INQUIRY INTO PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES

Organisation:  
Name:  Mr Robert Cairns  
Telephone:  
Date received:  30/04/2009
The Chairman of the Committee on the ICAC.

From: Submission Maker/Participant/Interested Person/Number 2.

Robert Cairns
Former RailCorp Employee 872518
Public Official 040/05359 8 RailCorp
Public Official E04/1916 ICAC
Public Official C 2005/6638 Ombudsman
Plaintiff 80073 07 Supreme Court
Prosecutor 20380098 07 District Court.

With respect to:

Interim Report of the Committee on
In response to the committee's invitation to make comment on issues that have been raised or can be raised by this interim report, testimony, and discussion papers that have been published and distributed thus far, I do so in this form of words in this paper.

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 purpose.

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.

   1. Govt Agencies / Authorities
   2. Investigating Authorities - ICAC / OBUDSHAW
   3. Investigating Authorities - Auditor General
   4. WorkCover
   5. Otsi, Tiser et al.
   6. 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 fact, 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 commence 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 and 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 stated 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. Railcorp General Manager for A.R. Service
States:

"We have a duty to do something about it."

(Standards of behavior below the norms set) We have a duty to respond that, we have a duty to re-establish those norms.

10. Protection Disclosure Act Requests for
Investigation of Corrupt Conduct includes
Audits and Inquiries.

11. Audits for Compliance with Standards set
For A Government 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 was
Concerned for his Position of Employment and
Or his Safety.

13. Any Employees that can be Audited may be
Audited by Internal Audits on request
Of any Authorized 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 consistent 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 was 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 authorised officer be 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 (material). The only requirement for the purposes of internal audit officers is that the request for audit by an authorised 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 witness to events.

19. A bona fide request for audit of a public official's 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 authorised officers - internal auditors and chief personnel procedures for dealing with such requests and authorised by the minister.

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 party to the process, and kept informed of developments or interim reports.

23. There is no one size fits all procedure for protected 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 and 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 and Ombudsman may refer requests for compliance audit to relevant investigative authorities or investigation and report.

29. The ICAC may choose not to do so.

30. Officials of government agencies cannot refuse requests made by the ICAC and Ombudsman to produce documents and statements to show compliance with statutory requirements and standards.
31. **Public officials requesting audit need only to establish their bona fide 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 authorised officers for audit compliance by internal or external officers.**

33. **Audit requests may include a request to verify and 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 aids and abet public officials to cover up false or misleading entries on your 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 and experience to show false and misleading entries on government business documents - audit documents, is enough to show cause for audit or investigation and referral to the police.

37. The process 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 ICAI Ombudsman and even the Speaker of the House.

41. Following that process the public official, 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 officials is to respond to the public interest and ensure compliance with legislation and lawful policies and procedures to maintain the standards required by the public trust, to ensure audit information is reliable, valid, and verifiable.
47. Invariably government business is documented. It is the documentation that is the subject of audits and investigations with statements made by the public officials who have the evidence, due to the auditors and 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, persuade the P. D. Act is shown in their collective admissions to the committee. -
   We do not record the complaint and we do not request 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 unwarranted ramifications that
involVement in a manner may lead to.

50. The disclosure is reduced to hearey
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 pervasity
of the process.

All is good - no case to answer is shown

52. Hence the committees proposals for amend-
ments to the act, which is shown to be
not implemented as an operational act
despite previous directions of the committees
on the ICAC for govt agencies to have a
protected disclosure act 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 implemented or are operational,
or efficacious. As of 2008 - 14 years after
the P.D.was implemented.
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 detrimental 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 thus far.

60. The Act therefore 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.


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 relations of the P.D. Act.
65. Such employees of the State to which
the State of N.S.W. owes a duty of care
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 being
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 ensure into the alleged
commission of authorised officers to perform
the course of justice and defeat the purposes
of the P.D. Act the ICAC Act and the Ombudsmans
Act.
68. AND TO FURTHER INQUIRE INTO THE DIRECTIONS GIVEN TO ASSOCIATES OF THOSE ORGANIZATIONS WHO RECEIVE P.I.D.A.C. REQUESTS FOR AUDITS OR INVESTIGATION DETAINING THE OPERATIONAL STANDARDS OF THE AUTHORITY.