – but the survey answers were already in. Any commenting about the ***'Ill-intentioned Agency'*** assumption was attempted only with deductions from findings such as Findings A to D above, without the benefit of survey data specifically addressing the systemic corruption possibility.

WWTW is substantially a survey into the ***'dobbing'*** form of whistleblowing, and this is the basis of advice on whistleblowing going forward from academic research to government. Little inquiry has been made into the ***'dissent'*** perspective to the same whistleblowing phenomenon, since the University of Queensland whistleblowing research of de Maria & Jan (1994).

The watchdog authorities that dominated the numbers on the steering committee for WWTW may have been influential in any omissions in the survey scope, but that domination in numbers may reasonably be perceived as a possible conflict of interest when researching the intentions of agencies over which these watchdog authorities had watch.

The host for the first meeting of the steering committee, the then CMC chair, declared at the beginning of the study that other research titled ***'Speaking Up'*** had shown -

> ***that investigating authorities can and do take internal disclosures seriously***
>
> (CMC, 2005)

The academic research did not question that announcement by the Chair, not even when the WWTW findings may have suggested the opposite, in large measure. Such questioning may or may not have put the WWTW in tension with its Partners, but such questioning, if merited, may reasonably have been perceived as a possible conflict of interest.

Protection of Whistleblowers

Our original submission to your Royal Commission (QWAG, 2018) expected that information, tending to show the existence of systemic wrongdoing and regulatory capture, would likely emerge from your inquiries. The prospects of whistleblowers being able to survive their disclosures, against an organisation and a watchdog both caught up in systemic wrongdoing, are empirically known to be remote.

QWAG and its members have observed for thirty years the treatment received by whistleblowers in the finance industry – the courts, for example, when whistleblowers had been terminated, allowed the finance organisations to go back and search the work performance of the whistleblower, find by audit some error previously ignored or already dealt with, and argue that the terminated whistleblower would have been dismissed anyway for errors in work performance. Australia has seen how a prominent whistleblower from recent troubles in the finance industry has been treated

by an organisation which, your hearings may have disclosed, had much to hide from its customers and from relevant authorities.

QWAG came to the Royal Commission with an analysis of the causes of the systemic wrongdoing, and how the punishment effected upon whistleblowers will lead to systemic wrongdoing. QWAG also offered the solution, based upon the premise that the whistleblowers must survive if the disclosures are to survive and if the public interest is to be served. Preferably, the whistleblowers will be able to survive within their organisations, but this will only be possible where legislation is improved so as to provide protection in circumstances where the wrongdoing is systemic and the watchdog authority is captured.

The second option, under the imperative that the whistleblower must survive, is for whistleblowers to be given **the means for their own survival** outside of any dependency on their organisation.

If the whistleblower can survive, the disclosures of wrongdoing within banks, insurance companies, financial services entities, watchdog bodies, legal and justice processes, and government wrongdoing will also be more likely to survive. Royal Commissions then will come more quickly. That is QWAG's solution to the search for the means of dealing with wrongdoing in our system of accountability institutions - **the whistleblower must survive**.

The Government, however, do not realise that:

a. whistleblowers are not receiving proper protection;
b. flawed laws and non-enforcement outcomes are allowing wrongdoing to escape prosecution; and,
c. the non-survival of whistleblowers appears to be part of the process that is effectively protecting wrongdoers from proper investigation, and may thus be corrupting organisational governance and watchdog authorities.

Any development towards systemic wrongdoing within the financial industries, as with other industries subject to institutional controls, may be allowing entities within these industries to make wrongdoing a part of their business strategy and operational procedures. The governance of these industries appears to be above the law, beyond government control, and cannot be touched by their consumers.

The Prime Minister's statement in the Parliament on 22 October 2018, after the decades taken to come to the recent Royal Commission on Institutional Responses to Sexual Abuse of Children, a statement that included saying 'Sorry' to the whistleblowers for not listening to them, is a national admission that whistleblowers must be heard.

A whistleblower/s or entity known to QWAG may be in possession of evidence of a practice by a financial institution/s that may have adversely affected categories of consumers. The size of the adverse effect may be sufficient, if the practice is only immoral, to draw the concern of your Royal Commission. This is likely to be the outcome because of the size of that immorality and the implications for the leadership of principal financial institutions. If the practice is also illegal, and it appears reasonable for this to be suspected to be the case, the disclosure may provide cause for both public institutions and/or private sector entities to take legal action to recover monies taken from them by that illegality. QWAG can only understand, rather than calculate, that the amount of funds concerned may go into billions of Australian dollars, not just millions.

QWAG is seeking legislation from the Federal Parliament that will provide to a whistleblower (or customer) in this situation the opportunity to deal with the risks to:

a. the whistleblower;
b. the whistleblower's colleagues and third parties who support the disclosure with their evidence; and
c. the whistleblower's family

by a reasonable apportionment of any funds recovered or fines imposed as a result of that disclosure made in the interests of the public.

Three situations need to be covered by that legislation. Two of those situations are

a. those where the government is the beneficiary of that disclosure through recovery of funds and/or fines, and
b. those where the beneficiaries from the disclosure are in the private sector.

False Claims Legislation. This legislation emanates from the American Civil War. A situation was born where corruption was so significant that the government's False Claims Act included a *qui tam* provision which entitled whistleblowers (then termed 'relators') with a percentage of the savings that their disclosures of suspected wrongdoing (false claims) brought to the Treasury. In fact, QWAG understands that *qui tam* provisions trace their origins back to the 1300s in English history.

The concept has been considered by the Federal bureaucracy in Australia, and formed part of the terms of reference for a 2017 Senate Committee. QWAG supports this concept in the national and public interest.

QWAG is requesting that these provisions be now legislated so that the whistleblower or incorporated whistleblower organisation that makes the disclosure is able to receive a reasonable apportionment of funds recovered and/or fines imposed (or with other types of disclosures, waste prevented). Accordingly, QWAG requests that the Royal Commission gives serious consideration to such a provision being one of its recommendations in addressing what is necessary to ensure that Australia's financial sector returns to and stays within honourable conduct under the rule of law.

Class Action. The principal difficulty for whistleblowers making disclosures in the public and private sector is the barrier placed before whistleblowers in the Court and justice system.

Chances for justice can improve where the suspected wrongdoing disclosed is of a significant size and/or has impacted on a significant number of persons. In this circumstance, a class action before the courts, funded by a knowledgeable and well-resourced third party, may be a viable option. The third party has the legal representation and expertise for the case, and the funds necessary to last whatever legal tactics are used by the government and/or the corporations of the size of Australia's four banks taking up a case together. The third party undertakes the legal action on a pro bono basis for the affected parties who join the class action. In return for this risk, however, the third party may require a proportion of the damages awarded by our courts.

It needs to be appreciated, however, that the third party may have altruistic motives and/or may have commercial motives for initiating the legal proceedings. Where the motives are largely commercial, the third party undertakes the legal action for a share of the damages won. The third party may elect to accept a settlement from the government or corporations on a confidential basis,

such that there is no 'day in court' for the whistleblower nor any public disclosure / discussion / publication over the issues. This can be a disappointing result for the whistleblower, as it may be the case that the wrongdoing, as a result, is not exposed to the public, and the public interest, as a result, may not then be properly served, to say nothing of the resultant opening for the wrongdoing to be repeated again.

Class actions are not to be confused with no-win-no-fee arrangements that an individual whistleblower may be offered by a law firm. These arrangements have proved to be very problematic-cum-dangerous for the whistleblower, where clauses in the arrangement allow the law firm to switch the rules and the whistleblower then faces large expenses for which the whistleblower is unprepared. This can force the whistleblower into accepting a settlement that covers only the legal expenses and ends all further rights to claims of damages by the whistleblower.

