

**Submission
No 16**

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

Name: Name suppressed

Date Received: 29 July 2020

Partially
Confidential

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



29 July 2020

cc: Ms Jessica Falvey

Dear Mrs Davies

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

[REDACTED]. I want to thank you for the opportunity to make a submission and I sincerely hope you are prepared to take what I have to say seriously.

I saw my son, [REDACTED], change from an outgoing, confident, friendly extrovert to a depressed, anxious, quiet and sad introvert.

For 8 years I have witnessed so many injustices, misrepresentation of the truth and alleged law breaking regarding ICAC's Operation Dewar, which is shocking to say the least! I have had firsthand experience in relation to the adverse effect on [REDACTED], having had his name unnecessarily bandied around during the ICAC's Operation Dewar Public Inquiry involving the NSW State Emergency Service (NSW SES) as well as the Trial, **NSW DPP vs Murray Kear** (2015 and 2016).

I attended every session of Operation Dewar's public hearings from 3-6 December 2013, along with my husband [REDACTED] and found it deeply concerning that while he was not sworn in to give evidence he was used and abused by the ICAC before, during and after the Hearing as a "whistle-blower."

Consequently the reputational impact it had on my son, both emotionally and financially, was enormous. [REDACTED]

On 3 February 2015, the DPP advised that there was sufficient evidence to charge Mr Kear with one charge of taking detrimental action in reprisal for a person making a Public Interest Disclosure (PID). In the ensuing case which I attended, **NSW DPP vs Murray Kear** (12-16 October 2015, 8-12 February 2016, 15-19 February 2016) during a break I asked [REDACTED], a representative of ICAC, why my son's name was being mentioned so frequently because he was not on trial and had not been called to give evidence. I was informed he could have asked for legal protection, something [REDACTED] was never made aware of and never offered – **too late, the damage had already been done!!**

While Mr Kear was acquitted from one alleged breach of the PID Act, I note in an attempt to clear his name of "**corrupt conduct**", Mr Kear wrote an email to the Inspector of ICAC on 1 June 2016. Following his review, the Inspector of ICAC, Mr Bruce McClintock SC dismissed all of Mr Kear's complaints accordingly in his report dated 6 June 2018. Mr McClintock SC also noted that Mr Kear was found "**corrupt**" on two counts and only one related to the PID Act.

There have been times during the last 8 years where I have had serious concerns that my son could have taken his own life. [REDACTED]

[REDACTED] The ICAC refused to support him even when they were made fully aware how difficult it was for him. Thankfully he pulled through with the support of his family, extended family and psychologist, [REDACTED]. I am so proud of him and what he stands for. [REDACTED]

Following a review of the ICAC's handling of Operation Dewar, the Acting Inspector of ICAC, Mr John Nicholson SC in his report [REDACTED] stated:

- Point 88 (page 24) – *“A finding is made in Chapter 2 of the ICAC Report that Kear engaged in corrupt conduct by deliberately failing to investigate properly allegations against Pearce in relation to the entry into two contracts, the use of SES funds to purchase roof-racks and electrical brakes for his car, the obtaining of an SES-paid vehicle for an SES manager and the potential falsification of diary entries because of his friendship with Pearce.”*
- Point 89 (page 24) – *“Chapter 2 sets out with greater specificity the terms of that finding. It is to be remembered the ICAC makes its findings on the civil standard – namely, balance of probabilities.*

*Commissioner Kear's **conduct in deliberately failing to properly investigate allegations against Mr Pearce** in relation to the entry into the Karoshi and Performance Drivers contracts, the use of SES funds to purchase roof racks and electrical brakes, the obtaining of an SES-paid vehicle for Mr Shaeffer and the potential falsification of diary entries in relation to [REDACTED] because of his friendship with Mr Pearce **is corrupt conduct.** (emphasis supplied).”*

Mr Nicholson under his heading, Invasion of Privacy – Reasonable or Unreasonable? stated:

- Point 275 (page 69) – *“In summary thenit is argued the report demonstrates there were two occasions (the conduct of the public inquiry, including internet publication of transcripts and Exhibits, and the request by Commissioner Latham for publication of the ICAC Operation Dewar Report), which brought about intrusions upon [REDACTED] privacy, honour and reputation.”*
- Point 276 (page 69) – *“The intrusions arising from these occasions were highly offensive and personally destructive. The intrusions caused detriment to [REDACTED] in the form of mental, physiological and emotional harm, and contributed to financial detriment subsequently experienced by him. All intrusions complained of, came about directly as a consequence of decisions and actions undertaken by officers of the ICAC, and non-action by officers of the ICAC in circumstances where specified action was indicated.”*

Mr Nicholson in Chapter IV, Conclusions and Recommendations Section of his report stated:

- Point 302 (page 75) – *“Given the precision of the terms of the ICAC findings, it is difficult to understand why adverse material in the quantities supplied were necessary to the extent that occurred in and through the public inquiry, why it is necessary in the public interest for the imputations and material to remain on the ICAC website, and why it was and still is necessary – in the public interest – for [REDACTED] identification to have been and to remain associated with that material, when his right to privacy screams for some saner solution.”*

- Point 303 (pages 75-76) – “Set out for the consideration of the ICAC and the Parliamentary Joint Committee on the Independent Commission Against Corruption (Parliamentary Joint Committee) are the following:
 1. *It is recommended that the ICAC issue an apology or statement of regret to [REDACTED] for unreasonable invasion of his privacy.*
 2. *An endorsement by the Parliamentary Joint Committee of a recommendation that the ICAC issue an apology or statement of regret to [REDACTED] for unreasonable invasion of [REDACTED] privacy.*
 3. *It is recommended that the ICAC remove from the Operation Dewar material appearing on its internet website any material identifying [REDACTED] or that may lead to his identification.*
 4. *It is recommended the Parliamentary Joint Committee endorse a recommendation that the ICAC remove from the Operation Dewar material appearing on its internet website any material that identifying [REDACTED], or that may lead to his identification.*
 5. *It is recommended that the Commission place a notification on the Commission’s website forthwith containing an explanatory note referring to the Inspector’s report and recommendations herein and indicating whether or not the Commission has accepted and acted upon the recommendations.*
 6. *It is recommended that the Parliamentary Joint Committee endorse a recommendation that the Commission place a notification on the Commission’s website forthwith containing an explanatory note referring to the Inspector’s report and recommendations herein and indicating whether or not the Commission has accepted and acted upon the recommendations.*
 7. *That the Parliamentary Joint Committee recommend to the Parliament an amendment to s.31 (2) by the inclusion of a sub-clause (e) in the following terms: Whether any adverse impact a person may experience arising from an internet site publishing information generated from the proposed public inquiry is outweighed by the public interest in such information being readily accessible to public through the internet site.”*

As far as I am aware none of the 7 recommendations have been enacted and of particular concern to me are recommendations 1- 4. [REDACTED] has never received an official apology. It is NEVER too late to take ownership to admit one is at fault and say, “sorry”.

I believe harrowing wrongs have been committed in the first instance by the NSW SES, then the ICAC and the NSW Government. Yet, still he is waiting for an apology. The silence is deafening. Who cares? Who really cares?

Now that the Committee has been made fully aware of [REDACTED] personal suffering I am pleading with you to do something, anything to help him. A face to face meeting with him would be a start. [REDACTED]

To conclude I wish to refer to point c, “whether an exoneration protocol should be developed to deal with reputational impact”. Given what I have seen firsthand as a mother, the impact it has had on my son, [REDACTED], my answer is Yes – most definitely, Yes.

Sincerely

[REDACTED]