

The Commission's cooperation policy

Introduction

The NSW Independent Commission Against Corruption ("the Commission") aims to protect the public interest, prevent breaches of public trust and guide the conduct of NSW public officials. To do this we:

- investigate and expose corrupt conduct in and affecting most of the NSW public sector (including state government agencies, local government authorities, members of Parliament and the judiciary but excluding NSW Police and the NSW Crime Commission);
- actively prevent corruption through advice and assistance; and
- educate the NSW community and public sector about corruption and its effects.

Corruption harms public administration, can involve the misuse of public funds and assets and undermine trust in government and the effective and efficient delivery of public services. It involves secrecy and deception and is often difficult to detect without inside information.

The purpose of this policy is to set out what we can do to encourage those involved in corruption to cooperate with us to establish that corrupt conduct has occurred and the full extent of that conduct so that we can stop the harm arising from such conduct.

How to cooperate with the Commission

A person can cooperate with us by:

- fully reporting any corrupt conduct at the earliest possible time;
- honestly and completely disclosing all relevant information;
- providing voluntary assistance during an investigation, including by providing evidence and/or other information in relation to the subject matter of an investigation, including at a public inquiry; and
- giving evidence in the criminal prosecution of others arising from the investigation.

Merely fulfilling certain legal obligations under the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), such as producing documents in response to a notice or summons issued by the Commission or attending to give evidence in response to a summons (unless the evidence is comprehensive and entirely truthful), does not constitute cooperation for the purposes of this policy.

Protection for those cooperating with the Commission

We take seriously the need to protect people who have assisted us, including their family members, against any potential harm, intimidation or harassment arising from their cooperation.

Section 50 of the ICAC Act provides that, if the safety of a person (or the safety of any other person, including family members) may be prejudiced or the person may be subject to intimidation or harassment because the person assisted the Commission, we may make arrangements to:

- protect the person's safety; or
- protect the person from intimidation or harassment.

Such arrangements may involve directing the Commissioner of Police to:

- provide protection;
- provide personnel or facilities or both to assist in providing protection; or
- otherwise assist in providing protection.

The Commission may also make an order to protect a person's safety or to protect a person from intimidation or harassment. It is a criminal offence for anyone to contravene such an order.

Under s 93 of the ICAC Act, it is a criminal offence for any person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to any person for or on account of the person:

- assisting the Commission; or
- giving evidence to the Commission.

Under s 94 of the ICAC Act, it is also a criminal offence for an employer to dismiss an employee or prejudice the employee because the employee assisted the Commission.

Potential benefits of cooperating with the Commission

There are various potential benefits available to those who fully cooperate with us.

1. Acknowledgement of assistance in a Commission report

The Commission may prepare a report in relation to any matter that has been the subject of an investigation. Such reports are made public and published on our website.

Where appropriate and subject to the consent of the relevant person(s), we will include mention in our report of the cooperation provided by particular persons and the value of that cooperation to us in uncovering corruption. This will be a public acknowledgement of the assistance provided to us in uncovering corruption.

2. Discretion not to make corruption findings

In reporting on its investigations, the Commission may make factual findings and findings that a person has engaged in serious corrupt conduct.

The Commission may exercise a discretion not to make a finding that a person has engaged in corrupt conduct, even though the factual findings permit such a finding.

The discretion may be exercised where a person has fully cooperated with the Commission. Relevant considerations include:

- the value to the Commission of the assistance, including the value of any evidence or other information provided by the person;
- the stage of the investigation the person began to fully cooperate;
- the extent and level of their involvement in the relevant corruption;
- whether they were an instigator or beneficiary of the corrupt conduct; and
- whether the making of such a finding would be, in all the circumstances, unduly severe.

3. Discretion not to recommend consideration of prosecution

In reporting on its investigations, the Commission may make a statement as to whether consideration should be given to:

- obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of a person for a specified criminal offence
- taking action against a person for a specified disciplinary offence, and
- taking of action against a person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

Where a person has fully cooperated with the Commission, the Commission may also exercise its discretion to not recommend consideration be given to seeking the advice of the DPP or the taking of disciplinary or dismissal action against that person.

Where a person, who has given false or misleading evidence to the Commission, voluntarily returns to the Commission and cooperates by providing a full and truthful account, we will take that cooperation into account when deciding whether consideration should be given to obtaining the advice of the DPP with respect to a prosecution for an offence under s 87 of the ICAC Act of giving false or misleading evidence. In exercising our discretion we will take into account:

- whether the person has on their own volition approached the Commission to change their evidence;
- whether the person has provided a full and truthful account;
- the stage of investigation at which the person approached the Commission to change their evidence; and
- whether the change is likely to materially affect the progress and outcome of the investigation.

4. Indemnities and undertakings

Under s 49 of the ICAC Act, the Commission may recommend to the NSW Attorney General that a person be granted an indemnity from prosecution for a specified offence or in respect of specified acts or omissions. If such an indemnity is granted, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.

The Commission may also recommend to the Attorney General that a person be given an undertaking that an answer, statement or disclosure in proceedings before the Commission or the fact of a disclosure or production of a document in proceedings before the Commission will not be used in evidence against the person. If such an undertaking is given, the answer, statement, disclosure or the fact of the disclosure or production is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings in respect of the falsity of evidence given by the person.

5. Assistance to a person convicted of an offence

Where a person who has cooperated with the Commission is subsequently convicted of an offence arising from the Commission investigation, we can provide a letter to the relevant court setting out details of the cooperation and request the court take that co operation into account when imposing the sentence.