Submission No 15

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

Name: Name suppressed

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Partially Confidential



29 July 2020

Mrs Tanya Davies MP Committee on the ICAC Parliament of NSW Macquarie Street SYDNEY NSW 2000

<u>icaccommittee@parliament.nsw.gov.au</u>

cc: Ms Jessica Falvey

Dear Mrs Davies

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

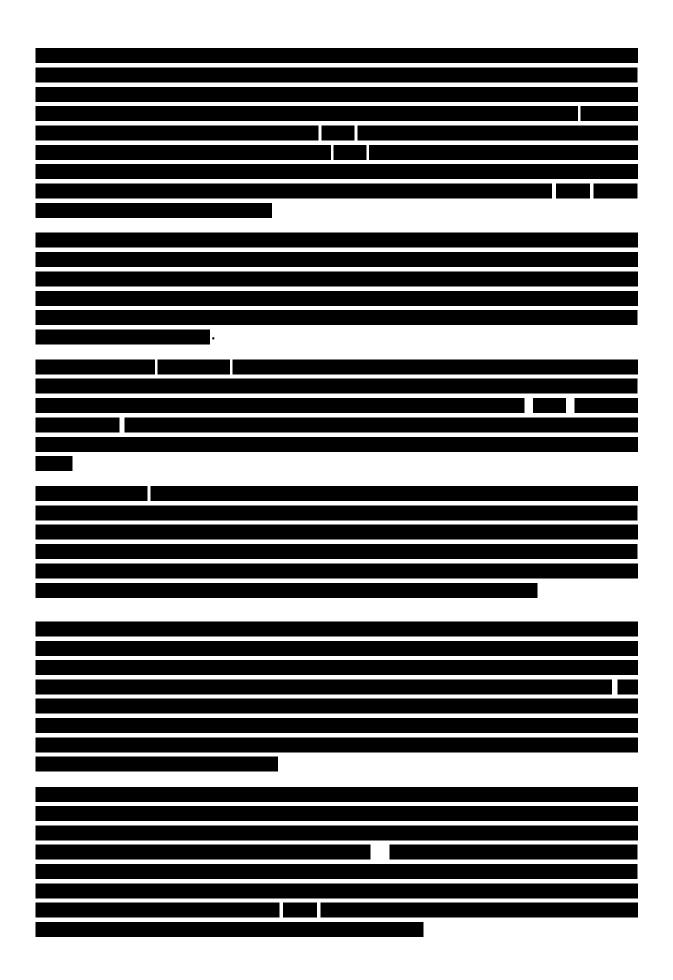
- A. WHETHER THE EXISTING SAFEGUARDS AND REMEDIES, AND HOW THEY ARE BEING USED ARE ADEQUATE, AND
- B. WHETHER ADDITIONAL SAFEGUARDS AND REMEDIES ARE NEEDED, AND
- C. WHETHER AN EXONERATION PROTOCOL SHOULD BE DEVELOPED TO DEAL WITH REPUTATIONAL IMPACT, AND
- D. RELEVANT PRACTICES IN OTHER JURISDICTIONS, AND
- E. ANY RELATED MATTERS

BACKGROUND:

•	aligned by ICAC	and the effect th	I observed my son, at it has had on us o	
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Later on 7 November 2013, ICAC released a "Media Release" about a Public Inquiry (Operation Dewar) into the actions of Mr Kear set down to commence on Tuesday 3 December 2013 and <u>was expected</u> to "continue for up to two weeks". In the Media Release, it stated "The ICAC is also examining allegations that Mr Kear improperly showed favour to Mr Pearce by failing to appropriately investigate allegations made by Ms McCarthy."
ICAC PUBLIC HEARING – OPERATION DEWAR
from 3 December 2013 to 6 December 2013. We were particularly concerned that a lot of questions were asked, evidence presented and answers given throughout the sessions, related to and the constant references to his name. We also PARTICULARLY noted that other parties, had legal representatives present acting on their behalf yet had not been offered any legal representation by ICAC.
we couldn't understand why he had not been called as a witness and to present his evidence.
On the morning of 6 December 2013, we were dumbfounded when ICAC Commissioner Ipp responding to Mr Kear's legal representative, Mr Oates' questions in relation to actions, stated

"Mr Kear is making all kinds of allegations against	who's not here, who has not been called
as a witness and circumstances	have
have a pretty remote connection with what we're talking	
6 December 2013). In relation to Mr Oates' subsequent pr	
entries, Commissioner Ipp said "I do not regard it as fair the	
any depth because not here to, to answer them."	(Page 33 of Transcript 6 December 2013)
Further still at no stage of the public inquiry was	ered the services of a lawyer by ICAC to
protect him and his interests.	ered the services of a lawyer by feact
protect fill and his interests.	
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INSPECTOR OF ICAC

On 10 July 2015 , in a further attempt to clear his name, forwarded a letter to The Honourable David Levine AO RFD QC for his office to review ICAC's conduct regarding
In an article published on 30 October 2015, ICAC Inspector David Levine AO RFD QC was quoted "in relation if the ICAC is to perform its work seriously, then it must be taken seriously. It must not be perceived as an institution culturally projecting an almost breathtaking arrogance in relation to its own powers, in relation to the people with whom it is dealing, in relation to other institutions of governance of the State not least the Parliament to which the ICAC itself is accountable and to the judicial system."
On 12 January 2016, met with Mr Levine in the Inspector of ICAC Office, Sydney and reinforced with him "that the truth had not been told. ICAC have completely ignored the truth (and evidence) regarding matters and through their maladministration he and his family and our family have been deeply impacted mentally, emotionally and financially".
On 28 April 2016, Mr John Nicholson SC in the role of Assistant Inspector ICAC assumed the responsibility of pursuing requests regarding his complaints about ICAC. Considerable correspondence and documents with attachments were submitted and discussed between both parties until the Parliament Special Report, was submitted by Mr John Nicholson SC (Acting Inspector of ICAC). In his report, Chapter IV, Item 298, he concluded "If one reduces complaints to the Inspector to their simplest terms the intrusion into privacy becomes bleedingly obvious, and bleedingly unnecessary." In his report, the Acting Inspector also made seven recommendations on steps to be taken to protect reputation and privacy. Mr Nicholson on Page 55 at Point 227 also stated: "227. role in the Public Inquiry, from the perspective of the ICAC, and certainly from his, cannot be described as non-existent. Source material provided by at very least gave context to one or more of the allegations. Indeed, he was regarded for some period by the ICAC as one of the Complainants/Notifiers. Material provided by him was referred to the PSC. His status as a person entitled, if possible, to protection (which obviously includes reputational
protection) was well known to the Commission."
I have noted that the ICAC was has added a note to its website entry for Operation Dewar "to the effect that conduct was not examined at the public inquiry, there were no adverse findings in relation to him and he was not represented at the public inquiry." (ICAC Annual Report 2016-2017, Pages 45 & 46) What about subsequent DPP Prosecutions that may ensue and which occurred in the trial NSW DPP v Mr Murray Kear? I believe in any circumstance in which one has had

Court of Law. We ask that your Committee recommend under similar circumstances to Mr Nicholson, that court documents and Magistrate Grogin's decision be redacted to protect privacy.
assistance to the Lynelle Briggs' investigation on behalf of ICAC, has never been acknowledged and like her report it has been buried and totally hidden from the public and taxpayers of NSW, who I note financed the report.
We attended the Parliamentary Joint Committee on ICAC Public Hearing held at Parliament House on and were excluded from an "in camera" session. is still waiting to receive an apology from ICAC amongst other things. Is it too much to ask for what he has been forced to suffer???
My concern that to this date, has not been given the courtesy of an apology from the NSW Government or ICAC as recommended by the Acting Inspector of ICAC for all their invasion of reputation and privacy which has seriously impacted him, his family and our family, I believe ICAC do not want to recognise the detrimental affect that they have had on and are not prepared to at least offer him an apology, A lone voice from an individual who has been forced to suffer
so much without being given an opportunity to defend himself. What has happened to procedural fairness?
Now to address the particular reference points:
a) Whether the existing safeguards and remedies, and how they are being used are adequate
The existing safeguards and remedies at the time of Operation Dewar were obviously inadequate due to the ICAC's failure to properly interview and to hear his version of all the allegations raised and documented against him. Also, he was not provided with any legal support by ICAC which should have then flowed on into the trial NSW DPP v Murray Kear.
Why did ICAC not pursue this point further in the Public Inquiry? and individual but not at the status of Deputy Commissioner? Discrimination?
b) Whether additional safeguards and remedies are needed
Yes. Most certainly. More consideration should be given to an individual and their reputational impact once exposed at a Public Inquiry by ICAC.
ICAC stated that following the recommendations made by the Acting Inspector. "the

	Commission added a note to their website entry on Operation Dewar to the effect that conduct was not examined at the public inquiry, there were no adverse findings in relation to him and that he was not represented at the public inquiry. The purpose of such an addition was simply to make those matters clear if they were not clear already." I still don't think ICAC went anywhere near far enough!
	I believe the Commission also has amended its Operations Manual procedures in relation to public inquiries "to ensure that the public interest in protecting the privacy of persons who may be mentioned in a public inquiry is taken into account in the planning for, and conduct of, a public inquiry." (ICAC Annual Report 2016-2017, Page 46).
c)	Whether an exoneration protocol should be developed to deal with reputational impact Yes.
	Especially as it would have helped when he was not utilised as a witness at the Public Inquiry.
	I consider ICAC has been totally ignorant about the impact that this has had on especially due to the severe depression he has had to endure and the subsequent bullying and harassment in his endeavours to clear his name.
d)	Relevant practices in other jurisdictions
e)	Any other matters
	Please refer to my comments detailed in the Background Section that you may wish to consider.
	I thank you for the opportunity to make a submission and look forward to hearing from you.
	Yours sincerely