From:	Joint Standing Committee on the Corruption and Crime Commission
To:	Worth, David
Subject:	FW: NCB submission CCC Cttee prosecutions by CCC 29 August 16
Date:	Thursday, 27 October 2016 9:27:19 AM

From: Noel Crichton-Browne [mailto:ncb@ozemail.com.au]
Sent: Monday, 29 August 2016 10:12 PM
To: Joint Standing Committee on the Corruption and Crime Commission
Subject: FW: NCB submission CCC Cttee prosecutions by CCC 29 August 16

David

On one occasion I referred to CCC when I intended to refer to DPP.

Regards

Noel

From: Noel Crichton-Browne [mailto:ncb@ozemail.com.au]
Sent: Monday, 29 August 2016 9:38 PM
To: 'jscccc@parliament.wa.gov.au'
Subject: NCB submission CCC Cttee prosecutions by CCC 29 August 16

Dr David Worth Principal Research Officer
Committee on the Corruption and Crime Commission

Dear David

I had intended to provide an extensive submission to your committee in respect to the reference “The CCC being able to prosecute its own charges” however time has defeated me and consequently I am restricted to the following submission which is principally composed of two articles written by Nicholas Cowdery, former New South Wales Director of Prosecutions together with my subsequent following remarks.

In respect to the CCC’s inquiry into the Smith’s Beach matter the CCC initiated a considerable number of charges. In all matters save one, it failed. My understanding of matters is that on more than one occasion the DPP has declined to undertake prosecutions in spite of urging from the CCC. On my observations, the CCC has shown an unnatural keenness to initiate or have initiated, charges flowing from

its inquiries. It will be rewarding to learn of occasions when the CCC has had requests for prosecutions declined by the DPP and the occasions in the absence of agreement by the DPP, the CCC has subsequently, unsuccessfully proceeded with prosecutions of its own.

In respect to prosecutions I remind the Committee of the appalling and entirely improper claims made by Commissioner Judge Hammond in a public speech in March 2007, seven months before the tabling of the Report into Smith's Beach and while the Commission was still awaiting submissions from witnesses who had provisionally been adversely mentioned in the Report. Judge Hammond had these highly damning, damaging and prejudicial comments to make:

"My retirement will not delay the completion of these reports which will be the result of the efforts of many people. Inevitably, charges will be laid as a result of those investigations".

In spite of Sec 23 Judge Hammond was publicly announcing that prosecutions would flow from evidence and material arising from the CCC's inquiries. The truth of the matter is that charges did flow and with the exception of one conviction for providing the CCC with false evidence all failed.

Perhaps I need not remind your committee of the words of Sec 23.

Sec 23 of the Corruption and Crime Commission Act provides that:
. The Commission must not publish opinion as to commission of offence
(1) The Commission must not publish or report a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence.
(2) An opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person has committed, or is committing or is about to commit a criminal offence or disciplinary offence.

Hammond of course did not name names; he simply smeared every witness. These statements had the inescapable consequence of smearing every witness who appeared before the Commission in

public hearings. Speculation and conjecture proceeded at a pace for seven long months due to Mr Hammond's comments.

The CCC subsequently went further in branding witnesses as having committed offences which required a finding by Acting Parliamentary Inspector, Mr Zelestis QC.

The question arose on that subsequent occasion because Counsel Assisting the CCC used intercepted transcripts in public hearings to claim witnesses have lied to the Commission. As Acting Parliamentary Inspector Mr Zelestis made clear in a report to the Parliament, the CCC has no power to make findings or opinions.

In his report he stated: *"Not only is the Commission not given power to publish or report a finding or opinion that a person has committed an offence, but the Commission is expressly prohibited from publishing or reporting such a finding or opinion. However, there is much more to the prohibition in s.23 than this. The express terms of s.23 do not confine the prohibition to a formal expression of opinion at the end of a deliberative process. The nature and purpose of the prohibition are much more fundamental than that.*

The purpose of s.23 is clear. Allegations that a person has committed an offence, etc (including an offence under s.168 of the Act of giving false evidence to the Commission) are to be made and determined in courts and tribunals of competent jurisdiction. No power at all is given to the Commission in that regard. It would be inconsistent with a person's right to a fair trial upon an allegation of commission of an offence to allow the Commission to make public statements about the commission of offences. Thus, the prohibition in s.23 is of fundamental importance in preserving the basic elements of the system of justice that prevails in Western Australia".

Can I say with respect that while your committee may take the view that the point is not on all fours with your reference, in my view it is entirely so. It gives a strong flavour of the attitude and state of mind of the CCC and of that which may occur in the future in respect to an abundant enthusiasm to judge and prosecute.

This is not the only occasion on which Counsel Assisting and the

Commission has made accusations of criminal offences.

I am entirely opposed to the CCC having powers to prosecute. I share the views of the South Wales parliament as set out in Sec 14a of the relevant Act:

14A Proceedings for offences commenced by officers of ICAC or PIC

(1) An officer of ICAC does not have the power to commence proceedings for an offence unless the Director of Public Prosecutions has advised the Independent Commission Against Corruption in writing that the proceedings may be commenced by an officer of ICAC.

(2) For that purpose, the Director of Public Prosecutions may liaise with the Independent Commission Against Corruption, but is to act independently in deciding to advise that proceedings for the offence may be commenced.

(3) The Commissioner, an Assistant Commissioner and an officer of the Police Integrity Commission do not have the power to commence proceedings for an offence.

(4) In this section:

officer of ICAC means a person acting in the capacity of the Commissioner, an Assistant Commissioner or officer of the Independent Commission Against Corruption.

Noel Crichton-Browne
PO Box 163
Claremont WA 6010
0412983250