

**INQUIRY INTO PROTECTION OF PUBLIC SECTOR  
WHISTLEBLOWER EMPLOYEES**

**Organisation:**

**Name:** Mr Robert Cairns

**Telephone:**

**Date received:** 30/04/2009

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Partially Confidential

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THE CHAIRMAN OF THE COMMITTEE  
ON THE ICAC.

FROM, SUBMISSION MAKER / PARTICIPANT / INVOLVED  
PERSON / INTERESTED PERSON / NUMBER 2.

ROBERT CALIENS

FORMER RAILCORP EMPLOYEE 872518

PUBLIC OFFICIAL 040/05598 RAILCORP

PUBLIC OFFICIAL E04/1916 ICAC

PUBLIC OFFICIAL C/2005/6688 OMBUDSMAN

PLAINTIFF 30073/07 SUPREME COURT

PROSECUTOR 20380098/07 LOCAL COURT.

WITH RESPECT TO:

INTERIM REPORT OF THE COMMITTEE ON  
THE ICAC. REPORT NO. 5/84 - MARCH 2009.

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THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON THE  
ICAC.

IN RESPONSE TO THE COMMITTEE'S INVITATION TO  
MAKE COMMENT ON ISSUES THAT ARE RAISED  
OR CAN BE RAISED BY THE INTERIM REPORT,  
TESTIMONY AND DISCUSSION PAPERS, THAT HAVE  
BEEN PUBLISHED AND DISTRIBUTED THUS FAR,  
I DO SO IN THIS FORM OF WORDS, IN TWO PARTS.

1. ISSUES RAISED BY THE PROPOSALS.

CONSIDERING THE PROPOSALS FOR AMENDMENT  
TO THE P.D. ACT 1994 - THE ISSUES,

SIMPLY PUT WHAT HAS BEEN IDENTIFIED BY  
THE COMMITTEE IS THAT THE P.D. ACT IS NULL  
AND VOID IN ITS PRESENT STATE AND NOT  
FIT FOR PURPOSES.

FOR THE FOLLOWING REASONS.

1. ALTHOUGH ENACTED IN 1994 THE P.D. ACT REMAINS IN 2009 UNADOPTED AS AN OPERATIONAL ACT IN N.S.W. BY ANY AUTHORITY WITH A DUTY OF CARE TO PUBLIC OFFICIALS - EMPLOYEES OF THE STATE TO ANY EXTENT GREATER THAN AS AN OPTIONAL OR ADVISORY NOVELTY OF LEGISLATION.
2. THE P.D. ACT HAS NEVER BEEN IMPLEMENTED FOR OPERATIONAL PURPOSES BY ANY STAKEHOLDER IN PUBLIC OFFICIAL PROTECTION. - BEING:
  1. GOVT AGENCIES / AUTHORITIES
  2. INVESTIGATING AUTHORITIES ICAC / OMBUDSMAN
  3. INVESTIGATING AUTHORITIES - AUDITOR GENERAL WORKCOVER MOT. OTSI ITSAR ET AL. D.P.P. POLICE.
3. THE ACT PLACES NO BURDEN ON ANY AGENCY AUTHORITY OR GOVT OFFICIAL TO ACTUALLY DO ANYTHING NOR CAN THEY BE HELD ACCOUNTABLE FOR DOING NOTHING ACTUALLY.
4. THE ACT PLACES A BURDEN OF PROOF TO SHOW OR TENDS TO SHOW CORRUPT CONDUCT THAT CANNOT BE MET. AND IMPOSES CRIMINAL PENALTIES FOR PROCEDURAL OFFENCES ON THE PUBLIC OFFICIAL DISCLOSURE MAKER FOR HIS OFFENCES AGAINST THE ACT.

5. ACCORDING TO THE ASSISTANT COMMISSIONER  
THE CROWN SOLICITOR HAS SET A VERY HIGH LEGAL  
BAR FOR THE BURDEN TO SHOW CORRUPT CONDUCT  
TO COMPEL AN INVESTIGATION OR AUDIT - WHICH  
IS THE STANDARD FOR GOVERNMENT AGENCIES WHO  
INITIALLY ASSESS DISCLOSURES OF CORRUPT CONDUCT  
FOR AUDIT AND REFERRAL TO THE ICAC & OTHERS.

6. THE STANDARD SET HAS BEEN STATED AS.

- IT MUST BE THE RIGHT KIND OF PERSON
- IT MUST BE THE RIGHT KIND OF INFORMATION
- IT MUST BE MADE TO THE RIGHT AGENCY  
TO QUALIFY AS A PROTECTED DISCLOSURE.

7. THE OMBUDSMAN HAS IT THAT DISCLOSURES MUST  
BE IN WRITING.

8. THE AGENCY / AUTHORITY, RAILCORP AND THE  
INVESTIGATIVE AUTHORITIES HAVE IT THAT  
DOCUMENTATION IS NOT ISSUED TO CONFIRM  
THE DETAILS OF A DISCLOSURE SUBMITTED  
FOR ASSESSMENT BY A PUBLIC OFFICIAL OR  
THAT IT HAS BEEN ASSESSED AS PROTECTED.  
THAT IS TO SAY THE PUBLIC OFFICIAL IS PROTECTED.

9. RAILCORPS GENERAL MANAGER FOR H. R. SERVICES STATES.

"WE HAVE A DUTY TO DO SOMETHING ABOUT IT."  
(STANDARDS OF BEHAVIOR BELOW THE NORMS SET) WE HAVE A DUTY TO REPORT THAT. WE HAVE A DUTY TO REESTABLISH THOSE NORMS."

10. PROTECTED DISCLOSURE ACT REQUESTS FOR INVESTIGATION OF CORRUPT CONDUCT INCLUDES AUDITS AND INQUIRIES.
11. AUDITS FOR COMPLIANCE WITH STANDARDS SET FOR A GOVT AGENCY IN LEGISLATION, POLICIES AND PROCEDURES ARE CARRIED OUT BY INTERNAL AUDITS OR SIMILAR BODIES.
12. REQUESTS FOR AUDITS COME FROM PUBLIC OFFICIALS UNDER THE P.D. ACT IF THE PUBLIC OFFICIAL HAS CONCERNS FOR HIS POSITION OF EMPLOYMENT AND OR HIS SAFETY.
13. ANY EMPLOYEE THAT CAN BE AUDITED MAY BE AUDITED BY INTERNAL AUDITS ON REQUEST OF ANY AUTHORISED EMPLOYEE OR OFFICIAL IN THE CHAIN OF AUTHORITY.
14. THE P.D. ACT ENABLES OTHER EMPLOYEES WITH SUFFICIENT STANDING IN THE WORKPLACE AND WITH SUFFICIENT CAUSE TO SHOW A CASE FOR

14. REQUESTING AN AUDIT OF ANOTHER PUBLIC OFFICIAL WHICH IS CONSISTANT WITH A CODE OF CONDUCT HOWEVER STATED.
15. A REQUEST FOR AUDIT MADE UNDER THE P.D.A.C. NEEDS ONLY TO BE SUPPORTED BY EVIDENCE OF A BREACH OF CONDUCT THAT SHOWS  
A LAW - CRIMINAL OR STATUTORY HAS BEEN BROKEN OR  
A DISCIPLINARY OFFENCE THAT CONSTITUTES MALADMINISTRATION HAS OCCURRED ACCORDING TO WORKPLACE STANDARDS POLICIES AND PROCEDURES.
16. DOCUMENTARY EVIDENCE IS REQUIRED TO SHOW THAT A PUBLIC OFFICIAL HAS COMMITTED AN OFFENCE IN THE COURSE OF GOVERNMENT BUSINESS DUTIES, UNLESS SEVERAL EMPLOYEES CORROBORATE THAT AN OFFENCE HAS OCCURRED.
17. UNDER THE P.D.A.C. NOTHING OUT OF THE ORDINARY COURSE OF BUSINESS OCCURS. SERIOUS BREACHES OF CONDUCT AND STANDARDS MAY BE AUDITED INVESTIGATED OR INQUIRED INTO SHOULD AN AUDIT OFFICER OR OTHER AUTHORIZED OFFICER BE COME AWARE OF THOSE BREACHES THROUGH OTHER CHANNELS. A RANDOM AUDIT FOR EXAMPLE OR A STATUTORY AUDIT CONDUCTED YEARLY - QUARTERLY OR WHATEVER.

18. THE SOURCE OF THE CAUSE FOR AUDIT IS IMMATERIAL  
THE ONLY REQUIREMENT FOR THE PURPOSES OF  
INTERNAL AUDIT OFFICERS IS THAT THE REQUEST  
FOR AUDIT - BY AN AUTHORIZED OFFICER OR P.D. ACT  
PUBLIC OFFICIAL IS NOT.

BASED ON FALSE AND MISLEADING INFORMATION.

IS NOT VEXATIOUS

IS NOT AN ATTEMPT TO AVOID DISCIPLINE

AND THE PUBLIC OFFICIAL HAS REASONABLE PROXIMITY  
TO THE MATTER TO ACT AS WITNESSES TO EVENTS.

19. A BONA FIDE REQUEST FOR AUDIT OF A PUBLIC OFFICIALS  
CONDUCT MADE BY ANOTHER PUBLIC OFFICIAL WITH  
SUFFICIENT CAUSE TO REQUEST AUDIT AND HAS  
THE NECESSARY DOCUMENTARY EVIDENCE TO SHOW  
A CASE TO ANSWER BY ANOTHER PUBLIC OFFICIAL  
IS TO BE FACILITATED BY P.D. ACT AUTHORIZED  
OFFICERS - INTERNAL AUDITORS AND GIVEN PRIORITY  
PROCEDURES FOR DEALING WITH SUCH REQUESTS  
ARE AUGMENTED & ENHANCED.

20. AS THE OMBUDSMAN PUTS IT - IT BUILDS ON EXISTING  
PROCEDURES.

21. IN EXCHANGE FOR THE PUBLIC OFFICIAL TAKING A  
LEADERSHIP ROLE IN THE PUBLIC INTEREST THE  
PUBLIC OFFICIAL IS PROTECTED FROM ADMINISTRATIVE  
AND OTHER ABUSES WHICH MAY FOLLOW.

22. THE PUBLIC OFFICIAL MAY OR MAY NOT BE A WITNESS TO PROCEEDINGS AND MAY OR MAY NOT BE INVOLVED IN THE INVESTIGATION PROCESS - A RIGHT TO BE FAIR TO THE PROCESS. AND KEPT INFORMED OF DEVELOPMENTS OR INTERIM REPORTS.
23. THERE IS NO ONE SIZE FITS ALL PROCEDURES FOR PROTECTING DISCLOSURES WHICH MAY GO TO, PUBLIC SAFETY OFFENCES PUBLIC ADMINISTRATION OFFENCES OR PUBLIC FINANCE MANAGEMENT OFFENCES, SERIOUS OFFENCES AGAINST THE PUBLIC INTEREST.
24. EACH IS DEALT WITH ACCORDING TO ITS MERITS AND ACCORDING TO LEGISLATION STANDARDS SET POLICIES + PROCEDURES APPLICABLE IN THAT GOVERNMENT WORKPLACE, IN THE FIRST INSTANCE, INTERNALLY.
25. REQUESTS FOR EXTERNAL AUDIT OF THE SAME OFFENCES OR OFFENCES THAT ARISE FROM THE PROCESS OF INTERNAL AUDIT ARE SIMPLY THAT - THEY ARE NOT A SUPREME COURT CHALLENGE OF THE MERITS OF GOVERNMENT POLICY DICTATED BY THE CROWN SOLICITOR OR COUNSEL TO THE AUTHORITY.

26. THERE IS NO REQUIREMENT FOR THE ICAC OR THE OMBUDSMAN TO CONDUCT MAJOR INVESTIGATIONS IN RESPONSE TO A REQUEST FOR THE AUDIT OF STATUTORY PROCESSES CONDUCTED BY OFFICIALS OF GOVERNMENT AGENCIES.
27. THE ICAC IS TO TAKE INTO ACCOUNT THE ROLE OTHER AUTHORITIES AND PUBLIC OFFICIALS HAVE IN CORRUPTION PREVENTION.
28. THE ICAC + OMBUDSMAN MAY REFER REQUESTS FOR COMPLIANCE AUDIT TO RELEVANT INVESTIGATIVE AUTHORITIES FOR INVESTIGATION AND REPORT.
29. THE SIMILAR CHOOSE NOT TO DO SO.
30. OFFICIALS OF GOVERNMENT AGENCIES CANNOT REFUSE REQUESTS MADE BY THE ICAC + OMBUDSMAN TO PRODUCE DOCUMENTS + STATEMENTS TO SHOW COMPLIANCE WITH STATUTORY REQUIREMENTS + STANDARDS.

31. PUBLIC OFFICIALS REQUESTING AUDIT NEED ONLY TO ESTABLISH THEIR BONA FIDES AND A BONA FIDE REASON FOR AUDIT FOR AN AUDIT INVESTIGATION TO TAKE PLACE.
32. PUBLIC OFFICIALS WHO MAY BE AUDITED AS PART OF THEIR EMPLOYMENT CONTRACT CANNOT REFUSE REQUEST BY AUTHORIZED OFFICERS FOR AUDIT COMPLIANCE BY INTERNAL OR EXTERNAL OFFICERS.
33. AUDIT REQUESTS MAY INCLUDE A REQUEST TO VERIFY & VALIDATE ANY INFORMATION OR ENTRY MADE BY A PUBLIC OFFICIAL ON ANY DOCUMENT HE PRODUCES.
34. BUSINESS DOCUMENTS THAT HAVE BEEN FALSIFIED IN A MATERIAL DETAIL BY ENTRY OR OMISSION WITH INTENT TO DECEIVE ARE EVIDENCE OF SERIOUS CORRUPT CONDUCT.
35. ATTEMPTING TO AIDE & ABETTE PUBLIC OFFICIALS TO COVER UP FALSE & MISLEADING ENTRIES ON GOVT BUSINESS DOCUMENTS IS A SERIOUS OFFENCE AND SYSTEMIC CORRUPT CONDUCT. AS SET OUT IN THE CRIMES ACT NSW.

36. A STATEMENT BY A PUBLIC OFFICIAL WITH THE RELEVANT WORKPLACE TRAINING & EXPERTISE TO SHOW FALSE & MISLEADING ENTRIES ON GOVERNMENT BUSINESS DOCUMENTS - AUDIT DOCUMENTS, IS ENOUGH TO SHOW CAUSE FOR AUDIT OR INVESTIGATION AND REFERRAL TO THE POLICE.
37. THE PROCEDURE THAT FOLLOWS IS THE AUDIT PROCESS - REQUEST FOR THE PRODUCTION OF DOCUMENTS AND STATEMENTS IN A TIMELY MANNER.
38. A SHOW CAUSE NOTICE MAY BE ISSUED FOR THE PUBLIC OFFICIAL TO SHOW CAUSE WHY FURTHER LEGAL ACTION OR DISMISSAL PROCEEDINGS SHOULD NOT BE TAKEN.
39. FAILING THAT FURTHER ACTION SHOULD BE TAKEN.
40. THAT IS THE AUDIT PROCESS - FOR INTERNAL & EXTERNAL AUDITS BY THE ICAC OMBUDSMAN AND EVEN THE SPEAKER OF THE HOUSE.
41. FOLLOWING THAT PROCESS THE PUBLIC OFFICIALS, THE ACCUSED AND THE ACCUSER ARE NOTIFIED OF THE OUTCOME.

42. THE PROCESS IS CONDUCTED WITH AS MUCH CONFIDENTIALITY AS POSSIBLE BUT NOT TO THE DETRIMENT OF THE PROCESS.
43. FURTHER INVESTIGATIONS MAY BE CONDUCTED AS NECESSARY BUT NOT TO THE DETRIMENT OF THE AUDIT PROCESS.
44. THE BASIC PRESUMPTION OF THE P.D. ACT IS THAT EMPLOYEES / PUBLIC OFFICIALS HAVE ACCESS TO THE AUDIT PROCESS IN THEIR WORKPLACE WHEN THE PUBLIC INTEREST IS INVOLVED AND ACT ON THE PUBLIC TRUST TO DO SO.
45. THERE ARE CRIMINAL PENALTIES FOR THOSE WHO ABUSE THE PUBLIC TRUST.
46. THE DUTY OF AUTHORIZED OFFICERS IS TO RESPOND TO THE PUBLIC INTEREST AND ENSURE COMPLIANCE WITH LEGISLATION AND LAWFUL POLICY + PROCEDURES TO MAINTAIN THE STANDARDS REQUIRED BY THE PUBLIC TRUST. TO ENSURE AUDIT INFORMATION IS RELIABLE - VALID + VERIFIABLE.