QWAG has made approaches to legal firms who conduct class actions to obtain a lawful arrangement whereby the whistleblower or the whistleblower organisation can gain a reasonable share of any funds recovered through a class action. Whistleblowers and others may gain such a share because the whistleblower (or other entity) made known, to the legal firm or the funding private corporation, the wrongdoing that may be available to a class action. The legal firms have been slow to respond and limited in the extent to which they will discuss the possibilities. A submission [no. 69] by Maurice & Blackburn to the 2017 Parliamentary Joint Committee on Corporations and Financial Services points out the vulnerabilities of legal firms and their third party financiers where whistleblowers are the informants. The alleged wrongdoer can sue the legal firm, for example, for encouraging the whistleblower to act contrary to employment contract provisions, or for breaching confidentiality. This avenue, for disclosures to have effect and for whistleblowers to be effectively protected and financially secured, needs the definition, by Parliament, of a legal pathway that ensures a safe process for whistleblowers and legal firms/private funding corporations to follow, such that confidence exists for all parties in effecting disclosures of significant public benefit – the legal firms would not become involved if the benefit was not significant, QWAG submits

Compensation to Consumers.

Regarding the potential disclosure known of by QWAG, if all the major entities in the industry at issue have been acting in the same way, and have been doing it for as long as the entity that is the subject of the disclosure, the threat exists that compensation due may take the situation, past bankruptcy of members of the industry, to fiscal effects upon our economy. As happened in the United States post the Global Financial Crisis, concerns about the viability of the financial system and thus the stability of the economy may override the need to address the moral danger posed by any immoral, unethical and/or illegal actions by financial industries continuing without prosecution. Traditional compensation schemes may need to be replaced by schemes that effect any compensation due to consumers without undermining the viability of the industry. Plainly, if the disclosures under consideration apply only to one institution and its practices that other members of the industry have avoided, then traditional compensation schemes would still be applicable.

QWAG submits that an alternative would be to entitle consumers to shareholdings (by, say, the allocation of additional shares) or by other marketable rights to future income of the financial industries entity. This would disadvantage the ownership of the financial institutions through any loss in share price, returning responsibility to owners for the legality of entity governance, in

addition to the responsibilities held by the governance board, without putting the financial viability of the entity at undesirable risk.

The measure would also bring closer inspection to the governance of entities, including the disclosures by whistleblowers, from the larger investors in the entity. The large investor organisations have the means to engage and match the financial and legal manoeuvres of the entities under disclosure, and to obtain the focussed attention of watchdog authorities who treat terminated and unemployed whistleblowers with disregard.

Conclusion

QWAG makes this submission against a quarter century of experience that current legislation does not protect whistleblowers, including whistleblowers subsequently fully vindicated by the admissions from the corporations under inspection by the Royal Commission.

QWAG sets out extensively, on its website at www.whistleblowersqld.com.au, the many perspectives regarding the failure of existing legislation. These perspectives form the background and context to the above proposals for improved and more expansive legislation - in government, our justice systems, courts, the watchdog authorities, academic research into whistleblowing, and certain commissions of inquiries.

Should the Royal Commission decide to hold public hearings on the protection of whistleblowers, QWAG stands ready to appear and speak to this submission so that lasting remedies are found, to eradicate corruption wherever its ugly head exists or attempts to take root against the public good.

Yours faithfully

G McMahon
President

References

CMC (2005), Media Release, Whistleblowers being heard … but are they being protected, Crime and Misconduct Commission, 16 February 2005

Dr William de Maria and Cyrelle Jan, (1994), Queensland Whistleblower Study Result Release One, University of Queensland, Brisbane, April 1994.

GUS I (2008): Draft Report, Whistleblowing in the Australian Public Service, Griffith University, October 2007

GUS II (2009): Editor Brown, Whistleblowing in the Australian Public Service, ANU Press, September 2008

GUS III (2009): Roberts et al, Whistleblowing in the Australian Public Service, Griffith University, October 2009

GUS IV (2009): Brown, Whistleblowing Legislation in Queensland The Agenda for Reform, Submission No 177, Qld Govt Integrity and Accountability Review, September 2009, http:www.premiers.qld.gov.au/community-issues/open-transparent-gov/submissions

Maurice & Blackburn (2017), Submission no. 69 to the Parliamentary Joint Committee on Corporations and Financial Services, Commonwealth Partiament, Canberra, 2017

QWAG (2018), Whistleblower Protection, Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 28 April 2018.

QWAG (2017), Submission to the Senate Economics References Committee Inquiry into Consumer Protection in the Banking, Insurance and Financial Sector, Commonwealth Parliament, February 2017 (treated as correspondence, not published by the Committee)

APPENDIX 1 TO
QWAG SUBMISSION TO RC
DATED OCTOBER 2018

THE FIVE TIERS OF WRONGDOING

The Levels of Systemic Wrongdoing. The framework given below is another example of the type of insight available from a study of major whistleblower cases.

Figure 1 is a representation of what is termed **'ad hoc'** wrongdoing. The wrongdoers are in black, their supervisor is in yellow or marked with a cross, and those with review authority above the supervisors are marked in blue with the Greek letter *theta*.

Wrongdoing, in this category, is occasional and sparse, involving an individual, or a small group of individuals. The wrongdoer could be in a supervisory or managerial position. Whistleblowing procedures are driven by management to ensure that wrongdoing is disclosed, that it is quickly eradicated, and that the ethical workers who have assisted the organization by their disclosures are protected.

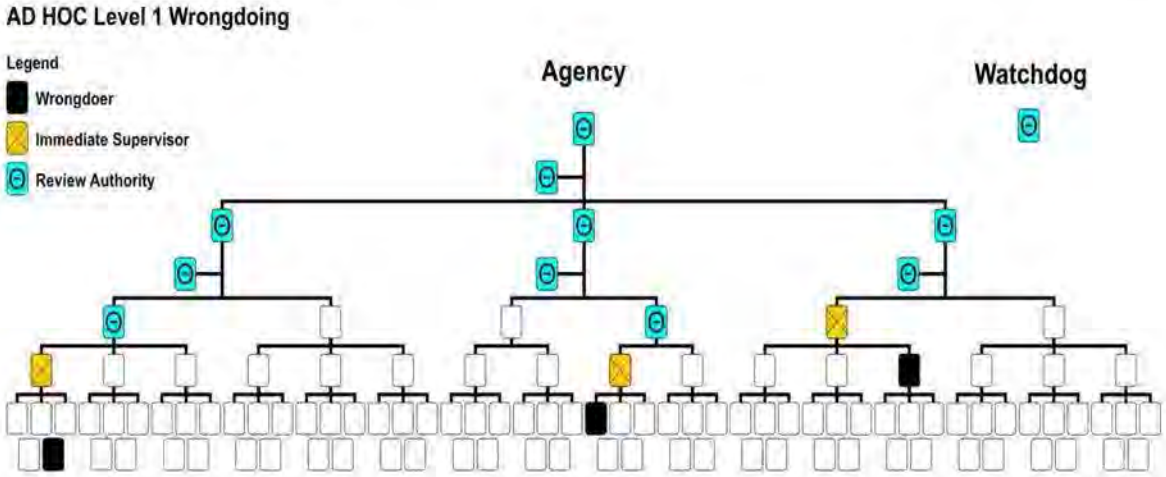

Figure 1: A Representative Mapping of 'AD HOC Wrongdoing in an Organisation

When the potential whistleblower in Figure 1 looks up at their organization, they see a 'sky' of blue review authorities above them. Most line managers, senior managers, the CEO and the relevant watchdog authorities are not involved in the wrongdoing (they are coloured in blue marked with a *theta*, on Figure 1). Staff officers who have a role supporting the integrity of the organization (internal auditors, equity officers, human resource managers, investigation officers, and the like) are also not involved in the wrongdoing. These Staff appointees are free to review any disclosed wrongdoing and any failure by a manager to properly supervise a wrongdoer (they are also coloured blue with a *theta* on the diagram).

This situation is termed the 'blue sky' organizational scenario. This is the situation most favourable to a good outcome for the whistleblower. If the supervisor is involved in the wrongdoing, or the supervisor acts to cover-up the wrongdoing by a subordinate in order to save themselves embarrassment at their lack of supervision, the situation is still not lost for the whistleblower. The

whistleblower only needs to refer their complaint to the next higher authority, or to the watchdog. In any eventuality, their disclosure will receive proper investigation from one of the several 'blue' review authorities above the blockage.

