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2 February 2015

Crime and Public Integrity Policy Committee
Parliament House
North Terrace
ADELAIDE SA 5000

Attention: *Katherine McLachlan – Executive / Research Officer*

Dear Committee Members

Response to Report of the Hon. Kevin Duggan AM QC

On 14 October 2014 the first report under section 46 of the *Independent Commissioner Against Corruption Act 2012* ('ICAC Act') was tabled in both Houses of Parliament. The report, prepared by the Hon. Kevin Duggan AM QC, followed the annual review of the operations of my office and the Office for Public Integrity ('OPI').

The report made a number of recommendations. The purpose of this letter is to update you on my views regarding the recommendations and the action taken in relation to those recommendations.

Website link to the Supreme Court Rules

As recommended, the ICAC website now contains a link to the Supreme Court Rules web page. The link appears within the "Regulatory Framework" page on the ICAC website.

Standard Operating Procedures – General Search Warrants

Mr Duggan recommended that the Standard Operating Procedures provide that a copy of a search warrant issued under the ICAC Act be given to the person upon whom it is being exercised.

Standard Operating Procedure 3 – Enter and Search Warrants – Exercise of Powers, provides that an investigator must:

- *Produce the original warrant for sighting by the person is being executed upon without relinquishing physical possession of the original warrant.*
- *A copy of the warrant is also to be provided to the occupier of the place, or the owner or driver of the vehicle upon request.*

A copy of the Standard Operating Procedures are available on the ICAC website.

Summary Report on 'Resolve'

My office and the OPI utilise the 'Resolve' case management system. In his report Mr Duggan recommended that, following the execution of a search warrant, the investigator in charge of a search and seizure operation enter a report on Resolve which contained a summary of events which took place in the course of the search.

My investigators have since been instructed to include on Resolve investigations tasks an entry in the 'Results' tab following the execution of a search warrant. The entry is to include the date and time of the execution of the warrant, the investigators and assistants (if any) involved in the search, reference to any field receipts issued during the search, and a record of any significant events that occurred during the search.

Policy – General Search Warrants

A new internal policy entitled "General Search Warrants – Use Of" has been approved and implemented. While the policy is not published externally, it provides that while the holder of a General Search Warrant is entitled to exercise his or her discretion as to its use (subject to the statutory requirements contained in section 68 of the *Summary Offences Act 1975*), it should generally be considered an option of last resort for use only in urgent or unanticipated circumstances. The policy aligns closely with a similar policy applicable in South Australia Police.

I would be pleased to show the Committee a copy of the policy on a confidential basis.

Guidance – Power of Arrest

The general power of arrest is afforded to each police officer by virtue of section 75 of the *Summary Offences Act 1975*. The power invests in every police officer, including those seconded as investigators to my office, discretion as to its exercise. I must be cautious not to dictate how that discretion is to be exercised.

There is a significant body of law which recognises when an arrest by a police officer will be a lawful exercise of that power. Those principles are recognised in the General Order issued by the Commissioner of Police under section 11 of the *Police Act 1998*, entitled "General Order: Arrest and Custody Management", to which all of my seconded investigators are familiar with.

I have expressed to my investigators my view that, given the nature of the conduct investigated under the ICAC Act, it would only be in rare circumstances that such investigations will necessitate the arrest of a person. Indeed, it is for that reason that my investigators have not arrested anyone since the office commenced in September 2013.

Having expressed my views, my preference is to rely upon the experience and good judgment of those investigators seconded from South Australia Police when determining whether or not to exercise the power of arrest.

Amendment to Legislation – Complaints Mechanism

Mr Duggan has recommended that an amendment to the ICAC Act be considered to provide for a mechanism for the making of complaints about the OPI or my office similar to that which exists in other jurisdictions. When I gave evidence to the Committee on 31 October 2014, I said that I did not have any difficulty with that recommendation. However, I did caution against the creation of a whole new body that would be empowered to review decisions

made in relation to complaints and reports. In my view, such a body would only invite those disillusioned who when told that an investigation will not be conducted for the reasons that they are given, to seek an investigation by that other body. There must be a point at which the process comes to a conclusion.

This is, of course, a matter for Parliament.

Confidentiality Provisions

Finally, Mr Duggan recommended an amendment to the confidentiality provisions to permit a person from taking legal advice in relation to an allegation of corruption or misconduct in public administration. In my view, Mr Duggan's concerns have now been resolved by the amendments made to the ICAC Act by Parliament in November 2014.

Indeed, since those amendments many of the difficulties occasioned by the previous confidentiality regime have fallen away.

Further Information

I would be pleased to provide further information to the Committee in relation to Mr Duggan's report or any other matter relating to the operations of my office or the OPI.

Yours sincerely



The Hon. Bruce Lander QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION