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TITLE: A leaky ship of State

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Two weeks ago a report by the Office of Workplace Services into sackings depicted in ACTU advertisements was leaked to the press. According to media reports, the OWS found that the advertisements were misleading as they hadn't given full details of the events surrounding at least five of the dismissals.

Given the information that is publicly available, it is impossible to tell who is telling the truth and whether the workers were treated unfairly. However, the incident has raised questions about the independence of the OWS.

In March, the Minister for Workplace Relations, Kevin Andrews, declared that the OWS had been established as an "independent agency". Since then, the Government has given the impression that the OWS is some sort of impartial umpire that can act as both policeman and independent adviser on workplace disputes. This message has been reflected in media reports that have suggested that the OWS is a statutory authority or is in some way separate from the government.

But looking behind the spin reveals that the OWS is not independent of the government or the Minister for Workplace Relations.

It was established under the *Public Service Act*, it has limited financial powers, and its head, Nicholas Wilson, is subject to direction from, and can be fired at the whim of, the minister. The OWS is effectively the same as a government department, only it is made to look independent to the casual observer.

The fact that the minister has such a tight reign over the activities of the OWS is no accident. It forms part of a larger agenda by the government to centralise power around the ministry and, where possible, to limit the number of truly independent statutory authorities.

The blueprint for this agenda is outlined in the [Uhrig Report](#) that was published in July 2003 and subsequently released for public consumption in August 2004. The report states plainly that where the government considers that it is not appropriate for an agency to be

given full power to act independently, the agency should be established with an executive management group that “is governed directly by the minister with departmental support and advice”.

The report goes on to say that the relevant legislative framework will determine “the ability of the Minister to supervise and direct the authority”. However, in the case of the OWS, there is a flimsy legislative framework, indicating that the government intended that the agency should be subject to ministerial control.

According to the government, the ability of ministers to intervene in the affairs of public agencies is necessary to ensure proper accountability. It claims that in the absence of such powers, the foundations of responsible government can be undermined.

Yet, as the affairs of the OWS have demonstrated, when the independence of an agency is compromised, the ability of these agencies to perform their intended functions can be jeopardised.

The OWS is supposed to be an impartial industrial regulator that is charged with the responsibility of investigating alleged breaches of the workplace laws and prosecuting offenders. In exercising these powers, it is crucial the OWS is independent, and that it be seen to be independent, of its political masters.

To date, this has not occurred. Not only is the structure of the OWS a concern, but there have been several instances where details of OWS investigations have found their way into the media. The pattern of leaks suggests that they have been orchestrated by the government.

In the recent ACTU advertising case, details of the report were given to News Ltd journalists. Within hours of the OWS’s claims appearing in the Murdoch press, the incident had attracted blanket media coverage and the government had seized on the case as an example of union fear mongering.

Similarly, a copy of the OWS’s report into the Cowra abattoir case was leaked to the Fairfax press in May in what some viewed as an attempt to soften the blow for the OWS’s ultimate finding, which was handed down in July, that the dismissals were attributable to the “poor viability of the firm”.

These sorts of incidents create distrust. The OWS can be seen as doing the Government’s dirty work and the public will inevitably question whether the regulator is performing a political rather than a public purpose.

Further suspicions are aroused when one looks at some of the personnel in government agencies that are involved in the industrial relations system. There is no clear evidence of overtly political appointments being made to the OWS, but the same cannot be said of other agencies like the Office of the Employment Advocate and the Australian Industrial Relations Commission.

The government's industrial relations changes were always going to be controversial, but it has done itself no favours in establishing a regime that is overseen by government agencies that are politically compromised.

Until the OWS and other similar agencies are truly independent of government, employees are justified in suspecting that there is no longer an independent umpire overseeing the workplace.