

At page 15 of the transcript I took on notice questions from the Hon Richard Amery concerning when the Director of Public Prosecutions (DPP) provided advice to the Commission concerning the prosecution of Ms Angela D'Amore and when the Commission posted that advice on its website. Having now reviewed the relevant file I am able to respond as follows.

The Commission's report on this investigation was published in December 2010. The report contained a statement pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* that the Commission was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms D'Amore for the common law offence of misconduct in public office.

A brief of evidence was compiled and sent to the Office of the DPP (ODPP) in March 2011.

In accordance with Commission policy, information on the Commission's website relevant to the prosecution recommendations for this investigation was updated to indicate that the matter was under consideration by the DPP. The Commission does not provide a running update on its website of its communications with the ODPP. The Commission only updates the website once the Commission has accepted the advice of the DPP whether or not to commence a prosecution.

Following the Commission's response to requisitions issued by the ODPP, the ODPP advised the Commission in September 2011 that the ODPP was of the view that there was evidence to charge Ms D'Amore with an offence under s 178BB of the *Crimes Act 1900* of obtaining a benefit by a false or misleading statement. This advice was subject to the Commission obtaining further specified evidence in admissible form in relation to five matters.

By April 2012 the Commission had obtained and provided to the ODPP the required admissible evidence in relation to three of the matters but had been unable to obtain admissible evidence in relation to the remaining two matters. There were then further communications between the Commission and the ODPP as to whether other steps could be taken to obtain the required evidence in admissible form.

On 3 September 2012 the ODPP advised that it considered there was insufficient admissible evidence to prosecute Ms D'Amore. This advice appears to have been provided on the basis that a particular witness, when approached by the Commission, had refused to provide a statement to the prosecution or give evidence in any prosecution involving Ms D'Amore and because of the absence of evidence in a form admissible in criminal proceedings establishing who had signed the relevant claim forms.

The Commission does not automatically accept ODPP advice on every matter. Advice received on each matter is considered by the Commission and a decision made whether or not to accept the advice. If the Commission believes that the basis on which the advice is given is unclear or that not all relevant considerations have been taken into account then the Commission may seek clarification or review of the decision.

After considering the ODPP response in this matter, the Commission wrote to the ODPP seeking clarification as to the basis on which the ODPP did not consider there was sufficient admissible evidence to prosecute.

The ODPP replied on 24 December 2012 advising that the matter had been subject to further examination by the "Director's Chamber" and identified further information sought by way of requisitions before the ODPP took "a settled position". The further information involved obtaining statements from three people and CCTV footage.

The Commission approached each of the three people but they all declined to provide statements. The Commission also ascertained that the CCTV footage sought by the ODPP was no longer in existence. The outcome of these enquiries was communicated to the ODPP in March 2013.

The Commission received further advice from the ODPP on 15 May 2013. The ODPP advised that although there was evidence to establish one offence under s 178BB of the *Crimes Act 1900* against Ms D'Amore, any prosecution would depend upon the evidence of a particular witness who had refused to provide a statement in admissible form. In the absence of such a statement, in order for any prosecution to proceed, it would be necessary for the DPP to succeed in an application under s 187(1) of the *Criminal Procedure Act 1986* to dispense with service requirements of a witness statement from the particular witness. The ODPP advised that proceedings against Ms D'Amore should not be commenced.

The ODPP response was given further consideration by the Commission. The Commission ultimately considered that, given the stated position of the ODPP, there was little point in making further representations to the ODPP or in yet again approaching the particular witness for a statement. In these circumstances the Commission accepted the ODPP advice.

The Commission updated the information on the Commission's website relevant to the prosecution recommendations for this investigation to note that the Commission had accepted the DPP's advice not to proceed. This was done on 25 November 2013.

It is Commission policy not to directly notify affected persons of progress in relation to prosecution recommendations. This policy is referred to on the Commission's website. Information on the status and outcome of prosecution matters is published on the Commission's website as well as in its annual reports. Persons who are affected by or have an interest in relevant recommendations may (and do) contact the Commission to ascertain whether there has been any change in the status of particular recommendations. The Commission provides information in response to such requests.

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