

11 December 2008

Ms Helen Minnican
Committee Manager
Committee on the Independent Commission Against Corruption
Parliament House
Macquarie Street
Sydney NSW 2000

By email: icac@parliament.nsw.gov.au

Dear Ms Minnican

Inquiry into the protection of public sector whistleblower employees

I refer to your letter dated 27 November 2008.

I have been asked to provide further information arising out of the following passages highlighted in the proof transcript provided with your letter:

“ **CHAIR:** Indeed, Mr Cribb – and maybe I should say this to each witness – it is not our role to go into individual matters and investigate those, it is about establishing what you have as far as practices and procedures are concerned and what would happen if someone came up and made a disclosure. You have not, however, been able to give any information on the ones that you have received – two in 10 years, I think it was – and what the outcomes were. We have asked those questions of other agencies and, in a general sense, to demonstrate how the procedures are working or not working, for example, without going into those matters.

This Committee is interested in knowing in general what the outcomes were and how your procedures worked or whether you had to improve them, et cetera. That is the information you have not been able to give

CHAIR: Are you also able to provide this Committee with some general outcomes of those protected disclosures – what they were about generally; in a broad sense what sections of the department they involved; how the procedures handled them, et cetera?”

Forming part of my evidence before the Committee was a written submission from NSW Maritime which included the following (omitting an endnote):

- “8. Only a very small number of protected disclosures have been made or referred to NSW Maritime under the [*Protected Disclosures Act 1994* (the Act)].
9. NSW Maritime has not experienced any difficulties in complying with the Act.
10. NSW Maritime has not received any complaints regarding its compliance with the Act.
11. NSW Maritime’s compliance with the Act has not been the subject of any investigation by the NSW Ombudsman under the *Ombudsman Act 1974*.”

Asked – in oral testimony before the Committee – to indicate how many protected disclosures had been made, I replied “about two in the past 10 years”. In response to the Committee’s abovementioned request for further information in relation to those matters, I advise as follows:

First Protected Disclosure – 2003

1. In 2003, an officer (A) at one of NSW Maritime’s regional offices contacted another officer (B) who was and remains the NSW Maritime’s Manager, Human Resources (as the position is now styled) seeking to discuss – as was later identified as being – concerns regarding a more senior officer (C).
2. A asked to meet with B at a location away from the regional office on a confidential basis.
3. In the course of initial discussions, A specifically stated that a protected disclosure was being made to B, who was an officer of NSW Maritime to whom a protected disclosure could validly be made.
4. The allegations against C were, in summary, to the effect that C was using NSW Maritime resources in the course of a private business operated by C and, furthermore, that C had not obtained the necessary approval from NSW Maritime to engage in secondary employment.
5. NSW Maritime: put the allegations to C; suspended C pending an investigation; appointed an external investigator to investigate the allegations; and reported the matter to the Independent Commission Against Corruption (ICAC).
6. Twelve days after the allegations were put to C, C gave notice of resignation from NSW Maritime. At the time of giving notice, C had not yet been interviewed about the allegations and no issue had arisen as to whether A’s identity would need to be disclosed to C in the course of the investigation.

7. Following A's making of a protected disclosure, two other officers of NSW Maritime made protected disclosures concerning much the same allegations against C.
8. The outcome of A's protected disclosure – and the similar protected disclosures made by two other officers – concerning C, was that C ceased to be employed in the service of NSW Maritime.

Second Protected Disclosure – 2007

9. In early September 2007, an officer (D) of NSW Maritime wrote to the officer acting in B's position regarding concerns that had been raised with D by two other officers (E and F) about the conduct of another officer (G).
10. The allegations against G were, in summary, to the effect that G had a conflict of interest in dealing with matters involving G's spouse who was conducting a business that had dealings with NSW Maritime on a regular basis.
11. At the time of initial discussions between D and E, E did not identify the matter as being a protected disclosure. Subsequently, in October 2007, E provided a written statement to B which included the following wording:

"Please treat this statement as a protected disclosure under the Protected Disclosures Act 1994."
12. E's statement was treated as such. E's identity was not disclosed to G in the course of the investigation conducted by NSW Maritime.
13. NSW Maritime reported the allegations against G to ICAC.
14. NSW Maritime found some of the allegations against G to be proven. G was reprimanded and counselled and restrictions placed on G's duties in so far as dealing with any matters directly or indirectly related to G's spouse's business. Further, broader restrictions were place on G's performing any duties that may lead to the perception of a conflict of interest.

I hope that the above clarifies the matters for the Committee.

Yours faithfully



Peter Cribb
A/Principal Solicitor
Contract, Information and Audit