When whistleblowing is suppressed in these situations, it is presumed that the problem lies, not with the intent of the review authorities above the wrongdoing, but with:

1. Awareness, training and education levels of managers and staff;
2. Processes developed or not developed by the agency or organisation;
3. Resources available to responsible organizational authorities to handle the disclosures and the protection of the whistleblowers;
4. Perceptions by whistleblowers and by managers that are incorrect.

This is in contrast with the any of the 'black sky' organizational scenarios, where the Executive and / or the watchdogs are involved in the wrongdoing. The 'Nested' form of what is termed the INTEGRATED Wrongdoing scenario (a Level 4 Corruption scenario) is depicted in Figure 2. Whistleblowing procedures here are designed to force the disclosure to be directed to a 'safe' officer, ['safe' meaning protective of the wrongdoers]. From the safe officer, any threat can be controlled by Denial, by Delay, by Destroying the evidence and / or by Discrediting / Dismissing the ethical worker.

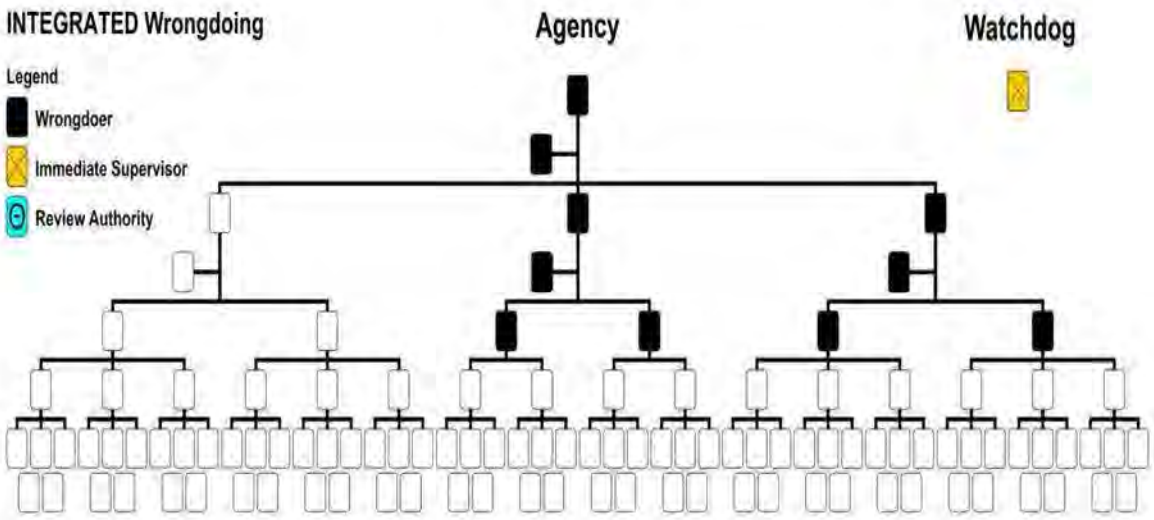

Figure 2: A Representative Mapping of Nested 'INTEGRATED' Wrongdoing in an Organisation

In Figure 2, for example, the CEO and a majority of the Executive Team, with the bulk of the Staff Officers who have a role in reporting the wrongdoing, including the most senior of these officers, are also involved by commission or by omission in the wrongdoing.

Corruption or wrongdoing in the AD HOC Wrongdoing scenario is **not systemic**.

The INTEGRATED Wrongdoing scenario is a case of **systemic corruption.** The full set of systemic corruption scenarios within organizations can be described as per the following:

- **PLANNED** systemic corruption, as with, say, making 'friendly' appointments to the bureaucracy, to watchdog authorities or to the judiciary, or the setting of self-limiting terms of reference for investigations, or failures to carry out regulatory inspections. In this form of systemic wrongdoing, control of the organization is not held by the wrongdoers, and each wrongdoing thus needs to be planned [see Figure 3];

