



SHOULD NEW CRIMINAL OFFENCES BE CREATED TO IMPROVE PROSECUTIONS FOR CORRUPT CONDUCT?

MEDIA RELEASE

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This is one of the key questions to arise from a current inquiry by the Committee on the ICAC, which has examined the ICAC's principal functions; the effectiveness of relevant processes and procedures of the ICAC and the Director of Public Prosecutions; resourcing; and whether there is a need to create new criminal offences to better capture corrupt conduct.

In a discussion paper released today the Committee canvasses reforms that would make it easier to prosecute corruption offences, including by enshrining current common law offences such as misconduct in public office in the Crimes Act, and reversing the onus of proof for the offence of receiving corrupt commissions under the Crimes Act.

The Committee heard that current common law offences can be difficult to prosecute and that codifying the offences would provide the community and the public sector with a clear statement of the elements of these offences, the potential penalties they can attract, and the ability to prosecute more minor matters in the lower courts.

Another proposal to improve prosecutions was to reverse the onus of proof for the offence of receiving corrupt commissions under the Crimes Act, and give protection against self-incrimination for witnesses who assist with prosecutions for the offence. This would make it easier to prove corrupt commissions offences, which are secretive and difficult to prove.

As Chair of the Committee, Mr Greg Smith SC MP, explains "the proposal to reverse the onus of proof for the offence of receiving corrupt commissions raises important questions around how we can maintain an appropriate balance between facilitating prosecutions and preserving the presumption of innocence."

Also examined in the discussion paper was the question of whether the ICAC's current functions should be changed to emphasise gathering evidence for prosecutions. Mr Smith explained that this change would not be in keeping with the ICAC's role as an investigative body.

"Requiring the ICAC to focus primarily on gathering evidence for prosecutions would be inconsistent with the ICAC's wide coercive powers."

The Committee has released the discussion paper to prompt further consideration of areas for reform, with a view to recommendations being made to Government in a future report following the 2015 state election.

For further comment please contact Mr Greg Smith SC MP on 02 9877 0266