

**Submission
No 15**

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

Name: Mr Andrew Patterson

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Committee on the Independent Commission Against Corruption
Via Online Submission

Dear Committee,

**Re: Submission to the Inquiry into prosecutions arising from
Independent Commission Against Corruption investigations**

I write to make a brief submission to you on this matter. By way of background I was a Chief Investigator at the ICAC from 2001 to 2004, so I have first-hand experience of the investigation and prosecution processes related to the ICAC.

I state at the outset that I strongly support the work of the ICAC in investigating and exposing corruption in NSW. From personal experience, I believe that the Commission's processes in relation to investigating and exposing corruption work very well. Its activities around corruption prevention and education are also highly effective in my view.

Whilst there has been recent media and public attention around the issue of ICAC prosecutions, in light of some high profile cases, these controversies are certainly not new and were being robustly debated at the time I served at the Commission. For those of us who have served in investigative capacities at the ICAC, the frustration about the delays in criminal prosecution proceedings are well-known. From my own point of view, I was being contacted and subpoenaed for criminal matters well after I had left my employ at the Commission.

I respectfully make the following points in relation to this issue for your consideration:

1. I do not believe there are any changes necessary to the evidential laws around corruption proceedings vis-à-vis criminal proceedings. The ICAC has coercive powers to obtain evidence to expose corruption, powers which contravene our accepted criminal law investigation powers. I believe these powers are absolutely appropriate to expose corruption, but I also support the fundamental principle that a suspect in a criminal investigation should not be compelled to answer all questions in the same manner.
2. I also know from first-hand experience that many ICAC investigations reveal clear and admissible evidence of criminal offences, in addition to the evidence which is only admissible in corruption hearings.

3. I believe that the ICAC should have, aside from its primary role to expose corruption, a role to prosecute criminal offences in those cases where it has obtained sufficient admissible evidence. As stated, I know there are plenty of instances where this occurs.
4. The traditional sticking point with ICAC criminal prosecutions has been the apparent low prioritization given to ICAC cases by the DPP, where, under the current framework, any criminal prosecutions arising from ICAC work must be dealt with.
5. I think it is an accepted adage that justice delayed is justice denied. So the delays, sometimes of years, in the DPP executing the criminal prosecutions arising from ICAC investigations are, in my view, completely unacceptable. I appreciate the DPP have many other pressing concerns, however, this only reinforces my view that changes need to be made.
6. I submit that the ICAC should have its own ability to criminally charge and prosecute offenders where the admissible evidence exists. This would remove the current delays in the process due to the DPP, and enable swift prosecution of criminal matters arising from ICAC investigations, completely separate to the Commission's exposing corruption function.
7. The legislative changes to effect this proposal are minor. I am not suggesting that all ICAC investigators should have the power of arrest or any such radical proposal. Rather, I believe the ICAC should have a distinct legal team which deals with prosecution briefs of evidence. Once the ICAC lawyers are satisfied that they have a criminal brief of evidence for prosecution, then the ICAC Commissioner should have the power to issue a warrant for criminal arrest, and then the NSW Police can effect the arrest, pursuant to the Commissioner's warrant. From that point onwards, the ICAC lawyers conduct all the prosecutorial functions in the criminal courts. This removes the DPP from the process, and enables the ICAC's criminal matters to be prosecuted in a very expeditious manner.
8. My proposal above would probably require some slight additional resourcing, maybe a couple of extra lawyers for the ICAC, but this is a very small impost when compared to the benefit of expedited prosecutions and the public perception benefits this would bring.
9. As an adjunct, to this issue, I strongly believe that there is benefit in a public education campaign around these issues. I know just from talking to my friends, and I do my best to properly inform them, that there is a lot of misunderstanding in the public of NSW as to the differentiation between corruption investigations and criminal investigations. The average citizen has, understandably, difficulty understanding why when a public official or politician is found by the

ICAC to have acted corruptly, they are not automatically and immediately charged with a criminal offence as well.

I thank you for the opportunity to contribute to your deliberations. I would be happy to answer any questions the Committee may have, and I am quite happy for my submission to be included in your public releases.

Yours sincerely,

Andrew Patterson

Former Chief Investigator at the ICAC (2001-2004)