

**Submission
No 3**

**REPUTATIONAL IMPACT ON AN INDIVIDUAL BEING ADVERSELY
NAMED IN THE ICAC'S INVESTIGATIONS**

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Partially
Confidential

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To: icaccommittee@parliament.nsw.gov.au

Subject: Committee on ICAC discussion paper ** Confidential**

Attention: Mrs Tanya Davies MP
Chair Committee on ICAC

Subject: Discussion paper – Reputational impact on an individual being adversely named in an ICAC investigation.

ICAC Inquiry: The ICAC Inquiry to which I refer is Operation Jasper....Inquiry into the grant of the Mount Penny coal exploration licence to Cascade Coal Pty Ltd

My Name: My name is John Alan Kinghorn of Mosman NSW Australia. I am now retired I was founder and majority shareholder of Allco Leasing Group Limited, of RentWorks Limited and of RAMS Home Loans Limited. I was active in the coal mining industry for some 40 years in Australia, Indonesia and India. I had been a shareholder/director of a number of public and private companies including White Industries Limited, Ulan Coal Mines Limited, Felix Resources Limited, Cascade Coal Pty Ltd and White Energy Company Limited.

Preamble: As mentioned, I was a director and shareholder of Cascade Coal Pty Ltd, the successful tenderer for a number of coal exploration licences in NSW. One of those exploration licences was for the Mount Penny coal area in Western NSW. The tender was a normal tender managed by the then Department of Mineral Resources. ICAC reviewed and had no concerns with the tenders or the tender process.

After approx. \$70m of exploration expenditure, the other areas were found to be not viable. However it transpired that the Mount Penny coal lease contained an excellent deposit of high grade steaming coal. Some 3 years after award of the Exploration Licence, after completion of exploration and upon development of a mine plan, Cascade Coal received a \$500m takeover offer by White Energy Company Limited (WEC), a listed public company. I was a director of WEC, declared my conflict of interest and withdrew from all negotiations.

At the time of lodging the tender, we did not know that the farming land the subject of the Mount Penny mining lease, was owned, and had been owned for some years, by interests associated with the Obeid family. The patriarch of the Obeid family, Eddie Obeid, had been a minister in the prior NSW 'Labor' government.

It is not possible to operate a coal mine without access to the mine. Usual practice is to purchase the land the subject of the coal lease. Cascade Coal entered into financial arrangements with the Obeid family to purchase the land the subject of the exploration licence. The financial arrangements were consistent with normal industry practice.

The Obeid family stood to make a significant profit. We understand this was galling to certain members of the Government.

I was served a notice to attend and give evidence at an ICAC Inquiry into the grant to Cascade Coal of the Mount Penny exploration licence. The inquiry was a private inquiry.

I was subsequently given notice to again attend and give evidence at an ICAC inquiry into the same matter but this time the Inquiry was to be a 'public' inquiry.

During the ICAC Inquiries

- ❖ Lack of procedural fairness
 - I thought I was attending the Inquiries as a witness. I was not aware that ICAC was seeking to prosecute me.
 - My Counsel and I were shut down by the Commissioner [REDACTED] and the Counsel Assisting (Geoffrey Watson) whenever we wished to make a statement or had a question.
 - My Counsel and I were denied any opportunity to question or cross examine.
 - I was not permitted to explain my reasons for my actions.
 - I was not permitted to confer with other witnesses.
 - Because I could not get a hearing, I lodged a written submission detailing the background and reasons for my actions. After reading the submission, Counsel Assisting (Geoffrey Watson) deemed it non-admissible. With hindsight, my submission was not admitted as it did not support ICAC's preconceived agenda.
 - ICAC (both Commissioner [REDACTED] and Counsel Assisting Geoffrey Watson) had a preconceived agenda. My evidence was ignored whenever it contradicted ICAC's preconceived agenda.

- ❖ ICAC sought sensationalist publicity. At the public Inquiry
 - Before each session, Watson would give a private briefing to Kate McClymont of the Fairfax Press
 - At the close of each day, Watson would give general TV and Press briefings
 - Watson deliberately used 'sensationalist' language and metaphors (such as the Rum Rebellion) to ensure sensationalist headlines and TV bytes.
 - My wife and I had 'TV news' helicopters circling and photographing our home. We also had TV cameras photographing us as we departed our house.
 - At the Balmoral Beach Club where I swam every morning
 - I had "I Love ICAC" stickers pasted on my locker
 - All 4 tyres on my car (which was parked in front of the Club) were slashed. I was forced to call a tow truck
 - My granddaughter came home from school crying asking if Grandpa was going to gaol.

- ❖ Political Agenda
 - It was quite obvious that the Inquiry had a political agenda.
 - With the benefit of hindsight, we now know that the ICAC agenda was set by Commissioner [REDACTED] in conjunction with the then NSW Premier, Barry O'Farrell.

