

**Submission
No 3**

**INQUIRY INTO PROTECTIONS FOR PEOPLE WHO
MAKE VOLUNTARY DISCLOSURES TO THE
INDEPENDENT COMMISSION AGAINST
CORRUPTION**

Organisation: ICAC
Name: The Hon Reginald Blanch AM QC
Position: Commissioner
Date Received: 19 May 2017

Mr Damian Tudehope MP
Chair
Committee on the ICAC
Parliament House
Macquarie Street
SYDNEY NSW 200

17 May 2017

Dear Mr Tudehope

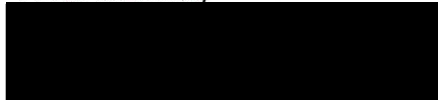
Re: Inquiry into protections for people who make voluntary disclosures to the ICAC

Thank you for your letter of 15 May inviting the Commission to make a submission to the above inquiry.

The Commission's position on this issue is set out in its 1 August 2014 submission to the Committee's inquiry into prosecutions arising from Commission investigations. The Commission is content for that part of the submission dealing with this issue being adopted as the Commission's submission for the present inquiry.

Please let me know if the Committee requires any further information from the Commission.

Yours sincerely


The Hon Reginald Blanch AM QC
Commissioner

Sensitive

Amendment sought to the ICAC Act

Protection for the voluntary supply of information to the ICAC

The Commission recommends that the ICAC Act be amended to include a provision that protects persons from any criminal, civil or disciplinary liability for the voluntary disclosure of information to the Commission where the disclosure was made for the purpose of the Commission's functions.

There are numerous secrecy and confidentiality provisions in legislation under which public authorities operate that have the effect of prohibiting the disclosure of information obtained by a public official in the course of their employment unless that disclosure is for the administration of or a function of operating legislation or is otherwise required by a law.²⁵ A large number of complaints and information accepted by the Commission each year are received directly from public officials who are not required or authorised by law to report or provide that information and in circumstances where the voluntary disclosure of that information is prohibited by a secrecy or confidentiality law. Similarly, private individuals who voluntarily provide information to the Commission may be at risk of incurring civil liability because of contractual or employment undertakings into which they have entered.

Section 109 of the ICAC Act gives limited protection to persons providing information to the Commission, and then only in circumstances where the Commission has exercised its power to

²⁵ See, for example, s 30 *Road Transport Act 2013*, s 71 *Housing Act 2001* or s 257 of the *Crimes (Administration of Sentences) Act 1999*

require or obtain that information.²⁶ This protection is not useful where persons have voluntarily disclosed information to the Commission about corrupt conduct of which the Commission is unaware and not at that time investigating.

Other Australian corruption commissions, to varying degrees, have legislative protection for voluntary provision of information for the purpose of a complaint, report or investigation.²⁷ For example, s 343 of the *Crime and Corruption Commission Act 2001* (Qld) relevantly provides:

343 Information disclosure and privilege

(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a person, whether imposed by any Act or by a rule of law, applies to the disclosure of information to the commission for the performance of the commission's functions.

(2) A person who discloses information under subsection (1) does not, only because of the disclosure—

- (a) contravene a provision of an Act requiring the person to maintain confidentiality in relation to the disclosure of information; or*
- (b) incur any civil liability, including liability for defamation; or*
- (c) become liable to disciplinary action.*

This type of provision is not enacted for the benefit of the Commission in the sense that it cannot be used by the Commission to *require* information from a public official or other person. The benefit of such a provision is entirely for the protection of the person disclosing the information to the Commission.

²⁶ See for example s 93, s 94 and s 109 of the ICAC Act

²⁷ See for example s 220 and s 221 *Corruption and Crime Commission Act 2003* (WA), s 50 *Independent Commissioner Against Corruption Act 2012* (SA)