

Statement

By the Chairperson, NSW Electoral Commission

Statement concerning legal professional privilege

On 9 January 2017, the NSW Electoral Commission (NSWEC) released a statement advising it had concluded its investigations and proceedings in relation to the Independent Commission Against Corruption inquiry known as Operation Spicer.

In a further statement issued on 9 January 2017, the NSWEC referred to legal advice considered by it in deciding to conclude its Operation Spicer related investigations and proceedings. The NSWEC has received a request to waive legal professional privilege and release this legal advice.

The ICAC operates in a different legislative environment to that governing civil or criminal action by prosecuting agencies, such as the NSWEC. ICAC hearings are not bound by the rules of evidence, and the documentation which the NSWEC obtained from ICAC was mostly not in an admissible form for tender to a court. During the Operation Spicer hearings witnesses were granted section 38 certificates (under the ICAC Act), which meant that their answers could not be used against them in any future civil or criminal proceedings.

Legal advice was obtained by the NSWEC in relation to Eightbyfive, Darren Webber and Chris Spence. This advice was considered and a decision was made not to proceed against those persons/entities.

It would not be appropriate for the NSWEC to release any advice which it has received. Also, the reasons why the NSWEC did not pursue litigation in this matter are unlikely to cast light on whether ICAC was entitled to conclude there had been a breach of the law given the different body of material that it was entitled to take into account during its investigation.

ABOUT THE NSW ELECTORAL COMMISSION

In December 2014, the three member Electoral Commission was constituted. It is separate to the agency led by the Electoral Commissioner. The Commission is an independent, statutory authority. It approves public funding to the political parties and others and enforces the provisions of three NSW Acts. These provisions govern electoral funding, expenditure and disclosures, the conduct of State elections and the lobbying of government officials. The Commission's Chairperson is the Hon Keith Mason AC QC, a former President of the NSW Court of Appeal (1997 to 2008). The Deputy of the Commission's Chairperson is Adjunct Professor Joseph Campbell, a former judge of the NSW Court of Appeal and the Supreme Court of New South Wales (2001 to 2012). Information about this independent Commission's work can view viewed at:

www.elections.nsw.gov.au/about_us/work_of_the_commission.

More information about funding and disclosure laws is available at: www.elections.nsw.gov.au/fd