



GAVIN SILBERT QC
CHIEF CROWN PROSECUTOR
VICTORIA

Prosecutors' Chambers
565 Lonsdale Street
Melbourne VIC 3000
PO Box 13085
Melbourne VIC 8010
DX 210290
T: (03) 9603 2541
F: (03) 9603 7892
E: gavin.silbert@opp.vic.gov.au
www.opp.vic.gov.au

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Our ref: 2016-00540

Hon Nick Goiran, MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Legislative Assembly Committee Office
WA Parliament
Level 1, 11 Harvest Tce
West Perth WA 6005

To the Honorable Nick Goiran, MLC,

Re: Submission to the Joint Standing Committee's Inquiry

I refer to your letter to the Director of Public Prosecutions ('the DPP'), Mr John Champion SC, dated 19 September 2016 inviting the DPP to provide a submission to the Joint Standing Committee on the Corruption and Crime Commission of Western Australia.

In particular, you have indicated that you are interested in receiving submissions about:

- a) 'the arrangements for the prosecution of offences associated with corrupt conduct and misconduct in other jurisdictions'; and
- b) 'the recent experience of the DPP handling the charging and prosecuting of people who were the subject of investigations by the Independent Broad-based Anti-Corruption Commission ('IBAC')'.

The Office of Public Prosecutions Victoria ('the OPP') is responsible for preparing and prosecuting serious criminal offences in Victoria on behalf of the DPP. Some of those serious criminal offences involve allegations of corruption and misconduct.

Neither the DPP nor the OPP has any role in instituting these criminal charges¹ but rather conducts the prosecution of these offences on behalf of the people of Victoria. The charges themselves are filed either by the Victoria Police or by the relevant personnel at IBAC.

¹ The DPP does not file charges against people who are the subject of IBAC investigations however there may be instances where the DPP may file a direct indictment pursuant to section 161 of the *Criminal Procedure Act 2009* (Vic)

There is a Protocol in place which details the processes, procedures and responsibilities of the OPP and IBAC in relation to matters that IBAC has investigated and subsequently refers to the OPP. Under those arrangements the OPP provides advice and prosecution services to IBAC for matters that would be prosecuted on indictment and, in some limited instances, summary prosecutions.

The Protocol sets out which agency has responsibility for the various preparatory tasks, hearings and expenses involved in the criminal prosecution. For example, brief of evidence preparation, attendance at hearings, witness expenses and counsel fees.

During the investigation stage IBAC may request the advice of the DPP in relation to certain matters including the appropriateness of indictable charges and the sufficiency of evidence. However the OPP does not provide advice in relation to operational matters.

The DPP and OPP consult with IBAC during the conduct of prosecutions involving IBAC however the DPP has final determination of prosecutorial decisions in relation to matters prosecuted by the DPP on IBAC's behalf.

While the DPP is primarily concerned with prosecuting serious criminal offences IBAC may, where appropriate, request that the DPP take over conduct of a summary prosecution commenced by IBAC. In such circumstances the DPP would consider a number of criteria such as the seriousness of the offending, the legal complexity of the matter and whether it was in the public interest to take over conduct of the proceedings.

The power to commence proceedings

In Victoria IBAC has been expressly conferred with the power to commence criminal proceedings against a person for an offence in relation to any matter arising out of an IBAC investigation¹.

As previously mentioned, neither the DPP or OPP file criminal charges.

Recent matters prosecuted by the DPP

Prior to the establishment of IBAC the OPP received briefs of evidence from the Office of Police Integrity and prosecuted many Victoria Police members for corruption offences. Allegations of corruption against other persons who were not members of Victoria Police would be investigated by Victoria Police and then prosecuted by the DPP.

However since the inception of IBAC in 2013 we have not prosecuted any person, including Victoria Police members², charged by IBAC³. The OPP has been asked on occasion to provide advice on IBAC investigations but no prosecutions on indictment have resulted from those investigations. A few matters resulted in charges being filed in the summary jurisdiction and in those instances IBAC then went on to prosecute those matters.

Consequently the OPP and DPP have had very little direct dealing with IBAC itself.

¹ Section 190 of the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic)

² The OPP has, however, received briefs involving allegations of police corruption investigated by the Victoria Police Assistant Commissioner Professional Standards Command (formerly the Ethical Standards Department).

³ The OPP is currently conducting one IBAC prosecution file that is yet to be determined.

Recent High Court decision

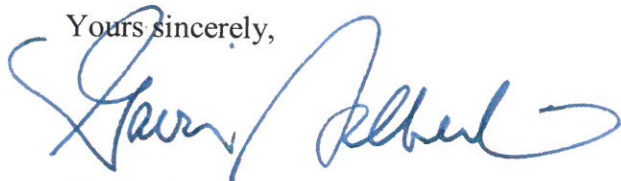
The DPP was not a party to the recent High Court decision in *R v Independent Broad-based Anti-corruption Commissioner* [2016] HCA 8 nor did he seek to make any submissions as an intervener. We are, however, aware of the decision.

With respect to the issue of the prosecution's access to transcript of an accused's compulsory examination by IBAC, the OPP does not routinely obtain access to the transcript of coercive hearings and they do not form part of the brief of evidence.

In our experience, defence practitioners do almost invariably choose to subpoena the evidence of any compulsory examinations of their client or other witnesses on the brief of evidence. It is only at this point that a copy would also be provided to the OPP by IBAC. The defence will often seek to use this transcript to put prior inconsistent statements to these witnesses when cross-examining them at trial. Of course as with similar legislation in other jurisdictions, any answer, information, document or thing given by the accused person at such a hearing that might tend to incriminate the accused person cannot be used by the prosecution against the accused in the trial, save for offences under the IBAC Act that involve giving deliberate false evidence.¹

I hope that this submission has been of assistance. If you have any queries, please do not hesitate to contact Ms Suzanne Penhall, Principal Solicitor, Policy and Specialised Legal Division, by telephone on (03) 9603 7534.

Yours sincerely,



Gavin Silbert QC

Acting Director of Public Prosecutions

¹ Section 144 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic)