

25 February 2016

Crime and Public Integrity Policy Committee
South Australian Parliament
Parliament House
North Terrace
Adelaide SA 5000

Attention: Jane Nikitenko

Dear Committee Members

Amendment to *Criminal Law (Sentencing) Act 1988 (SA)* or Regulations

Section 29E of the *Criminal Law (Sentencing) Act 1988 (SA)* ('Sentencing Act') provides that a person who is currently serving a custodial sentence and who cooperates with a law enforcement agency may make an application to the court that imposed the relevant sentence to have that sentence quashed and a new sentence imposed, taking into account the person's cooperation with the law enforcement agency.

Section 29E(3) provides that:

The court may only grant permission to make an application under this section if the court is satisfied that the cooperation relates directly to an offence that is, in the opinion of the court, a serious offence that has been committed or may be committed in the future (whether in this or any other jurisdiction).

Section 29E(4) provides that:

The chief officer of the law enforcement agency, the Director of Public Prosecutions and the applicant are parties to the proceeding on the application.

The 'chief officer' of a law enforcement agency is defined as:

- (a) *in the case of SA Police – the Commissioner of Police;*
- (b) *in any other case – the person for the time being occupying a position within the agency prescribed by the regulations.*

No regulations have been made relevant to this section.

As you are aware, the Independent Commissioner Against Corruption ('ICAC') is a law enforcement agency.

Section 52 of the *Independent Commissioner Against Corruption Act 2012* (SA) provides that:

The Commissioner and members of staff of the Commissioner are, for the purposes of any other Act, to be regarded as a body established for law enforcement purposes (however described).

There may be occasion where a person who has been sentenced to imprisonment may provide assistance to the ICAC and, by virtue of that assistance, make an application pursuant to s29E of the Sentencing Act.

In those circumstances it would be proper that the Independent Commissioner Against Corruption be entitled to make submissions on the application. Unless the definition of 'chief officer' of a law enforcement agency, as provided for in s29E(7) is amended, or the relevant regulations are amended to prescribe the Independent Commissioner Against Corruption as the chief officer of a law enforcement agency, the Independent Commissioner Against Corruption would have no standing to make submissions on an application under s29E of the Sentencing Act.

I think consideration ought to be given to amending s29E the Sentencing Act, or inserting a new regulation to the Regulations, to permit the Independent Commissioner Against Corruption to be a party to proceedings on an application pursuant to s29E of the Sentencing Act where the applicant has cooperated with the Independent Commissioner Against Corruption and is seeking the relief contemplated under that section.

I have provided a copy of this letter to the Attorney-General.

Yours faithfully



The Hon. Bruce Lander QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION