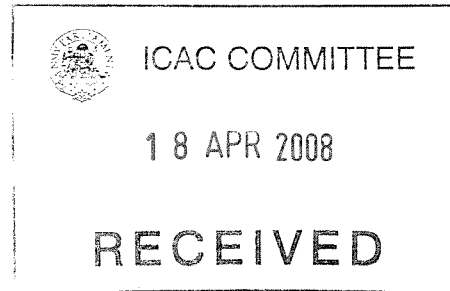




ICC 212
C08/218

INDEPENDENT COMMISSION AGAINST CORRUPTION

Mr Frank Terenzini MP
Parliament House
Macquarie St
Sydney NSW 2000



Dear Mr Terenzini

RE: MEMORANDUM OF UNDERSTANDING BETWEEN THE ICAC AND THE DPP

I enclose for the information of the Committee a Memorandum of Understanding between the ICAC and the DPP which was signed on 12 December 2007.

The previous MOU was reviewed during 2007, in consultation with the DPP's office, to address issues such as delays in the provision of advice about proposed prosecutions and a perceived lack of effective communication between our offices.

The main changes to the MOU are:

- (1) Sections 2(b)(i) and (ii) have been re-drafted to emphasize that the ICAC will provide quality briefs in a timely manner, and that the ODPP agrees to assign a senior lawyer to review those briefs in a timely and efficient manner.
- (2) The new sections 3-10:
 - provide a clear distinction between admissible and background (non-admissible) information, and require admissible evidence to be provided to the DPP in a separate volume;
 - provide a clear distinction between the processes to be followed for summary (time-limited) and indictable offences;
 - detail the matters that the ICAC case lawyer's summary report should contain;
 - specify that the ODPP will assign a senior lawyer to a brief referred by the ICAC and advise the ICAC of the name of that lawyer within two weeks of the receipt of the brief.
 - specify that the assigned lawyer will arrange a conference with relevant ICAC officers within four weeks of the receipt of the brief;
 - provide that issues arising from the brief will be discussed at that conference, including whether any requisitions will be issued;
 - require a timetable to be agreed for the issuing of and response to the requisitions and, if no requisitions are to be issued, require a timetable to be agreed for the furnishing of advice by the ODPP.

- (3) A new section has been drafted (section 11) to provide a more streamlined process for consideration of charging where a person has indicated that they intend to plead guilty.
- (4) The main change to the sections on requisitions (section 13 to 16) is that they now specify that requisitions will be issued only after a conference has taken place between ICAC officers and the relevant officer of the ODPP in accordance with the revised MOU.
- (5) The previous MOU already had appropriate time limits in place, e.g. that advice would be provided by the ODPP within 6 weeks of the receipt of responses to requisitions by the ICAC. The main problem had been that these time limits had not been enforced by either party to the MOU. The regular liaison meetings between the Deputy Commissioner and the Managing Lawyer of ODPP Group 6 (referred to below) are intended to monitor issues like this
- (6) The official points of contact will now be the Deputy Commissioner of the ICAC and the Managing Lawyer for ODPP Group 6. These officers, as well as liaising about specific matters as they arise, will meet at least once every two months to discuss the progress of prosecutions generally.

I have informed the DPP that this MOU will be reviewed after 6 months to assess how effective it has been in dealing with the issues of delay and inadequate communication and liaison between our offices.

Yours sincerely



Hon. Jerrold Cripps QC
Commissioner

11 April 2008

MEMORANDUM OF UNDERSTANDING

1. This Memorandum of Understanding ("MOU") is made on the 12th day of December 2007 between the Independent Commission Against Corruption ("the ICAC") and the Office of the Director of Public Prosecutions ("ODPP").

PURPOSE

2. The purpose of this MOU is to set out in general terms the responsibilities of the ICAC and ODPP in relation to:

- (a) the furnishing by the ICAC to the ODPP of admissible evidence obtained as the result of ICAC investigations, pursuant to its function under section 14(1)(a) of the *Independent Commission Against Corruption Act 1988* (the ICAC Act); and
- (b) liaison arrangements between the ICAC and ODPP to ensure that:
 - (i) any evidence furnished by the ICAC to ODPP is provided in a timely manner and presented in an orderly, comprehensive and accurate form;
 - (ii) the ODPP assigns an appropriately senior officer to consider such evidence in a timely and efficient manner.

FURNISHING OF EVIDENCE

3. The ICAC will provide copies of statements, exhibits and any other relevant admissible material to the ODPP, together with a covering letter outlining what charges have been identified by the ICAC as being open on the evidence and a case lawyer's summary report which outlines the evidence obtained during the ICAC investigation and any relevant legal and evidentiary issues.

In a separate volume or volumes, the ICAC will provide copies of information that is not admissible but contains relevant background information and indications of what evidence a witness who has declined to provide a statement might provide if called to give evidence. This material will include:

- transcripts of any compulsory examinations or public inquiries conducted by the ICAC in relation to a matter which are not admissible against the person being questioned because that person has been directed to answer after a claim of privilege against self-incrimination;
- exhibits a person has been directed to produce after a claim of privilege against self-incrimination; and
- the ICAC's public investigation report.

