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To: "ICACCommittee" <ICACCommittee@parliament.nsw.g...
Date: 3/06/2009 11:38 am
Subject: RE: ICAC Committee hearing - proof transcript for correction

Committee on the Independent Commission Against Corruption Secretariat
Legislative Assembly
NSW Parliament, Macquarie St,
Sydney 2000
RE: ICAC Committee hearing

I refer to my appearance before this Honourable Parliament of NSW Committee of the Independent Commission against Corruption at 4:00 PM on 11 May 2009.

I was asked to provide a response to a proposal to narrow the aim of using compelling evidence solely for disciplinary purposes by making an insertion in the Independent Commission Against Corruption Act to the effect that evidence obtained under compulsion from the ICAC could be only used in disciplinary proceedings, and that evidence gained in disciplinary proceedings, together with the evidence gained from the ICAC could not be used either directly or indirectly in other proceedings.

The proposal has the effect removing the prohibiting use, in disciplinary of compulsorily obtained evidence provided under objection to the Commission contained in s37 of the Independent Commission against Corruption Act.

I would respectfully submit whilst the proposal may work as a draft amendment to achieve a derivative use of such evidence in further proceedings; the proposal should be rejected as it is contra to the central aim of Independent Commission Against Corruption Act 1988, that is, to expose and prevent corruption involving or affecting public authorities and public officials

The effect of the proposal may discourage full and frank disclosure of information by witnesses which in turn would not fulfil the objectives of the Act. It may lead to some witnesses attempting to conceal or destroy evidence relating to an disciplinary manner peripheral to an inquiry and consequentially may impede an investigation.

S37 (3) offers protection of inadmissibility of such evidence in disciplinary proceedings. The effect of this protection is to encourage full and frank disclosure of information by witnesses which in turn fulfils the objectives of the Act.

With no shield to protect a witness from reprisal from others in the work place, one may be very reluctant to come forward and tell the truth to ICAC for fear of having the transcript used in their own disciplinary proceedings against them.

A witness may prefer the risk of contempt proceedings for saying he is "unable to remember" against the outcome of giving evidence which will be marshalled against him in a disciplinary action.

It may inhibit witnesses from being honest or cooperative. Rooting out systemic corruption is a principal object of ICAC then there is a little justification for making that task any more difficult than it already is. To fast track the method of dismissal to deal with the discipline of public servants

The NSW Government agency that deals disciplinary matters are governed by the Public Sector Employment and Management Act 2002.

In **Bigg and Anor v NSW Police Service** unreported IRC Full Bench 31 March 1998 it was observed :

The police service as a discipline force with statutory duties powers and capabilities has been subject to industrial procedures different to those applying to the General public and to those who were otherwise employed in the public service.

No one wants to see a corrupt public servant hide behind the shield of the objection and obstructing the recovery of money or assets fraudulently obtained from the State. However legislatively removing the shield would impact adversely on procedural fairness in the way ICAC conducts its investigations.

The Public Sector Employment and Management Act 2002, the Criminal Assets Recovery Act 1990 and or the Confiscation of Proceeds of Crimes Act 1989 in addition to the exhaustive and extensive information gathering powers under the ICAC Act, would weed out and effectively discipline a corrupt public servant whilst preserving procedural fairness in the inquiry

The power given to the inquirer can be very easily abused. Careful supervision is needed by this committee. I draw the committee to Mr Nick Griener comments , the then Premier when Mr Tempy was the first ICAC Commissioner. He said :

" I want to make it perfectly clear that the establishment of the ICAC was not a political stunt nor was it set up to pillory his political opponents or engage in political witch hunts".

The Premier however went on to refer 70 matters of alleged Corruption to ICAC of the former Unsworth and Wran governments .It is less therefore desirable to expose such witnesses to such breaches of procedural fairness .

In 1993 of course Mr Griener was investigated himself by the ICAC for giving Mr Terry Metherill a five year \$100,000 position with the Department of the Environment

The privilege against incrimination is a fundamental civil right. Diminish those rights of ICAC witnesses may result in procedural unfairness.

I would be happy to provide further details of the above should this honourable committee require the same.

Peter McGhee.
Acc Spec Adv