

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

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Office of the Inspector of the
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Ms Elspeth Dyer
Committee Manager
Parliamentary ICAC Committee

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

Dear Ms Dyer

This letter deals with the second of the matters referred to in my letter dated 23 August 2017. My submissions in relation to the first such matter are set out in that letter.

As I understand it, the Committee is dealing with the adequacy of existing law in protecting persons who make voluntary disclosures to the Independent Commission Against Corruption. I have read the Hansard for the Committee hearings on 7 August 2017, paying particular attention to the evidence of Professor MacMillan and Mr Lander.

The Committee, it seems, is confronted with two similar but distinct issues, as follows:

1. Should the protection now contained in section 109 of the ICAC Act be extended so that a person making a voluntary disclosure to the ICAC of possible corrupt conduct be protected from all forms of liability and reprisal? Both Professor McMillan and Mr Lander argue that it should be. Professor MacMillan suggests, as models, either the Community Services Complaints Review and Monitoring Act 1993 or section 343 of the Queensland Crime and Corruption Commission Act 2001. Mr Landa also supports that section of that Act as a model.
2. Should there be an immunity granted in respect of the underlying corrupt conduct if a person makes a voluntary disclosure of his and others' corrupt conduct to the ICAC?

As to question 1, I agree that the protection in the ICAC legislation should be extended, and I agree also that the current protection is inadequate. I further agree that section 343 of the Queensland legislation referred to provides an appropriate model upon which amendments to the ICAC Act could be based. That provision is in the following terms:

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.*
- (3) To remove any doubt, it is declared that only a person who is an individual may claim self-incrimination privilege under this Act.*

I should point out, as I did in my evidence, that the Defamation Act already provides a protection for persons who make disclosures to the ICAC. Specifically, it creates a defence of absolute privilege of the same nature that protects parliamentarians from liability for such disclosures. See Defamation Act 2005 section 27 & Schedule 1, clause 19. A similar protection appears in section 343 of the Queensland legislation.

As to the second question, whether persons actually involved in corrupt conduct should receive an immunity in respect of that corrupt conduct, my unequivocal answer is no. That is the answer also given by Professor MacMillan in his evidence before the Committee on 7 August 2017. It is extremely dangerous to create a legislative protection for such matters. They must be left to the appropriate authority, in this case the ICAC or the Director of Public Prosecutions, to determine whether, given the disclosure made by the person, they should be protected from prosecution for the actions they have engaged in. It is impossible because of the range of relevant factors to predict in advance whether such granted immunity is appropriate and it must be left to the authorities who actually have to deal with the issue.

Yours sincerely,



Bruce McClintock SC
Inspector, Independent Commission against Corruption.