47. INVARIABLY GOVERNMENT BUSINESS IS DOCUMENTED. IT IS THE DOCUMENTATION THAT IS THE SUBJECT OF AUDITS + INVESTIGATIONS WITH STATEMENTS MADE BY THE PUBLIC OFFICIALS WHO MADE THE ERRORS, DUE TO THE AUDITORS + INVESTIGATORS. - LAWYERS DO NOT ENTER INTO THE PROCESS.

48. THE PERVERSITY OF THE PROCESS CONDUCTED BY

1. INTERNAL AUDITORS.

2. ICAC

3. OMBUDSMAN

WHEN UNDERTAKING COMPLIANCE AUDITS AND OR INVESTIGATIONS BY REQUEST OF PUBLIC OFFICIALS PERSUADED TO THE P.D.A.C. IS SHOWN IN THEIR COLLECTIVE ADMISSIONS TO THE COMBUTEE -

WE DO NOT RECORD THE COMPLAINT AND WE DO NOT ~~DECEIT~~ ISSUE DOCUMENTATION CONFIRMING A DISCLOSURE WAS MADE BY A PUBLIC OFFICIAL AND THAT PROTECTION IS OR IS NOT ENACTED.

49. OSTENSIBLY THIS IS NOT DONE SO AS TO AVOID UNWANTED RALIFICATIONS THAT INVOLVEMENT IN A MATTER MAY LEAD TO.

50. THE DISCLOSURE IS REDUCED TO HEARSAY INFORMATION THAT REQUIRES NO ACTUAL AUDIT OR INVESTIGATION AND NO ACTUAL REPLY TO INQUIRIES MADE BY THE AUDITORS.

51. THE OUTCOMES OF SUCH PROCESSES ARE PRE-DETERMINED BY THE PERUERSITY OF THE PROCESS.

ALL IS GOOD - NO CASE TO ANSWER IS SHOWN.

52. HENCE THE COMMITTEES PROPOSALS FOR AMENDMENTS TO THE ACE, WHICH IS SHOWN TO BE NOT IMPLIMENTED AS AN OPERATIONAL ACT DESPITE PREVIOUS DIRECTIONS OF THE COMMITTEES ON THE ICAC FOR GOVT AGENCIES TO HAVE A PROTECTED DISCLOSURE ACE POLICY.

53. POLICIES HAVE BEEN MADE ACCORDING TO THE OMBUDSMAN THAT ARE LESS THAN ADEQUATE.

54. THERE IS NO EVIDENCE TO SHOW THESE POLICIES HAVE BEEN IMPLIMENTED OR ARE OPERATIONAL OR EFFICACIOUS. AS OF 2008 - 14 YEARS AFTER THE P.D ACT WAS IMPLIMENTED.

55. THE ACT IS AN ORPHAN. NOBODY OWNS THE ACT  
THE ACT PLACES NO BURDEN ON ANYONE TO ACTUALLY  
DO ANYTHING.

56. NOBODY ACTUALLY DOES ANYTHING HARMFUL.

57. THERE IS NO AVENUE OF REVIEW APART FROM  
PROSECUTIONS UNDERTAKEN BY THE PUBLIC  
OFFICIALS WHO BEARS THE CRIMINAL BURDEN  
OF PROOF TO SHOW.

1. A DISCLOSURE OF INFORMATION WAS  
MADE TO AN AUTHORISED OFFICER WHICH  
MET THE BURDEN OF PROOF TO SHOW -  
A CASE TO ANSWER BY ANOTHER PUBLIC  
OFFICIAL WHICH SHOULD BE INVESTIGATED/  
AUDITED. OF A SERIOUS NATURE AND WAS IT  
IN THE PUBLIC INTEREST TO DO SO.

