

OUR REFERENCE

DIRECTOR'S CHAMBERS

YOUR REFERENCE

DATE

20 September, 2016



Elspeth Dyer
Committee Manager
Committee on the Independent Commission Against Corruption
Parliament of New South Wales
Macquarie St
Sydney 2000

Dear Ms Dyer

Review of the Inspectors Report to the Premier: The Inspector's review of the ICAC

I refer to the questions taken on notice during my evidence to the Committee on 8 September 2016. I am now in a position to advise the Committee on the matters raised about the prosecution of Murray Kear.

The summary proceedings against Mr Kear for an offence contrary to section 20(1) of the *Public Interest Disclosure Act* 1994 commenced in the Local Court on 12 October 2015. The proceedings were heard over 3 weeks, initially until 16 October 2015 and then from 8 February 2016 to 19 February 2016 when the evidence concluded. Judgment was delivered on 16 March 2016 and a costs application was heard by the Court on 26 May 2016.

In the period between the October hearing dates and the February dates the defence caused a subpoena to produce documents to be issued to the ICAC. In response to that subpoena the ICAC produced 2 volumes of material comprised of 28 statements and other investigative material such as investigators notes and emails. Of this material, only one of the statements had previously been provided to the ODPP by the ICAC.

Following the award of costs by the Magistrate pursuant to section 213 the *Criminal Procedure Act* 1986 the solicitor, who conducted the hearing, spoke with Deputy Solicitor (Legal) about whether an appeal against the imposition of the order or the quantum of costs ordered was justified in the circumstances. As no appeal was to be lodged in the case the solicitor completed a "Costs Advice" for transmission to the Department of Justice (annexed and marked "A").

Later the solicitor raised with the Solicitor for Public Prosecutions the failure by the ICAC to disclose the material that was subsequently produced under subpoena and suggested that the Memorandum of Understanding (MOU) between the ODPP and the ICAC be amended to provide for a Disclosure Certificate to be completed by the ICAC in summary hearings (as section 15A of the *Director of Public Prosecutions Act* 1986 applies only to indictable offences). On 8 July 2016 the Solicitor for Public Prosecution proposed this change to the MOU with the ICAC. On 2 September 2016 the Solicitor for the ICAC agreed to provide

disclosure certificates in relation to summary offence prosecutions. The MOU is in the process of being updated.

Yours faithfully



Lloyd Babb SC
Director of Public Prosecutions



**Office of the Director of Public Prosecutions –
Costs Advice to Community Relations Division,
Department of Attorney General and Justice**

Name of Accused	MURRAY KEAR
H Number	2015/00060123 ICAC
CASES No	201502930
DPP Officer with carriage address & contact number	F E GRAY 175 Liverpool Street, Sydney [REDACTED]
Court	Downing Centre Local Court (Sydney)
Judicial Officer	G Grogin LCM
Date of Order	26.05.16
Act and Section	Section 213 Criminal Procedure Act 1986 (NSW)
Amount of Order	\$137,494.20
Was this amount	Agreed by parties post costs hearing X Ordered by Court after argument?
Were the Attorney's rates applied	Less (ie 2010 rates stipulate \$2400+GST for sol per day and \$1800 per day +GST for junior counsel) Total charged per day for instructing solicitor and solicitor advocate was \$4000.00
Number of court days that the costs order relates to	18 hearing days, 3 mentions (note ROS not charged for)
Accused Lawyer's name and address	Ben Jamieson Suite 101 Level 1 281 Elizabeth Street SYDNEY NSW 2000
Counsel / Solicitor Advocate	Greg Goold
Reasons Costs were ordered	
Prosecution Adjournment	<input type="checkbox"/> Witness Unavailable <input type="checkbox"/> Brief/evidence not served/partially served or late <input type="checkbox"/> Incorrect charge or new/additional charge laid <input type="checkbox"/> Prosecution not briefed or not ready <input type="checkbox"/> Unreasonable delay
Charges Withdrawn	<input type="checkbox"/>
Case Dismissed	No reason given

	<p>X Failure to investigate/investigate properly or evidence not obtained – re costs being awarded per s214(1)(a), (b) and (c)</p> <p>No prima facie case/no reasonable prospect of conviction</p> <p>X Other – re substantive matter Accused discharged the onus on him. Refer attached decision.</p>
Is the reason this costs order was made substantially the fault of the Police	Yes (ICAC in lieu of police)
Attachments	X Judgment and order

Signed:

(Name)

Fiona Gray

Date:

26 May, 2016