

**Submission
No 33**

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

Name: Mr Vic Tagg

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Partially
Confidential

Committee of The Independent Commission Against Corruption
NSW Parliament
Macquarie Street
Sydney NSW 2000

31st July 2020

Dear Committee members,

I commend your efforts in attempting to address the very serious issue of reputational impact after being adversely named in an ICAC "investigation".

An exoneration protocol is long overdue and must be put in place immediately to counter the undeserved damage when ICAC gets things seriously wrong, like it did with its supposed investigation into Ryde Council - 'Operation Cavill'.

ICAC's actions in this matter were never focused on anti-corruption. This mishandling of allegations against several Ryde councillors - diligently performing their civic duties - and their community allies, was a disgrace and there is a need for the record to be set straight.

ICAC's allegations against the councillors, related to breaches of electoral laws, were doomed to failure from the outset with two fundamental flaws:

- a) ICAC made its allegation before the deadline for councillors' disclosures for activity related to the September 2012 council elections; and
- b) The breaches, allegedly involving joint election newspaper advertising, involved amounts that did not exceed the disclosure threshold

There are indications that ICAC was well aware it had wrongly accused the councillors - after including the allegation in its [July 12, 2013 media release](#), announcing the commencement of a public inquiry three days later.

It quickly disappeared from the [next media release in August](#) and subsequent public statements by the ICAC - on [19 Sept 2013](#) and [26 June 2014](#) - until it resurfaced on [June 30, 2014](#) in the announcement of the release of ICAC's Operation Cavill Report.

The report changed the electoral offence ICAC was alleging against the councillors and then used a bizarre and nonsensical rationale to justify its conclusion the councillors were guilty and should be referred to the DPP for prosecution.

Former ICAC Inspector, David Levine AO, could not help but notice this absurdity and included it in his Report to the Premier: The Inspectors Review of the ICAC (attached), dated 12 March 2016 (p21).

“47. ICAC's investigation in Operation Cavill also recommended that the DPP consider prosecuting 5 Councillors, including [REDACTED] for breaches of s. 96E of the Election Funding, Expenditure and Disclosures Act 1981 (the "EFED Act") relating to the payment for advertising. The Councillors argued that the total cost of the advertising was \$4180 and their one-sixth share was thus \$696.66. ICAC rejected this submission and determined that each was in breach and the total cost of advertising was over \$1000. Some time after the publication of the Report in Operation Cavill, one of the Councillors sought clarification from the Electoral Commission as to the correct position. In a letter dated 26 October 2015, the Electoral Commission confirmed the following:

"Where each candidate or group pay an equal share of the cost of the advertising to the printer or advertiser the amount paid by each candidate or group is to be disclosed as electoral expenditure.

Each candidate or group is not required to disclose the full cost of the advertising but rather the amount of expenditure paid by the candidate or group.

In this scenario no candidate or group is making or accepting an indirect campaign contribution as no person or entity is paying for electoral expenditure for advertising that was to be incurred by another person or entity.”

On page 60 of the 71-page report on Operation Cavill, ICAC's counsel assisting Jason Downing provides the following illogicality to support his claim the councillors exceeded the threshold:

“Each councillor received the full benefit of the advertising. It promoted the re-election of each councillor. The value of the advertising to each councillor exceeded \$1,000 because that is what it would have cost the individual councillor had he placed an advertisement of that size in the newspaper promoting his re-election.”

ICAC's conduct continued to defy decency in its 'prosecution outcomes' document where it gives a blow by blow account of each step of its legal action against targets but often doesn't report its allegations being thrown out of court.

In its July 29, 2015 prosecution outcomes document, the ICAC tries to ride roughshod over the Electoral Commission with the following: “The DPP also advised that criminal proceedings be commenced against [REDACTED] and [REDACTED] for offences alleged to have been committed by each of them in breach of the Election Funding, Expenditure and Disclosures Act 1981 in relation to advertising published in The Weekly Times in August and September 2012. The NSW Electoral Commission will issue court attendance notices for these matters.”

A day later in its July 30, 2015 update of the document, it says: “The DPP also advised that criminal proceedings be commenced against [REDACTED] and [REDACTED] for offences alleged to have been committed by each of them in breach of the Election Funding, Expenditure and Disclosures Act 1981 in relation to advertising published in *The Weekly Times* in August and September 2012. Information in relation to offences against the Election Funding, Expenditure and Disclosures Act 1981 has been provided to the NSW Electoral Commission, which is considering the sufficiency of evidence to prosecute.”

On 26th August, 2015, the NSW Electoral Commission declared that there was insufficient evidence to prosecute the councillors and the matter was put to rest. But ICAC still considers the councillors guilty and so an exoneration protocol is urgently needed to end the nonsense.



Media Release

26 August 2015

NSW Electoral Commission determines not to proceed with prosecution action following ICAC investigation

The NSW Electoral Commission has been examining possible breaches of the Election Funding, Expenditure and Disclosures Act by [REDACTED]

The Independent Commission Against Corruption's Operation Cavill reported as to a number of potential offences against the Act in relation to advertisements published in *The Weekly Times* immediately prior to the 2012 NSW Local Government Elections.

After careful consideration the Commission has formed the view that there is insufficient admissible evidence to commence proceedings against any of the named persons.

END

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