2. THAT DETRIMENTAL ACTIONS FLOWED  
FROM THE MAKING OF THE DISCLOSURE

3. THAT A PERSON OR PERSONS WERE  
RESPONSIBLE FOR CAUSING THE DETRIM-  
ENTAL ACTIONS OR TOOK THE DETRIMENTAL  
ACTIONS THEMSELVES.

58. THE RIGHT TO SILENCE IS REMOVED FROM  
THE ACCUSED IN REPLY TO FACTS ESTABLISHED  
BY THE PROSECUTION.

59. THE TECHNICALITIES ASSOCIATED WITH SUCH PROSECUTIONS AS STATED BY THE OMBUDSMAN HAVE NEGATED ALL ATTEMPTED PROSECUTIONS TILL FAR.

60. THE ACT THEREFOR HAS BEEN RIGHTLY FOUND BY THE COMMITTEE TO BE DEFECTIVE IN NATURE. AS IT HAS BEEN FOUND ON PREVIOUS OCCASIONS.

61. THE ACT DOES NOT PROVIDE PROTECTION  
THE ACT DOES NOT ENSURE PROPER AND ADEQUATE INVESTIGATION.

THE ACT HAS NOT BEEN INSTITUTED AS AN OPERATIONAL ACT.

62. THE P.D. ACT 1994 IS NOT EIT FOR PURPOSE  
THE P.D. ACT 1994 UNAMENDED IS NULL AND VOID.

63. ALL DECISIONS FINDINGS ACTIONS MADE OR TAKEN UNDER THE P.D. ACT ARE NULL AND VOID.

64. CAUSE FOR ACTION AS A CLASS ACTION IS ESTABLISHED FOR ALL PUBLIC OFFICIALS WHO HAVE SUFFERED ADVERSE TREATMENT IN PURSUANCE OF THE P.D. ACT.

65. SUCH EMPLOYEES OF THE STATE TO WHOM THE STATE OF N.S.W OWES A DUTY OF CARES PAST PRESENT AND FUTURE WHOSE CONTRACTS OF EMPLOYMENT HAVE AS A REQUIREMENT COMPLIANCE WITH LEGISLATION STANDARDS POLICIES AND PROCEDURES IN THEIR WORK-PLACE WHICH IMPOSES A DUTY OF CARE ON THE EMPLOYEE TO ACT IN THE PUBLIC INTEREST WHEN CONDUCTING HIS DUTIES ARE GIVEN A FOOL'S ERRAND BY THE P.D. ACT WHEN MEETING THE PARLIAMENT'S EXPECTATION TO REPORT CORRUPT CONDUCT AND HAVE IT PROPERLY DEALT WITH.
66. SUCH EMPLOYEES OF THE STATE SENT ON A FOOL'S ERRAND BY THE PARLIAMENT OF N.S.W. HAVE ALSO A CAUSE FOR APPEAL TO THE GOVERNOR OF N.S.W WHO MAY MAKE ORDERS WITH RESPECT TO THE P.D. ACT 1994
67. ORDERS MAY INCLUDE A JUDICIAL REVIEW BE UNDERTAKEN TO ENQUIRE INTO THE ALLEGED COMMISSION OF AUTHORIZED OFFICERS TO PERVERT THE COURSE OF JUSTICE AND DEFEAT THE PURPOSES OF THE P.D. ACT THE ICAC ACT AND THE OMBUDSMAN ACT..

68. AND TO FURTHER INQUIRE INTO THE DIRECTIONS  
GIVEN TO ASSESSORS OF THOSE ORGANIZATIONS  
WHO RECEIVE P.D.A.C. REQUESTS FOR AUDITS OR  
INVESTIGATION DETERMINING THE OPERATIONAL  
STANDARDS OF THE AUTHORITY.

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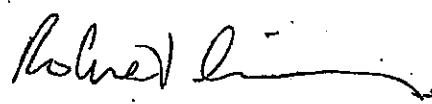












ROBERTO CHIRIB

27/04/2009