In determining what background information should be provided, regard should be had to the DPP's duty of disclosure to the defence.

The case lawyer's summary report should:

- identify any known or expected difficulties of proof;
- identify which witnesses have indicated that they are willing to give evidence, and particulars of the manner in which this willingness was conveyed to the ICAC;
- identify which witnesses have indicated that they are not willing to give evidence and particulars of the manner in which this unwillingness was conveyed to the ICAC;
- identify and explain the significance of the documents included in the brief (preferably in the form of a table attached to the case lawyer's report);

- advise if there is any particular urgency, and, in the case of matters in which summary charges are considered appropriate, advise of the last date on which proceedings can be instituted.

SUMMARY OFFENCES

4. In matters in which the ICAC indicates in its covering letter that the available charges are time-limited summary offences, within six weeks of the ODPP receiving the material referred to in paragraph 3, the ODPP will advise the ICAC if criminal charges are available or will provide a progress report. Where charges are available, the ODPP will identify them and provide the appropriate wording for the CANs and a statement of facts.

5. Where potential offences are summary offences, the ICAC will ensure that the documentation referred to in paragraph 3 is provided to the ODPP as soon as practicable and the ODPP will ensure that the advice as to whether any criminal charges are available is rendered in a timely manner, allowing the ICAC sufficient time for an ICAC officer to take out a CAN in accordance with the advice.

INDICTABLE OFFENCES

6. Upon receipt of the documentation referred to in paragraph 3, the ODPP will assign the matter to an appropriately senior ODPP lawyer. The ODPP will advise the ICAC of the name of the lawyer to whom the matter has been referred, his/her telephone number and other contact details within two weeks of the receipt of the documentation, and the assigned lawyer will arrange a conference with relevant ICAC officers within four weeks of receipt of the documentation.

7. At the conference, the ODPP lawyer and relevant ICAC officers will discuss any issues arising from the brief, including whether any requisitions will be issued. If requisitions are to be issued, a timetable for the issuing of requisitions, the answering of requisitions and the furnishing of advice

by the ODPP as to whether criminal charges are available will be agreed. If no requisitions are to be issued, a timetable for the furnishing of advice by the ODPP will be agreed.

8. The timetable agreed will be confirmed in writing by the ODPP to the ICAC case lawyer.

9. Any variation to this timetable, including any requests for further requisitions, should be raised by the DPP lawyer by way of initial discussion and then confirmed in writing.

10. Where the ODPP advises that criminal charges are available, the ODPP will identify them and provide the appropriate wording for the CANs and the statement of facts.

INDICATION OF EARLY GUILTY PLEA

11. In cases where ICAC officers have been advised that a person who has been the subject of an investigation by the ICAC wants to plead guilty, a brief of evidence may be provided that does not include all of the information referred to in paragraph 3. In such cases, the ICAC will provide a more streamlined brief consisting of whatever material is then available, as long as such material sufficiently identifies the offence/s which the ODPP will be asked to consider.

12. In cases where there are co-offenders, and a plea of guilty is being offered on the basis that evidence will be given against other offenders and recognition sought for such cooperation on sentence, ICAC officers will also provide the evidence then available in respect of the co-offenders, a detailed summary of that evidence, and an indication of how the cooperation offered would assist in the prosecution of such co-offenders, but will not be required to provide full briefs of evidence in respect of all such possible co-offenders at the time of the consideration by the ODPP of the proposed guilty plea.

REQUISITIONS

13. Upon receipt of the material referred to in paragraph 3, and after the conference referred to in paragraph 7, the ODPP may raise requisitions, in writing, identifying any additional evidence or other material required to be obtained by the ICAC.

14. The ICAC will obtain additional evidence as requested by the ODPP. If any questions of law arise, clarification and advice will be sought from the ODPP, preferably through another conference.

15. Where a prospective witness has refused to sign a statement in admissible form, the ICAC will provide:

- a copy of the transcript of that witness' evidence before the ICAC;
- a statement from the ICAC officer who attempted to obtain the statement.

16. Where the ODPP after receiving a response to requisitions, has raised additional requisitions necessary to complete the brief of evidence, the ODPP advice as to the charges to be laid, as a general rule, will be provided within six weeks of receiving the additional material, or the ODPP will provide a progress report prior to the expiration of the six weeks, indicating the date by which it is expected the advice will be provided.

INSTITUTING A PROSECUTION

17. If, after consideration of the advice of the ODPP, the ICAC is of the view that other charges (based on the same evidence) are preferable to those advised by the ODPP, the ICAC will consult with the ODPP regarding the laying of those CANs.

18. Upon receipt of appropriate wording for the CANs and statement of facts and a decision by the ICAC to proceed, an ICAC case officer will prepare CANs and then proceed to issue the CANs, obtain a date and serve the CANs upon the Defendant. Prior to obtaining a date for the CANs, the

ICAC case officer will consult with the ODPP about a suitable return date. If for any reason CANs are not served within four weeks of receipt of the ODPP's advice to prosecute (or such shorter period as is appropriate where statutory time limits apply), the ICAC will advise the ODPP in writing of its intended action.

