

ICAC Submission – Email 25/7/17 10.08PM

From: [REDACTED]
Sent: Tuesday, 25 July 2017 10:08 PM
To: Policy AGD <Policy.AGD@nt.gov.au>
Subject: Independent Commissioner against Corruption – Draft Legislation

Thank you for the opportunity to respond to the draft ICAC Legislation.

I welcome the moves to establish this legislation and organisation, because I have and am a Whistleblower who has reported a colleague for unethical behaviour, and have subsequently experienced retaliation by this person as well as adverse disciplinary actions by my employer.

I have been subjected to false and misleading allegations about my performance as an employee that I believe was an intentional action by this person to discredit myself as a reliable person and for him to avoid accountability for his action.

These adverse actions by my employer have resulted in legal expenses of approx. \$100,000 to this point. Much of this expense has involved my having to seek legal assistance to fight these false and misleading allegations against myself by the person who I reported and the adverse actions taken against myself by senior staff.

My employer has consistently resisted providing documentation that either supports these allegations or documentation that rebuts these allegations. This resistance has occurred both in the Supreme Court and also in FOI requests resulting in further legal costs.

I specifically bring to your attention the Fact Sheet – The ICAC And HR Implications For Public Bodies and its relevance to my situation. The statement that “Whistleblowers need to be aware that they are not immune from disciplinary action.....” is of particular relevance to my situation because false allegations do take place in an effort to discredit a person and in this case myself.

I would like to see this legislation detail investigative policy and procedures to ensure any disciplinary actions taken against a Whistleblower are properly investigated and the material these actions rely on is tested in line with the Principal of Natural Justice and that any investigations conducted are bound by the rules of evidence.

In my situation, the initial investigation was a flawed process that relied on false and malicious statements and did not allow an important witness to be given the opportunity to provide a statement and evidence to rebut the allegations made against myself. I personally requested that this important witnesses be allowed to give evidence, this did not happen. When I was notified of the allegations made against myself I again sought investigators act on my request. I did so both in a personal interview and in my written responses again without any action taken by the delegates to allow this person to give evidence. When I received foreshadowed findings that still did not include this evidence I again requested this to be done to ensure fairness and equity towards myself. When the final findings of the delegate did not contain this evidence I appealed to the OCPE for this matter to be addressed and provided a written letter from this witness to rebut the false allegations and findings made against myself. At this point my employer engaged a Darwin Legal firm to oppose my

appeal to the Public Sector Appeals Board resulting in further legal expense, despite my providing this letter that clearly rebuts the allegations and findings against myself.

From my own experience in this matter I feel it is too easy for Senior Executives and HR staff to take adverse disciplinary actions based on false and misleading information and then resist being held accountable for those adverse actions and not be accountable to provide evidence of matters that they rely on when taking adverse disciplinary actions.

I refer to the objects of this legislation, “to address wrong doing and minimise improper conduct”.

In my situation not only did the person I report act inappropriately in his position as a Public Sector Officer, but he also took retaliatory actions by making false claims and spreading a negative narrative about myself in an attempt to provide a false misrepresentation of myself to others. This is further improper conduct.

These actions then resulted in adverse actions against myself by senior executives and these senior executives have refused to provide reliable tested evidence to support these actions. I believe this also improper conduct.

In one particular senior executive’s case this person has made further allegations against myself that supports the false allegations made by the person I reported. This person even claims statements made by myself are false and defamatory despite three past and present employees having provided evidence to an investigator that support my report. This senior executive is in possession of a report from this investigator detailing these statements by other staff and still claims statements made by myself are false and defamatory. My legal representative has pointed this out without a reply from this senior executive. I believe this is improper conduct.

I do wish to raise my concern relating to the draft legislations arrangements for allowing access to confidential information and data bases in investigating matters before the ICAC. In my particular situation the reference that “a public body may allow this access” is particularly relevant as my employer has consistently used this argument to keep important and relevant documents from myself and allow myself natural justice, fairness or equity, ultimately prejudicing my ability to defend myself against adverse disciplinary actions that rely on false and misleading allegations. I believe this is improper conduct.

I commend the intent of this legislation and hope the legislators take into account my personal experience and ensure disciplinary actions taken against a whistleblower are properly investigated and documented, ensuring that not only does Natural Justice takes place, but Senior Executives and HR staff are compelled to provide the information relied on in these disciplinary actions against a Whistleblower are in fact correct and not false.

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