

**Submission
No 3**

**PROSECUTIONS ARISING FROM INDEPENDENT
COMMISSION AGAINST CORRUPTION
INVESTIGATIONS**

Name: Mr Harvey Cooper AM

Date Received: 29/07/2014



25 JULY 2014

Greg Smith SC MP,
Chair,
Committee on the Independent Commission against Corruption,
Parliament of NSW,
Macquarie Street,
SYDNEY NSW 2000

Dear Sir,

Prosecutions arising from ICAC Investigations (Ref. D14/15996)

I refer to your letter of 27th June 2014 inviting me to make submissions to your Committee on the above topic.

I should point out that it is now almost ten months since my term as Inspector of the ICAC ended and that I no longer have access to the records which may have enabled me to offer a more detailed submission.

I do note that most of the matters now under consideration by your Committee were alluded to in paragraphs 34 and following of its Review of the 2011-2012 Annual report of the Independent Commission Against Corruption published in October 2013 which is available to me per the internet.

Since its creation, the role of the ICAC has never been to prosecute those guilty of corrupt conduct, but rather (in the current context) to investigate and expose corrupt conduct in the NSW public sector. It is invested with extensive and intrusive powers to enable it to expose such conduct by the use of means which would be impermissible in a criminal prosecution.

This has the advantage of exposing corrupt conduct which may not otherwise have been disclosed and thereby can assist the preservation of the assets of the NSW public sector from loss. But, in circumstances where the evidence is sufficient to support a finding of corrupt conduct but insufficient to support criminal prosecution, it has the disadvantage that the perception is created that the ICAC is a "toothless tiger" and that wrongdoers are "getting off scot free".

The first question to consider is whether the disadvantages outweigh the advantages. My submission would be that the experience over the past 25 years emphatically answers this question in the negative.

In the first place an incorrect perception can be overcome by adequate explanation. In the second place it must be remembered that criminal prosecution is not the only source of sanctions which may follow a finding of corrupt conduct. Apart from the public humiliation and shame resulting from such a finding, the Australian Tax Office, the NSW Crime Commission, and the Australian Securities and Investment Commission all have powers with

the potential to take action against wrongdoers. In addition, section 114A of the *Independent Commission against Corruption Act* 1988 facilitates the conduct of disciplinary proceedings against a public official in respect of whom a finding is made by the Commission in a report under section 74 that that public official has engaged, or has attempted to engage, in corrupt conduct.

In my time as the Inspector of the ICAC I had no involvement in:

- the gathering and assembling of evidence that may be admissible in the prosecution of a person for a criminal offence;
- consideration of the effectiveness of relevant ICAC and DPP processes and procedures including alternative methods of brief preparation;
- adequacy of resourcing.

Consequently I am unable to make meaningful submissions on the six bullet-point paragraphs of your Committee's terms of reference.

Please let me know if I can be of further assistance.

Yours sincerely,

A large black rectangular redaction box covering the signature of Harvey Cooper AM.

(Harvey Cooper AM) ✓