19. The ICAC will file the affidavit of service and court copy of the CANs with the registry of the relevant court and advise the ODPP when this has been done.

20. The ICAC case officer will provide a copy of the CANs and the affidavit of service to the ODPP lawyer within three working days of service.

21. The ODPP will appear on the return date of the CANs.

22. The ODPP will specify in writing to the ICAC the documents required to be included in the brief of evidence to be served upon the defendant.

23. The ICAC case officer will prepare the s75(a) notice and serve it and a copy of the brief of evidence in accordance with the orders made by the Court. A copy of the s75 notice as served on the defendant will be provided by the ICAC officer to the ODPP lawyer with carriage of the matter within three working days of service upon the defendant.

24. The s75 notice will specify the documents and other contents of the brief of evidence through a detailed description.

COSTS

25. The ICAC is responsible for meeting the expenses of security arrangements for ICAC witnesses who are the subject of witness security arrangements.

26. The ODPP is responsible for meeting the cost of witness expenses for those witnesses who are not the subject of witness security arrangements. These expenses include travel costs in all prosecutions conducted by the ODPP and any order for costs to be paid to the defendant if the prosecution fails.

27. The ICAC will bear the costs relating to the investigation of the charge and the obtaining of evidence.

28. The ODPP and the ICAC may make arrangements for the sharing of costs associated with the preparation of evidence for trial.

29. The ICAC will be responsible for arranging for the attendance of witnesses at the hearings. The ODPP will provide the ICAC with information, updated as necessary explaining payment of costs and related matters. The ICAC will forward relevant aspects of this information to witnesses.

SUMMARY HEARINGS, COMMITTAL AND TRIAL

30. The ODPP will provide subpoenas to the ICAC within an adequate time to permit the ICAC to attend to service.

31. The ODPP lawyer with the carriage of a prosecution will meet with relevant ICAC officers at least two weeks before the trial of the matter is due to commence to discuss witness attendance and the exhibits that will be required at trial.

32. The ICAC is generally responsible for the storing and transporting of ICAC exhibits and original documentation. Where such exhibits or documentation are provided to the ODPP prior to trial, the relevant ODPP lawyer will issue a receipt to the ICAC and will be responsible for the safe custody of the exhibits and documentation prior to their tender into evidence or return to the ICAC. The ODPP lawyer will place the receipt on the ODPP file together with a note indicating the location of the items and documentation.

POINTS OF CONTACT

33. The official points of contact, and the points of contact for all matters of a serious or sensitive nature, will be the Deputy Commissioner of the ICAC and the Managing Lawyer for ODPP Group 6.

34. As well as liaising in respect of specific issues that might arise, these officers will meet at least once every two months to discuss the progress of preparation of advice by ODPP lawyers and the progress of responses to requisitions by ICAC officers.

35. The usual points of contact for each prosecution will be between the relevant ODPP lawyer and the ICAC case lawyer.

36. When the ICAC works jointly on investigations with another investigative body or bodies, an officer from the ICAC will be nominated to be the contact officer in relation to the answering of requisitions and the collation of the brief of evidence.

37. The address for all correspondence between the ICAC and the ODPP is:

To the ICAC:

The Solicitor to the Commission
Independent Commission Against Corruption
DX 557 SYDNEY
ATTENTION:(name of ICAC case lawyer)

To the ODPP:

Solicitor for Public Prosecutions
Office of the Director of Public Prosecutions
DX 11525 SYDNEY DOWNTOWN

ATTENTION: The Managing Lawyer, Group 6

GENERAL MATTERS

38. In circumstances where the ICAC considers it appropriate to place before a sentencing judge information relating to the significance and usefulness of an offender's assistance to the ICAC (i.e. *Crimes (Sentencing Procedure) Act 1999* s.23), the ICAC will make the information known to the ODPP and the defence as soon as practicable prior to the day of the hearing. Access to the information prior to or on the day of the hearing will only be given in the presence of an ICAC officer and, subject to contrary arrangements in particular cases, will be given on ODPP premises.

39. The ODPP will notify the ICAC of all proceedings brought under the *Confiscation of Proceeds of Crime Act 1989* where such proceedings relate to a prosecution instituted as the result of an investigation conducted by the ICAC in the exercise of its functions.

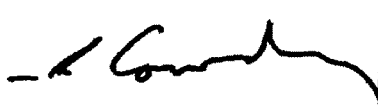
MOU TO BE BROUGHT TO ATTENTION OF RELEVANT STAFF

40. The ICAC and ODPP agree that all staff who are involved in the preparation or consideration of briefs of evidence covered by this MOU should be made aware of the terms of the MOU. All new officers commencing at either office who will be involved in the preparation or consideration of such briefs will be made aware of the terms of the MOU.



The Hon Jerrold Cripps QC
Commissioner, ICAC

31.12.07



N R Cowdery AM QC
Director of Public Prosecutions

12.12.07