

Dear Ms Ah Kit,

SUBMISSION TO SOCIAL POLICY SCRUTINY COMMITTEE

INDEPENDENT COMMISSIONER AGAINST CORRUPTION (ICAC) BILL

From 2012 to 2016 Australia has been declining on the Corruption Perceptions Index whilst other countries such as the United Kingdom see an opposite trend. Why is Australia being perceived as a more corrupt country? The answer is quite simple; our law makers are doing nothing about corruption.

CORRUPTION PERCEPTIONS INDEX 2016

search

2016 Rank	Country	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score	Region
1	Denmark	90	91	92	91	90	Europe and Central Asia
1	New Zealand	90	91	91	91	90	Asia Pacific
3	Finland	89	90	89	89	90	Europe and Central Asia
4	Sweden	88	89	87	89	88	Europe and Central Asia
5	Switzerland	86	86	86	85	86	Europe and Central Asia
6	Norway	85	88	86	86	85	Europe and Central Asia
7	Singapore	84	85	84	86	87	Asia Pacific
8	Netherlands	83	84	83	83	84	Europe and Central Asia
9	Canada	82	83	81	81	84	Americas
10	Germany	81	81	79	78	79	Europe and Central Asia
10	Luxembourg	81	85	82	80	80	Europe and Central Asia
10	United Kingdom	81	81	78	76	74	Europe and Central Asia
13	Australia	79	79	80	81	85	Asia Pacific
14	Iceland	78	79	79	78	82	Europe and Central Asia
15	Belgium	77	77	76	75	75	Europe and Central Asia
15	Hong Kong	77	75	74	75	77	Asia Pacific
17	Austria	75	76	77	69	69	Europe and Central Asia

Source: https://www.transparency.org/news/feature/corruption_perceptions_index_2016

Corruption is a bit like bacteria or fungi; opportunistic and the Northern Territory Public Service is like a petri dish of agar. A place where corruption can flourish, where the light of accountability is never seen and not wanted, the current disclosures legislation is little more than window dressing.

Irrespective of any legislation that may be enacted there will continue to be corruption so long as the public service does not have appropriate policies and procedures. Incompetent public servants also abound in the Territory, simply because they cannot create appropriate policies to manage public assets and money. We have seen plenty of examples where no policies exist, there are cover ups; it is a free for all.

Here are a few reminders for you.



Northern Territory

Corruption allegations grow against the NT Housing Department

CHRISTOPHER WALSH, NT News
May 24, 2017 12:00am
Subscriber only

Source:

<http://www.ntnews.com.au/news/northern-territory/corruption-allegations-grow-against-the-nt-housing-department/news-story/f36c9d780d576852d7a20c09a5af0c8f?nk=4dce0293f7279d38df1f38e4c42a28ef-1506600590>



Former NT Crime Stoppers boss Xana Kamitsis jailed for fraud, corruption

By Felicity James
Updated 16 Dec 2015, 3:44pm

Source: <http://www.abc.net.au/news/2015-12-15/former-nt-crimestoppers-boss-xana-kamitsis-jailed/7029240>

breaking news

Spear threat to NT teacher

A SCHOOL principal threatened to kill one of her teachers after he complained about her "borrowing" money from staff.

By Nigel Adlam

NT News

JANUARY 24, 2012 12:29PM

Source: <http://www.news.com.au/breaking-news/spear-threat-to-nt-teacher/news-story/669d06d6d384c7a8fce02179986fb141>

BREAKING NEWS TERRITORY CENTRALIAN ADVOCATE CRIME NATIONAL WORLD OPINION

Northern Territory

A Northern Territory Government bureaucrat apologises for Facebook reputation damage

By FRED McCUE, NT News
December 28, 2014 2:38pm

Source: <http://www.ntnews.com.au/news/northern-territory/a-northern-territory-government-bureaucrat-apologises-for-facebook-reputation-damage/news-story/8a88634f48254290e446717da7c7ba0e?nk=4dce0293f7279d38df1f38e4c42a28ef-1506600998>

1. Corruption knows no bounds and cannot be excused. Culture is no excuse for corruption. The economic, social, health, environmental and other costs of corruption are massive leading to inequality, lack of development and death amongst other things. Currently the NT appears to be the joke jurisdiction with bloggers having to use the internet to bring public servants to account. Here is an example <https://cardfightback.wordpress.com/> Not surprising that people do not stay in the NT!

2. A failure to support this Bill will write your political epitaph. Forever labelled as a supporter of corruption, kings and queens of the cover-up, back door deals, dodgy

handshakes, nods to mates, secret meetings.....the list goes on and the finger will be pointing at you.

3. The 'Executive' (I use this term rather loosely given there is no separation of powers in the NT) should the Bill be passed will have to appoint a Commissioner; I just hope that the Commissioner is someone with some teeth and is not some old recycled 'cronie'. Please pass this on to the Member for Fannie Bay.

Specific

In the past I have said it is 'woe to the whistleblower' in the Northern Territory; the ICAC Bill if passed should provide some protection to whistleblowers and place a greater onus on public sector officers to deal with corruption in an open and transparent manner.

In an ideal world there would be no need for ICAC's or whistleblowers; unfortunately we do not live in an ideal world. Currently there are great risks involved with whistleblowing in the Northern Territory; the current legislation provides little if any protection and does not encourage public servants to report wrong doing because the risks of doing so are too great, retaliation can be easily carried out with impunity.

