

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

**Organisation:** Parliamentary Inspector of the Corruption and Crime Commission  
of Western Australia

**Name:** Hon Michael Murray AM QC

**Position:** Parliamentary Inspector

**Date Received:** 9 June 2017



**PARLIAMENTARY INSPECTOR**  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA

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8 June 2017

The Hon D Tudehope MP  
Chair  
Joint Committee on the ICAC  
Parliament of New South Wales  
6 Macquarie St.  
SYDNEY NSW 2000

Dear Mr Tudehope,

Committee Inquiry – Protection of Voluntary Witnesses

I make this submission, with my apology for its lateness, resulting from local pressures following the recent state election in W A, in the hope that it may still be of use to the Committee.

I note the current provisions to be found in ss 49 and 50 of the *ICAC Act 1988 (NSW)* which are limited to the provision of an indemnity from criminal prosecution, to undertakings as to the use in evidence of statements made or documents produced, and to the physical protection of persons assisting the ICAC in any way in relation to proceedings before the ICAC of any kind. There appears to be no capacity to protect from civil or disciplinary liability.

It appears that the proposal behind the Term of Reference of the Committee's current inquiry is that persons who voluntarily provide information to the ICAC and who voluntarily assist in any way should not be able to be prosecuted, sued or be the subject of disciplinary processes, not as a matter of discretionary judgment, but absolutely. If that is a correct analysis of the proposition under consideration then, in my opinion it goes too far. It appears that the protection would be available to anyone who chose to come forward to assist an investigation voluntarily, rather than wait until required to do so under compulsion by the Commission.

It would carry with it the danger that the effectiveness of the Commission as an investigative agency, the opinions or findings of which might lead to the exposure of persons guilty of corruption in public office to the punitive and remedial processes of the law, might be substantially compromised for the at times dubious benefit that those who know of corruption might come forward to assist the Commission when they may otherwise be afraid to do so.

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They may fear harm by way of retribution by the guilty parties, reputational harm arising out of public exposure of their association with the guilty parties or harm because they may be exposed to the processes of the law as persons who have been involved as subsidiary offenders in corrupt conduct.

The law provides protection from those who commit the serious criminal offences of harassment, threats of detriment, violent behaviour and unlawfully causing financial damage to a person. Those who are involved in corrupt conduct, when, by the processes of the law and in accordance with the rules of evidence that is established, should not be protected from the consequences of that involvement because, in effect, they voluntarily confess their involvement as well as providing evidence or assistance to expose others to the sanctions of the law for their corrupt conduct.

The difficult area, which requires careful handling if the integrity system is to function effectively, is how witnesses and those otherwise involved in assisting the Commission in its investigations, inquiries or hearings may be protected from reputational and other damage until the process results in findings which it is adjudged need to be made public in the interest of public accountability for corrupt conduct in public office.

In my case, as Parliamentary Inspector, under the *Corruption, Crime and Misconduct Act 2003* (WA), without wearying you by taking you to specific provisions, my investigations and inquiries of a formal kind are always not to be 'open to the public'. The same applies to investigations by the Corruption and Crime Commission (CCC), which is subject to standard secrecy provisions.

Its examinations are, again, 'not open to the public', unless the Commission considers that it is in the public interest to open all, or any part, of a hearing to the public, 'having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements': ss 139 and 140.

Of course, that is a discretionary judgment to be made by the Commission and one may take issue with the correctness of that decision in the circumstances applicable to a particular case or a particular individual. In my view the CCC should always err on the side of privacy because in its case, as in mine, there is a power to refer a matter for investigation and other action to an appropriate authority and the power of public reporting to the Parliament (usually via the Joint Standing Committee) is couched in terms which enable proper public accountability for corruption in public office. If necessary in the performance of my functions or those of the CCC, persons involved in any way in a matter may be named in such a report.

In my view premature publicity of that kind is more likely to dissuade informants from coming forward voluntarily than it will encourage them to identify themselves to the Commission and, as has been seen, there is always, until the investigation is at an end, a real risk of unwarranted damage to the reputation and livelihood or careers of those who may in the end not be proved to be guilty of corrupt conduct or guilty involvement. It should not be forgotten that the public reporting process may expose corruption in public office and provide to the community the assurance of the effectiveness of the integrity agencies at work to reduce or prevent its occurrence while at the same time

maintaining appropriate confidentiality of individuals to protect them from fear of harm to their persons, careers and families and the loss of their reputations.

Yours sincerely,

A black rectangular box redacting the signature of Hon Michael Murray.

**HON MICHAEL MURRAY AM QC**  
**PARLIAMENTARY INSPECTOR**