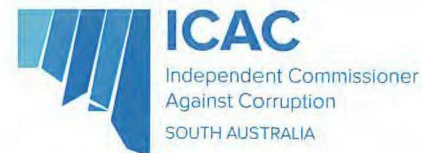


**INQUIRY INTO PROTECTIONS FOR PEOPLE WHO
MAKE VOLUNTARY DISCLOSURES TO THE
INDEPENDENT COMMISSION AGAINST
CORRUPTION**

Organisation: Independent Commissioner Against Corruption - South Australia
Name: Hon. Bruce Lander QC
Position: Independent Commissioner Against Corruption
Date Received: 5 June 2017

OUR REFERENCE NUMBER: A230082
YOUR REFERENCE NUMBER: LAC17/062



2 June 2017

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

By email: ICACCommittee@parliament.nsw.gov.au

Dear Sir

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

Thank you for your invitation to make a submission to the Joint Committee on the Independent Commission Against Corruption's *Inquiry into protections for people who make voluntary disclosures to the ICAC*.

I understand that your inquiry follows a recommendation by the Independent Commission Against Corruption that the *Independent Commission Against Corruption Act 1988* (NSW) be amended to protect people from criminal, civil or disciplinary liability if they voluntarily disclose information to the ICAC for the purpose of the ICAC's functions.

Section 50 of the *Independent Commissioner Against Corruption Act 2012* (SA) (ICAC Act (SA)) provides:

50 – No obligation on persons to maintain secrecy

No obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of a complaint, report, assessment, investigation or referral under this Act, except an obligation or restriction designed to keep the identity of an informant secret.

The primary statutory objects of my office are to investigate serious or systemic corruption in public administration and, in relation to serious or systemic misconduct or maladministration in public administration, to refer it to an appropriate body to be dealt with in accordance with my directions, or to deal with it myself using powers given to me by statute.

The Office for Public Integrity (OPI), which I oversee, has responsibility for receiving and assessing complaints from members of the public and reports from public officers, public authorities and inquiry agencies.

Each complaint or report received by the OPI is assessed as one of the following

- A matter raising a potential issue of corruption in public administration
- A matter raising a potential issue of misconduct in public administration
- A matter raising a potential issue of maladministration in public administration
- A matter raising other issues that should be dealt with by an inquiry agency, public authority or public officer
- A matter warranting no further action.

In the main, the matters which I investigate, and the matters which I refer to other agencies to be investigated or otherwise dealt with, originate from those complaints and reports received by the OPI.

Members of the public who make complaints to the OPI are entitled to make those complaints, but are not obliged to do so.

Public officers are obliged to report to the OPI any conduct that the public officer reasonably suspects raises a potential issue of corruption or serious or systemic misconduct or maladministration in public administration. They may voluntarily report conduct that they suspect raises a potential issue of misconduct or maladministration that is not serious or systemic.

Experience shows that reports from public officers are more likely to give rise to some sort of action than complaints by members of the public.

Public officers have an insider's view of public administration: generally they know what should be done in the areas in which they work, and therefore are well placed to identify wrongful conduct when it occurs.

Nearly all South Australian public officers are subject to confidentiality or secrecy requirements of some kind which govern the extent to which they can communicate or use official information. In many instances, those confidentiality requirements are found in legislation and are associated with provisions that criminalise the unauthorised communication of official information. In many instances, public officers may not communicate official information contrary to codes of conduct, and they may be liable to disciplinary action if they do so.

It is not possible to state with precision the extent to which s 50 has been relied upon by public officers who make reports whether under compulsion or otherwise. Nevertheless, I am in a position to make some observations drawing on the experience of the OPI.

I have been advised that persons who have been potential reporters to the OPI or persons from whom the OPI has sought information have sometimes expressed their concern about whether they were prohibited from providing confidential work-related information to the OPI. Those people are directed to s 50 of the ICAC Act (SA) for their consideration.

I think that a provision such as s 50 ICAC Act (SA) encourages the appropriate disclosure of useful information to an integrity agency by conscientious public officers. That should be encouraged, even if it means a relaxation of secrecy and confidentiality requirements otherwise owed by potential reporters.

Although the section releases public officers from an obligation to maintain secrecy except in the case of informants, it does not in its terms confer an immunity upon the reporter against civil or criminal liability.

No doubt a reporter would claim the section in his or her defence, but it is probable the defence could only extend to a prosecution or a claim that a reporter failed to comply with an obligation to maintain secrecy and could not be pleaded to defend against some other claim for the making and the content of the report, such as defamation.

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I think that s 343 of the *Crime and Corruption Commission Act 2001* (Qld) is to be preferred to the South Australian provision to which I have referred.

If I can be of any further assistance to the Joint Committee, please do not hesitate to request that assistance.

Yours faithfully

A large black rectangular redaction box covering the signature of the sender.

The Hon. Bruce Lander QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION