

**Submission  
No 7**

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

**Organisation:** Office of the Director of Public Prosecutions  
**Name:** Mr Lloyd Babb SC  
**Position:** Director of Public Prosecutions  
**Date Received:** 31 May 2017

OUR REFERENCE

**DIRECTOR'S CHAMBERS**



**ODPP**  
New South Wales

YOUR REFERENCE

DATE

31 May 2017

Damien Tudehope MP  
Chair, Joint Committee on the ICAC  
Parliament House  
6 Macquarie Street  
Sydney NSW 2000

[ICACCommittee@parliament.nsw.gov.au](mailto:ICACCommittee@parliament.nsw.gov.au)

Dear Mr Tudehope

**Inquiry into protections for people who make voluntary disclosures to the Independent Commission Against Corruption (ICAC)**

I refer to your request for submissions in respect of the above inquiry, into whether the law should be amended to protect people from criminal, civil or disciplinary liability if they voluntarily disclose information to the ICAC for the purposes of the ICAC's functions.

I suggest making a provision in the ICAC Act for the taking of Induced statements from witnesses. Apart from the insertion of legislative provisions dealing with the taking of an induced statement, the current protections that are afforded people who make voluntary disclosures are sufficient in my view.

**Current legislative framework in NSW**

There is currently legislation in New South Wales designed to protect people who make disclosures in the public interest of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector (s.3 *Public Interest Disclosure Act 1994* "The PID Act"). The object of the PID Act is to protect people who make disclosures from "detrimental action" (s.3(2)(a) of the PID Act) and from being offered "beneficial treatment" to influence their decision whether to disclose or to withdraw a disclosure (s.3(2)(b) of the PIC Act).

This legislation doesn't protect people from criminal or civil liability however it affords them protection from disciplinary liability in relation to their employment.

The *Independent Commission Against Corruption Act 1988* ("the ICAC Act") contains some relevant provisions. The Attorney General can provide immunity and undertakings with respect to criminal proceedings (s49 ICAC Act, ss32 and 33 Criminal Procedure Act 1986). There are

criminal offences created for disadvantaging a person who assists the ICAC (s93 ICAC Act) or dismissing an employee who assists the ICAC (s94 ICAC Act).

### Submission

A legislative provision permitting the taking of induced statements by the ICAC would encourage voluntary disclosures of corrupt conduct, where the person disclosing the information may be in some way inculpated by the information provided in their statement to the ICAC. Induced statements provide certainty to the maker of the statement that the statement made will not be used against them in criminal proceedings.

I suggest that provisions consistent with the approach taken by the NSW Police under their Code of Practice for CRIME when taking induced statements during an investigation could be created to apply to ICAC investigations.

Yours faithfully

Director of Public Prosecutions