Some people say that an ICAC or encouraging whistleblowing will result in large numbers of vexatious and frivolous complaints. In my opinion the current situation discourages any form of reporting and the ICAC Bill has robust provisions to cater for false, vexatious and frivolous reports. Therefore those making such erroneous claims will risk penalties with ICAC but also with the Office of the Commissioner for Public Employment (OCPE).

Honest public servants should not have to become ill because they are wrestling with deciding to report wrongdoing because of the potential for retaliation.

General Comments

1. The Bill is a substantial improvement compared to the current legislation in terms of protecting whistleblowers and addressing corruption. However relying on other agencies such as the Director of Public Prosecutions may be a weak link. The ICAC should be able to prosecute directly.
2. Arguments regarding the costs for public bodies in addressing the proposed legislation should not be considered in light of the costs of corruption.
3. An increase in vexatious and frivolous complaints is unlikely because there are penalties currently for such actions and the proposed legislation has further sanctions for such actions.

4. OCPE and the public servant. Who are public servants? It currently appears that the OCPE sits in an ivory tower isolated in many respects from public servants apart from an odd email and enterprise bargaining every few years. There must greater efforts to educate so that all public servants recognise they are public servants.
5. Section 20. The requirement for mandatory reporting of suspected improper conduct is an excellent provision. Each public servant must take on the responsibility of working to stop corruption rather than either “turning a blind eye”, whinging about the situation to colleagues while doing nothing or reporting the matter to a superior who may do nothing. Mandatory reporting is essential and can play a part in corruption prevention and reporting.
6. The need for education across government regarding corruption prevention and reporting is essential. The public must have confidence in government in the widest sense. For too long it has appeared that schools and hospitals/health clinics are somehow separate from the public service and in a special realm where laws do not apply. The OCPE must educate all public employees regardless of agency and location that they are public servants. For example a school located in remote community should be operating to the same standards as a school located in Darwin. Yet how many times have there been reports of ‘Captain Queeg’ like characters running amok in remote schools and health clinics or their superiors in regional centres doing the same or encouraging the behaviour. In one case one of these regional managers asked where/how to obtain a gun licence in the Territory in regard to an employee. And this type of behaviour can go to the highest echelons of government agencies, for example the head of human resources in a major Northern Territory Government Department created a fake social media page in the name of an ex-employee, this highlights that retaliation can go beyond the bounds of current employment including trying to reduce the employment opportunities of ex-employees.
7. The ICAC must be effective and been seen to be so. Constantly stating that it is not in the public interest to take action will quickly erode public confidence. Where no action is taken leaks, blogs, posters, stickers, whispering campaigns and pamphlets appear. The press including the NT News and blogs such as Cardfightback have born the burden of exposing the dark recesses of government when government has an interest not to.

Part 6 Whistleblower Protection

1. Section 88. The whistleblower protection principles (a), (b), (c) and (d) are sound provided the public bodies are given guidance in being model litigants that includes refraining from misusing discipline procedures and performance procedures as well as vexatious litigation strategies. Section 88 (1) (b) provides an incentive for public bodies to be proactive in regard to the protection principles.
2. Section 90 (1) (b). Protected communication does not include communication with for example the Teacher Registration Board (TRB) or Pastoral Land Board (PLB). How will the proposed Act deal with these boards in regard to protected communication and allegations of corruption? Will individuals avail themselves with section 91 (1)?
3. Section 91(1). It appears that the safest option for an individual is to apply directly to the ICAC for a declaration of protected communication.
4. Section 92. Places all public officers on notice regarding retaliation.
5. Section 96 (1) (b). The provision regarding disciplinary action and adverse administrative action is a key provision. Employee performance issues suddenly arising after 'incidents' where the employee identifies fault or wrong doing are all too common in public agencies where collusion and lies are used to 'shut up' whistleblowers.
6. Section 98 (1) (d). Management, supervision or control must be defined in the widest sense to include not only line managers but also for example human resources officers.
7. Section 98 (7). The 12 month period is too short and the ICAC must be given scope to extend the 12 month period after the offence is alleged to have been committed.
8. Section 100 (1). The Supreme Court is not a jurisdiction without cost of application and there is the matter of the cost of legal counsel. It is of the utmost importance that Section 100 (2) (a) is utilised by the ICAC because cost is one major factor that scares individuals from taking legal action against government agencies. The risk of being sent broke by ever increasing legal bills as government uses delaying tactics silences most people and only a few dare to take on organisations with endless taxpayer funds.
9. Section 102 (3) (d) and (e). The financial circumstances of the public body should not be a consideration nor should the number of employees of the

public body. All public bodies should be considered to be the Northern Territory Government. The number of employees should not provide an excuse for the body. Providing public bodies with excuses will ensure that some bodies do very little in regard to retaliation and the status quo will remain. The ICAC must ensure that all public bodies are able to carry out the reasonable steps.

10. Section 104 (c). Take any other action or refrain from taking action should also state provided the other action or refraining from taking action does not amount to retaliation.

I ask that the Social Policy Scrutiny Committee recommend that the Bill:

- a) be passed by the Assembly;
- b) not be amended to remove any retrospectivity or mandatory reporting provisions;
- c) does have sufficient regard for the rights and liberties of individuals; and
- d) has regard for the institution of Parliament.

Yours faithfully,

Scott Beaton

29th September 2017

SCOTT BEATON

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INDEPENDENT COMMISSIONER AGAINST CORRUPTION (ICAC) BILL