- ❖ Transparency and due process: We now know
 - ICAC selected evidence that supported its and O'Farrell's political agenda and ignored or discarded evidence that did not support that agenda.
 - ICAC coached witnesses and granted pardons to witnesses whose testimony supported its agenda.
 - ICAC discarded or ignored testimony that contradicted its agenda.
 - Exculpatory testimony was ignored by ICAC.
 - Exculpatory evidence was withheld by ICAC.

ICAC's Finding

- ❖ ICAC found that I was corrupt.
 - Through Press coverage of the Inquiry, it was by now common knowledge that the farmland the subject of the exploration licence, was owned by the Obeid family. This was certainly known by all directors of WEC. WEC had formed an independent sub-committee of non-conflicted directors to consider the takeover. Having declared my conflict of interest, I was not a member of that sub-committee.
 - ICAC found me corrupt because I did not seek to advise the WEC independent sub-committee (and therefore by extrapolation WEC shareholders and therefore by extrapolation the public and therefore by extrapolation unknown and unnamed public officials), that Cascade Coal had entered into a financial arrangement with the Obeid family to purchase the land the subject of the exploration licence.
 - The ICAC finding that I was corrupt was evening news on all TV channels and headline news in all major newspapers.
 - I was shown on the ICAC website and in Google searches as 'corrupt'

Consequences of the ICAC Finding

- ❖ The consequences of the ICAC finding were
 - My personal and business reputations were severely tarnished.
 - My business dealings were severely impacted.
 - I was asked by my golf club to resign as Chairman of the Club's Foundation.
 - I was a founder/director of Dia Vikas Pte Limited, an Indian charity providing microfinance loans to the poor. I was asked to resign my directorship. The concern was that potential donors might cease to donate funds to a charity of which a 'corrupt' person was a director.
 - I resigned as a director of WEC.
 - I offered to resign as a director of Saluda Medical Limited (an Australian and US based medical device company of which I was a director and major shareholder). My offer was declined.
 - I was forced to sell my 62% interest in Orbian Corporation Limited (a European, UK and US supply chain finance business) to the Orbian minority shareholders. Orbian funded its supply chain business from bank loans. The bankers to Orbian were not comfortable lending monies to a company majority owned by a 'corrupt' person.

- I had funded the Kinghorn Cancer Centre, a joint venture between St Vincent's Hospital and the Garvan Medical Research Institute. A journalist from the Fairfax Press contacted the Board of St Vincent's Hospital asking if my name was to be stripped from the Cancer Centre and then wrote several articles published in the Fairfax Sydney and Melbourne newspapers suggesting that the funds donated by me to St Vincent's/Garvan were the proceeds of corruption.

- ❖ My health suffered from the stress of the Inquiry and to this day has not fully recovered.

- ❖ The direct financial cost to me of ICAC's finding was of the order of \$110m comprising
 - Loss on forced sale at short notice of my controlling shareholding in Orbian Corporation
 - Loss in market value of WEC and Cascade Coal shares due to cancellation of the Mt Penny mining lease by the NSW Government (the NSW Government cited 'corrupt directors/shareholders of Cascade Coal' as the reason for the cancellation).
 - Un-recouped legal fees

ICAC Finding Overturned

- ❖ I appealed to the NSW Supreme Court. The Supreme Court found no evidence of corrupt behaviour by me and overturned the ICAC finding.
- ❖ ICAC appealed the Supreme Court finding to the NSW Court of Appeal. The NSW Court of Appeal upheld the Supreme Court judgment.
- ❖ I was awarded costs in both cases.

Publication of the Supreme Court Finding

- ❖ The Supreme Court/Court of Appeal finding was reported in a small article in the legal section of The Australian newspaper. It was not mentioned on TV or by any Fairfax newspaper. Very few friends and business associates were aware that my ICAC 'corrupt' finding had been overturned.
- ❖ The Supreme Court/Court of Appeal finding was not reported on the ICAC website. The ICAC website continued to report their finding that I was 'corrupt'.

Recommendations for Consideration by the Committee

The purpose and objectives of ICAC are important. Corruption exists in the governing structures of many countries. It is of paramount importance that corruption be not tolerated in any of the governing structures of NSW. It is also important that ICAC and its funding be accountable to and subject to oversight by the elected members of the NSW parliament.

However

1. A reporting and oversight mechanism should be implemented which ensures that ICAC cannot be used as a 'political weapon' by the political party of the day.
2. All ICAC inquiries should be 'private' inquiries, not public inquiries. The results of the Inquiry and the reasons for the 'finding' should be published at the conclusion of the Inquiry.
3. All ICAC inquiries must be subject to the normal rules of procedural fairness and due process.
4. ICAC must be required to consider all evidence including exculpatory evidence before making and publishing its findings.
5. My experience is that an ICAC finding of corruption is headline and front page news and that a subsequent exoneration is lucky to rate a mention. An exoneration protocol is analogous to shutting the gate after the horse has bolted. Despite this, I believe there should be a formal exoneration protocol including publication by ICAC of the exoneration.