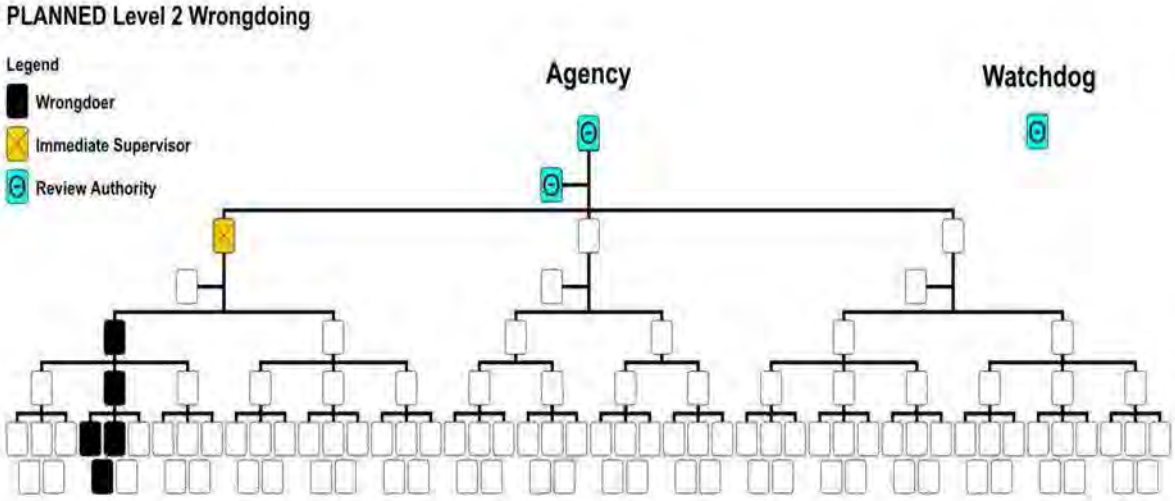

Figure 3: A Representative Mapping of 'PLANNED' Wrongdoing in an Agency

- **MANAGED** systemic corruption, as with, say, Police practices protecting criminals for a share of the profits, as exposed by then Sergeant Col Dillon during the Fitzgerald Inquiry – the practices are conducted without interference or the threat of interference from higher management [see Figure 4];

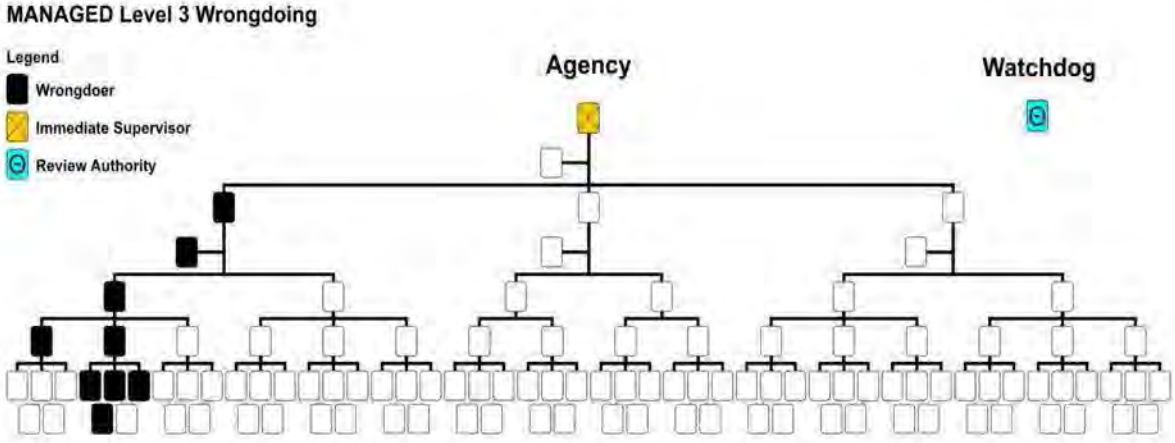

Figure 4: A Representative Mapping of 'MANAGED' Wrongdoing in an Agency

- **INTEGRATED** systemic corruption, as with, say, the repeated falsification of hydrologic information, in order to justify proposals to build more dams and thus elongate the existence of the dam building organization. The practices become a part of the organisation's methodology, as can the practices used to cover-up and to protect the cover-up of the practice [see Figure 5]. The situation where a watchdog refers a disclosure against an organization back to the organization that is the subject of the allegation, shows an integration of processes that may act to deny a fair review;

