

## **INQUIRY INTO PROPOSED AMENDMENTS TO THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988**

**Organisation:** Crime and Misconduct Commission  
**Name:** Mr Robert Needham  
**Position:** Chairperson  
**Telephone:**  
**Date received:** 18/03/2009

---

# CRIME AND MISCONDUCT COMMISSION

GPO Box 3123  
Brisbane Qld 4001

Level 2, North Tower  
515 St Pauls Terrace  
Fortitude Valley, Qld

Tel: (07) 3360 6060  
Fax: (07) 3360 6333

Toll Free:  
1800 061 611

Email  
mailbox@cmc.qld.gov.au

www.cmc.qld.gov.au



Our Reference: AD-09-0092 / KDA

16 March 2009



Mr Frank Terenzini MP  
Chair  
Committee on the Independent Commission Against Corruption  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Terenzini

**RE: PROPOSED AMENDMENTS TO THE INDEPENDENT COMMISSION  
AGAINST CORRUPTION ACT 1998 (NSW)**

The Commission has been invited to make a submission with respect to the proposed amendments of section 37 of the *Independent Commission Against Corruption Act 1998* (ICAC Act).

It is proposed to remove the restriction on the use in civil and disciplinary proceedings of evidence obtained under objection by the Independent Commission Against Corruption (ICAC). A further proposal is to amend the ICAC Act to make the assembling of admissible evidence for criminal prosecutions a primary function of the ICAC. I will address each proposal in turn.

**REMOVAL OF THE RESTRICTION ON USE**

Section 197(2) of the *Crime and Misconduct Act 2001* (CM Act) provides for a similar provision to the current section 37(3) of the ICAC Act. Although there are no current plans to make submissions to government to amend section 197(2) of the CM Act, the Commission sees some sense in the lifting of the restriction on the use of the evidence with respect to disciplinary proceedings. It has reservations about the utility of removing the restrictions on the use of evidence in civil proceedings.

The reservation is derived from the concern that if evidence could be used for civil proceedings it might be inimical to what is considered as the primary purpose of such hearings, and that is to ascertain the truth. Where a witness would be exposed to significant financial detriment they may be more likely to hide the truth for fear of financial ruin or at least financial distress. Although it is acknowledged that most investigations are primarily aimed at conduct which is criminal or disciplinary in nature the fact is that much of what is both criminal and disciplinary may also give rise to civil liability. Examples include unlawful assaults by police officers on individuals and fraud by employees on public institutions. One can also envisage possible civil suit by third parties arising from some financial disadvantage they have suffered, say as a tenderer, arising from the conduct of the person giving evidence in the hearing.

On the other hand with respect to evidence for the purposes of disciplinary proceedings the worst that can occur is the termination of a person's employment. Although that may have a significant financial impost upon a person in that they may not have any further income from that source that is a far cry from having to pay what may be substantial damages.

Furthermore, at least in Queensland, most public servants are obliged to answer questions upon direction by their employer. The answers given can be used for the purposes of disciplinary proceedings. In most cases the evidence is not able to be used in criminal or civil proceedings either by statutory force or on the basis that the officer had been induced by a direction from a person in authority.

What regularly occurs under the present Queensland regime is that a person is reinterviewed upon direction of their employer after they have finished giving evidence in the Commission. The evidence given in the Commission's hearing forms the basis of that questioning. In effect, it is often a repetition of this officer's evidence before the Commission but it is able to be used for disciplinary proceedings. This is an inefficient use of resources and also involves further stress for the subject officer.

For these reasons the Commission favours that evidence for use in disciplinary proceedings be excluded from the restriction on use.

#### **ASSEMBLING OF ADMISSIBLE EVIDENCE FOR CRIMINAL PROSECUTIONS**

Section 35(1)(h) of the CM Act specifically provides that for its misconduct functions the Commission has the function in conducting or monitoring investigations, of gathering evidence for the prosecution of persons for criminal offences or for the bringing of disciplinary proceedings against persons. We see no objection to such a provision being incorporated within the ICAC Act.

I trust these submissions are of assistance to you.

Yours sincerely



**ROBERT NEEDHAM**  
Chairperson