

CCC POWERS TO REPORT

The recent decision of the High Court in *Crime and Corruption Commission v Carne* determined that a CCC report on the investigation of a complaint may only be made in one of the ways specified in s49 of the *Crime and Corruption Act 2001*. A public report is not an option available under s49. The majority judgement accepted that the Commission can report more generally about the performance of its corruption functions. However, it is unclear if or to what extent the Commission is permitted to draw on its investigation outcomes in doing so. The majority acknowledged that whether a report is caught by the limitations imposed in s49 may involve 'evaluative questions'.

In my view, the Act as now interpreted by the High Court denies the Commission the ability to effectively report on corruption in the public sector. Legislative amendment is required.

Those engaged in corrupt behaviour typically act in secret. While there will be instances of individuals engaging in isolated conduct, more concerning is where a numbers of office holders are recruited into a corrupt scheme. The development of systemic corruption in a public sector organisation poses the greatest risk for society. Even where corruption is successfully suppressed, experience tells us that in time it has a way of returning. The prevention and deterrence of future corrupt behaviour is best achieved by ensuring the public sector workforce, politicians and general public are fully informed about the nature and extent of corruption which has been detected. The Commission has three ways of achieving this: Criminal prosecutions; public hearings; and public reports.

While prosecutions in the criminal courts place the allegations in the public domain, they may not be effective in highlighting the extent of any systemic corruption. Corrupt conduct can take many forms. In addition to the familiar cases of bribery and self interested fraud, individuals may be motivated to act unlawfully for what they perceive to be commendable reasons. Examples include fabricating false confessions or misuse of police powers: see for example the CMC report *Dangerous Liaisons* July 2009. While the existence of widespread corrupt conduct may be apparent, it may nevertheless be difficult to sheet it home to individuals. Where disciplinary action is taken the results may not become more broadly known, even in the affected organisation. Successful prosecutions may be characterized as examples of a 'few bad apples' by those with reason to minimize the extent of the conduct.

Public reports which describe corrupt behaviour in general terms are unlikely to have the same impact on public understanding as those where recommendations are informed by actual examples of detected wrongdoing. The most effective public reports will be those

that are informed by and describe all the Commission's investigation, public hearing and prevention action in respect to the particular corruption the subject of the report.

In the past public hearings and public reports have usually followed the receipt of complaints and initial investigation of allegations. In some instances, the complaints were already in the public domain and the subject of media attention and political dispute. In those circumstances the need to fully and transparently report is necessary to maintain public confidence.

Of course, the power to publicly report does not require it to be used unnecessarily. The conduct of public hearings and the preparation of public reports are expensive and resource heavy activities for the Commission. They would only be entered into where the subject matter justified their use. Individual misconduct will normally be sufficiently addressed by investigation and prosecution. There should not be publication of information that may prejudice future criminal prosecutions. Commission reports in the past have typically avoided identifying individuals the subject of allegation. Where appropriate, a public report may summarise complaints received, investigations conducted, and criminal and disciplinary prosecution outcomes in a way that is mindful of the legitimate interests of those individuals.

In my submission, deterrence and prevention of corruption is best achieved when there is a fully informed public, public sector workforce and Parliament. Public reports can achieve that if they are able to fully demonstrate the extent of detected corruption and to highlight why there is a real risk of its continuation or recurrence. To do so it will be necessary, on occasion, for a public report to outline the nature of Commission investigations and the extent of corruption detected by them. There should be legislative amendment of the Act to allow this to occur.

Brendan Butler AM KC

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