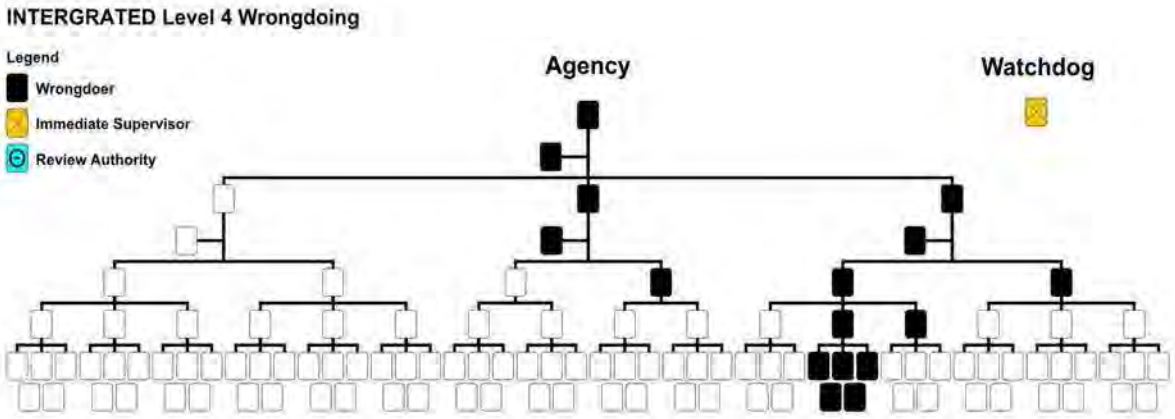

Figure 5: A Representative Mapping of Vertically 'INTEGRATED' Wrongdoing in an Agency

- **OPTIMISED** systemic corruption, where the watchdogs are themselves involved. Reprisals against whistleblowers, or cover-up of criminal acts, can draw this level of systemic wrongdoing – for example, two watchdogs, one charged with investigating crime, the other with investigating maladministration; each tells the whistleblower that the disclosure is the responsibility of the other watchdog, and neither watchdog investigates, in full knowledge of the position taken by the other watchdog authority [see Figure 6].

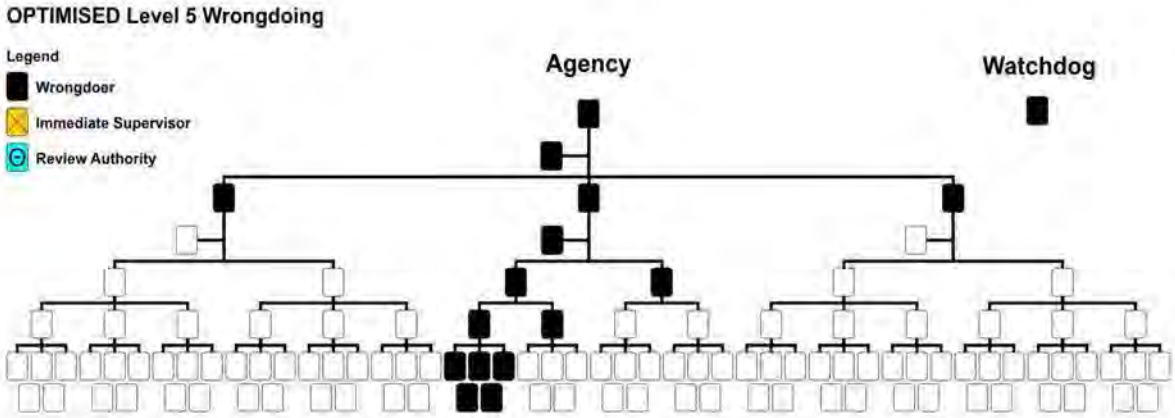

Figure 6: A Representative Mapping of 'OPTIMISED' Wrongdoing in an Agency

In the 'blue sky' organisational scenario, the act of disclosing wrongdoing is more likely to be against a colleague or subordinate. This whistleblowing situation has been colloquially termed 'dobbing'.

In the 'black sky' organizational scenario, the act of disclosing wrongdoing is more likely to be against more senior executives, against the organization, and against failures by the relevant watchdog authority. Such acts are termed 'dissent', 'resistance' or 'dissidence'.