

Why Australia Needs a PIDA and a False Claims Act

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Outline

- Australia has failed its whistleblowers
- The need to establish a Public Interest Disclosure Agency (PIDA)
- The need for a False Claims Act
- Reflection

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Australia Has Failed Its Whistleblowers

- First Whistleblower Act South Australia (1993)
- Victorian Act (2002)
- No prosecutions under any Whistleblowing Act for victimisation (civil cases, equal opportunity cases, many settlements)
- Analogy: Reserve Bank monetary targeting.

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Victorian Legislation

- Internal points of contact
 - Lack of Independence (p.100-110)
 - Systemic
- Lack of accountability
 - Report to Parliament and to a board(p.113)
- Lack of transparency
 - Maintain files, statistics, records of cases (p.113)
- Lack of credibility
 - Provide evidence of client satisfaction through surveys
 - “Both potential whistleblowers and employer organisations must have confidence in the legislation”
- Fragmentation
 - Across regulators and across states

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Senate Inquiries

- 1994 Senate Inquiry
 - 39 recommendations
 - National legislation with coverage to private sector, health care, higher education, banking
 - Public Interest Disclosure Agency (p.112)
 - Public Interest Disclosure Board (p.113)
 - Tort of victimisation (p.224)
 - Uniformity of defamation laws
- 1995 Senate Inquiry
 - 16 cases and 16 sets of recommendations
 - Reaffirmed support for 1994 report
- **None of the recommendations of either Senate inquiry has been enabled.**

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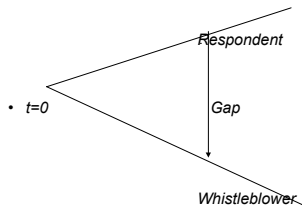
Non- Measurement

- Not measuring the costs on the firm/taxpayer:
 - Fraud (Australia) \$1 billion to \$20 billion
- Not measuring the benefits in terms of changes in procedures
- Not measuring the predictive benefits
 - early warning signals, e.g HIH
- Not measuring the inverted yield curve for whistleblowers

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Inverted Yield Curve

- A Tale of Two Career Paths (J.Lennane)



- Need a systematic survey of the whistleblowing gap

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Public Interest Disclosure Agency

(In The Public Interest, p.112)

- Arrange for investigation by appropriate authority (ombudsman) with appropriate powers
- Ensure protection for whistleblowers
- Provide national education program
- Oversee implementation of recommendations
- Report to Board and Parliament
- Maintain files, statistics and records
- Provide evidence of client satisfaction

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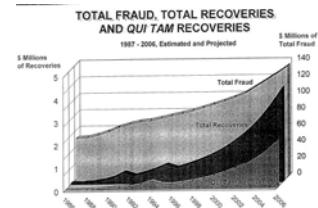
US False Claims Act

- Lincoln's Law (1862) to combat fraud by defence contractors, strengthened in 1986
- Whistleblower can initiate lawsuit against fraudulent claimant on the government.
 - 6 year statute of limitations.
 - Challenge contractual violations, including safety, environmental
- Qui Tam: refers matter to DOJ which can assume case. "Eyes and ears of the government."
- Law permits fraud recovery with penalties of treble damages. Whistleblower entitled to 15% of cost recovery. Protection for whistleblower.

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Economic Impact of US False Claims Act

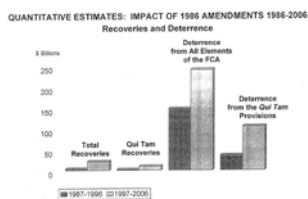
(William Stringer:September 1996)



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Economic Impact of US False Claims Act

(William Stringer:September 1996)



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US False Claims Act

Statistics since 1987

- Total FCA recovered \$6.38 billion
 - \$6.11 billion in DOJ cases
 - \$276 million by own cases
- Total cases 3954
 - 718 in DOJ cases
 - 2516 DOJ declined (>400 pursued)
 - 800 under investigation.
- In 2002
 - 320 cases
 - DOJ recoveries>\$1billion
 - individual \$25million (\$125 million)
- Average amount to whistleblowers is 18% of cost recovery.
- HHS: >50%.
- Average recovery: \$7.2 million.
- Average relator's award: \$1 million

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US False Claims Act

- *Effectiveness*
 - *More effective than corporate voluntary disclosure.*
 - *Explosion of claims.*
- *The opposition*
 - *GEC*
 - *fraud lobby*
 - *17 out of 22 were multiple offenders.*
- *Constitutionality*
 - *conflict between citizen's act and voluntary disclosure.*
- *Whistleblower incentives*

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Reflection

United States

1968	1979	1986	2002
First	1989	False	S-O
Amendment	1994	Claims	
<i>Whistleblowers Protection</i>			

Australia

1993., 2002
State and Federal Acts

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Reflection

- *The real versus the nominal*
- *Discrimination*
 - *unobservable*
 - *observable*
- *Australia*
 - *Governance risk (network)*
 - *Inverted loyalty*
 - *Immaturity*
 - *Regulatory risk*
 - *The market based approach*
- *No amount of legislation will substitute⁵ for basic integrity.*