

4 April 2017

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

Dear Committee Members

Re Annual review of the Crime and Public Integrity Policy Committee into public integrity and the Independent Commissioner Against Corruption 2015-16

On 14 February 2017 the second report of the Crime and Public Integrity Policy Committee (**the Committee**) was tabled in both Houses of Parliament. I think it is appropriate to offer my views on the recommendations and findings contained within the Committee report that directly impact upon the operations of the Office for Public Integrity and my office, in much the same way as I did in respect of the Committee's first report.

I will also provide a copy of this letter to the Attorney-General as the Minister responsible for the *Independent Commissioner Against Corruption Act 2012 (SA)* (**the Act**).

Provision of copy of search warrant - Recommendation 1

The Committee recommended that consideration be given as to whether the *Special Application Rules 2014* of the Supreme Court should be amended to mandate for a copy of a search warrant to be provided to the occupier of the place or to the owner or driver of the vehicle to which the warrant applies.

I would caution against imposing an absolute obligation to provide a copy of the warrant to the owner or occupier. An absolute obligation to do so could present practical challenges in circumstances where the owner or occupier is not present or is unknown at the time a search warrant is executed.

In my view the requirement to provide a copy of a search warrant, unless it is not practicable to do so, is appropriate. That is a requirement that has been built into our Standard Operating Procedures and it is observed by investigators executing search warrants.

General search warrants

The Committee stated at page 18 of the report that it would benefit from learning about instances where general search warrants are used and that this information can be included as part of my Annual Report.

I would be pleased to assist the Committee by including in my future annual reports the number of times general search warrants have been used and the general circumstances in which they were used.

I would be pleased to expand on those circumstances with the Committee

Legal professional privilege - Recommendation 2

The Committee recommended that consideration be given to adopting the best practice in resolving legal professional privilege claims, including the imposition of penalties which would provide an adequate deterrent. Putting to one side the question of appropriate penalties, it is not clear from the report what other issues of best practice in relation to legal professional privilege have exercised the Committee's mind.

I would be pleased to discuss with the Committee further.

Penalty in section 54 - Recommendation 3

The Committee recommended that the penalty for a breach of s 54 be reviewed as it may now be too low to deter a breach.

I agree that the penalty for a breach of s 54 should be at a level that is sufficient to deter a breach and would welcome any review of that or any other penalty under the ICAC Act.

Public hearings into serious maladministration

The Committee stated at pages 28-29 of the report that it considers that a review of practices in other jurisdictions may be helpful in determining the best approach to public hearings for inquiries into serious maladministration.

I note that I am the only integrity agency of its kind in Australia that does not have the discretion to conduct public hearings in certain circumstances. While I remain of the view that public hearings are not appropriate for corruption investigations, I think there should be discretion to hold public hearings where the subject matter relates to serious or system maladministration in public administration.

I would welcome a review and would be pleased to provide any assistance that the Committee might need to conduct such a review.

Central repository of misconduct records

The Committee stated at page 31 of the report that it will keep monitoring the issue relating to a central repository of misconduct records.

In June 2016 I wrote to the Commissioner for Public Sector Employment ('CPSE') seeking her views on whether a central repository ought to be established. Having not heard from the CPSE I wrote to her again in August.

On 23 August 2016 the CPSE wrote to me and said that she was open to creating such a register and that her office would commence a scoping project to ascertain how best to implement such a system.

I have not heard from the CPSE again on the topic.

Local Government Codes of Conduct - Recommendation 4

The Committee recommended that the Minister for Local Government consider whether the Local Government Code of Conduct needs to be revised to address concerns expressed by me.

I first wrote to the Minister for Local Government about the Codes of Conduct in April 2014 after meeting with him and advising him that I thought the Codes of Conduct were stultifying the business of local government and ought to be rewritten.

I wrote to the Minister a second time in June 2016 and provided my views on a redrafted set of Codes of Conduct. My most recent correspondence with the Minister in relation to the Codes was in October 2016 when I raised a further issue relating to the Ombudsman's ability to make a finding that a criminal offence had been committed. I met with the Minister that month to discuss the issue further.

It is unfortunate that the problems affecting the Codes of Conduct for local government have not been rectified, particularly given the passage of time that has passed since those problems were identified.

I would welcome any assistance that the Committee can provide to expedite a resolution.

***Criminal Law (Sentencing) Act* - Recommendation 5**

The Committee recommended amending the *Criminal Law (Sentencing) Act* to allow the ICAC to be a party to proceedings for an application under s 29E of that Act.

I would welcome an amendment of that kind.

Quantitative Analysis of ICAC's impact - Recommendation 6

The Committee was of the view that an assessment of whether the ICAC has made an appreciable difference requires a quantitative analysis of data and a comparison against selected Key Performance Indicators. It recommended that a detailed analysis be performed in order to

ascertain whether the operations under the ICAC Act made an appreciable difference to the prevention or minimisation of corruption, misconduct and maladministration in public administration.

I think that a quantitative analysis of this kind would be difficult.

I think the greatest challenge in undertaking a quantitative assessment of whether the ICAC has made an appreciable difference to the prevention or minimisation of corruption, misconduct or maladministration relates to the nature of the topic to be assessed. I think that the most important change that my office can make to the integrity landscape of the public sector is to prevent a person from engaging in the conduct that might amount to corruption, misconduct or maladministration. It would be a difficult task to make that assessment on a strictly quantitative basis.

I would be pleased to discuss with the Committee what it considers a quantitative assessment might involve and how meaningful results might be obtained.

Evaluation of the Practices, Policies and Procedures of the Ombudsman - Recommendation 8

The Committee recommended that consideration be given to appointing an independent reviewer to examine the practices, policies and procedures of the Ombudsman.

The Committee noted views previously expressed by the Ombudsman that oversight by the ICAC undermined the independence of his office. I am not sure whether the Ombudsman's comments were directed to an independent review of the kind recommended by the Committee. I think those comments were directed towards my then power to be dissatisfied with the manner in which the Ombudsman carried out an investigation.

In my view, the ICAC has the same level of independence that any other independent statutory officer would have in evaluating the Ombudsman's practices, policies and procedures. The ICAC would be no different to any other independent reviewer in that regard.

I would be pleased to discuss this matter further with the Committee.

Video recordings of examinations conducted under the ICAC Act

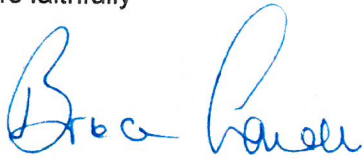
Recently the Hon. Kevin Duggan AM QC gave evidence before the committee. In answer to a question the committee was informed that examinations conducted under the ICAC Act were not video recorded but were only audio recorded.

I would like to take the opportunity to clarify that every examination conducted under the ICAC Act has been and will continue to be recorded on both video and audio. The fact that the examination is being video recorded and audio recorded is explained by the examiner at the start of every examination and is recorded on the transcript.

I have clarified this with Mr Duggan.

I look forward to meeting the Committee soon.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Bruce Lander', with a large, stylized 'B' and 'L'.

The Hon. Bruce Lander QC

INDEPENDENT COMMISSIONER AGAINST CORRUPTION