

# **REVIEW OF THE INSPECTOR'S REPORT TO THE PREMIER: THE INSPECTOR'S REVIEW OF THE ICAC**

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# POLICE ASSOCIATION OF NEW SOUTH WALES

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22 July 2016

The Committee Manager  
Committee on the Independent Commission Against Corruption  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Sir / Madam

**Review of the Inspector's Report to the Premier: The Inspector's Review of the ICAC**

I would like to make the attached submission to the Committee on the Independent Commission Against Corruption's *Review of the Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

This submission is made in my capacity as President of the Police Association of New South Wales on behalf of the Association's members.

If the Committee has any questions in relation to this Submission or seeks the response of the Association to any matter related to the Inquiry, please do not hesitate to contact the Association Research Division on [REDACTED].

Yours sincerely

[REDACTED]

Scott Weber

# Police Association of NSW Submission

## NSW Parliament Committee on the Independent Commission Against Corruption

### Review of the Inspector's Report to the Premier: The Inspector's Review of the ICAC



*The Police Association of New South Wales (PANSW) represents the professional and industrial interests of approximately 16,500 members, covering all ranks of NSW Police Officers in New South Wales.*

*This submission is written on behalf of our members and does not seek to represent the position of the NSW Police Force.*

**Terms of Reference – Inquiry into the ICAC Inspector’s Report to the Premier: The Inspector’s Review of the ICAC**

That the Committee on the Independent Commission Against Corruption (‘ICAC’) review and report on the ICAC Inspector’s Report to the Premier: The Inspector’s Review of the ICAC dated 12 May 2016; with particular regard to:

- 1) the extent, nature and exercise of the ICAC’s current powers and procedures including the rationale for and conduct of investigations and public hearings, and possible options for reform;
- 2) the current structure and governance of the ICAC, best practice models adopted by other integrity institutions, and possible options for reform;
- 3) the current oversight arrangements for the ICAC, including the role, powers and resourcing of the ICAC Inspector, and possible options for reform;
- 4) whether the outcome of legal action taken in response to the ICAC’s corrupt conduct findings is adequately reflected on the public record; and possible options for reform;
- 5) any other related matters.

In conducting its inquiry the Committee will take into account relevant reports and documents impacting on the terms of reference, in particular:

- a. the report of the Hon Murray Gleeson AC, QC and Mr Bruce McClintock SC, Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption, dated 30 July 2015;
- b. the report of Mr Andrew Tink AM, Review of Police Oversight, dated 31 August 2015;
- c. any report of the ICAC Inspector recommending changes to the ICAC’s practice and procedure.

1. The Police Association of NSW (PANSW) welcomes the opportunity to submit to this Inquiry. While the jurisdiction of the ICAC does not include police officers, the recommendations in this submission are primarily based on the experience of police officers under the Police Integrity Commission Act 1996. This experience is directly relevant to this Inquiry because:
  - a. Both Commissions exercise the powers of a standing Royal Commission, and employ substantially similar procedures,
  - b. The oversight arrangements for the ICAC and the PIC replicate each other, and in fact the Office of Inspector for each Commission is currently held by the same individual,
  - c. Many provisions of the ICAC Act and the PIC Act replicate each other or are substantively similar,
  - d. This Inquiry has been necessitated by significant criticisms of the Commission, and the PIC has been subject to many of these same criticisms for many years now,
  - e. Given the PIC Act and ICAC Act often replicate each other, the recommendations of this Inquiry and any resulting changes to the ICAC Act will likely be later replicated in the legislation establishing the new police oversight Commission (the Law Enforcement Conduct Commission), meaning the interests and rights of police officers will be significantly affected by this Inquiry.
2. Given the operation of the PIC and ICAC, and the experience of those affected by these Commissions, has raised many of the same community concerns, and given the outcome of this Inquiry will likely have a flow on effect on the oversight arrangements for the Law Enforcement Conduct Commission, the PANSW requests our submission be considered directly relevant to this Inquiry.
3. The community demands these Commissions must be capable and effective at detecting and exposing corruption. This of course means the Commissions must have the necessary powers and resources. Years of deficient conduct and outcomes on the part of the PIC has also demonstrated that to be effective, the Commission must also be reliable. The use of extraordinary investigatory powers is ineffective if the product of those investigations is not reliable and cannot be trusted by the community. This means the Commission's legislation must require processes for exercising these extraordinary powers in a manner which is reliable and fair, and provide for mechanisms which maintain the accountability of the Commission's activities.

## Experience under the Police Integrity Commission Act

4. The Police Integrity Commission has previously faced consistent findings by the Inspector of the PIC of bias, denials of procedural fairness, and even failures to utilise basic investigative practices.
5. In regards to investigative deficiencies, the Inspector has previously found the PIC engaged in the following:
  - a. "prejudice and prejudgment on the part of the Commission"<sup>1</sup>,
  - b. A systematic skewing of the evidence<sup>2</sup>,
  - c. A persistent pattern of omitting relevant evidence and failing to have regard to the whole of the evidence so as to present that evidence fairly and intelligibly<sup>3</sup>,
  - d. Reliance on, and publication of, witnesses who were acknowledged as unreliable<sup>4</sup>,
  - e. The PIC "spent an enormous amount of time and resources investigating, the sensational claims comprised in the June 2005 anonymous allegation"<sup>5</sup>,
  - f. The PIC "gave credence to gossip and rumours"<sup>6</sup>, and
  - g. "contained inaccuracies concerning the Complainants, lacked clarity and precision, in some cases failed to refer to exculpatory material, failed to refer to relevant evidence or to explore relevant issues, and failed to present a fair and balanced account of the evidence"<sup>7</sup>.
6. In regards to procedural fairness, the Inspector has previously made the following findings:
  - a. There was "a clear and significant failure to accord procedural fairness to these witnesses"<sup>8</sup>,
  - b. This lack of procedural fairness cause considerable damage to the reputations of the persons involved. The PIC failed to act to limit this damage, and
  - c. There were "substantive problems underlying the practices and procedures adopted by the Commission"<sup>9</sup>.
7. The Inspector has said of this bias, lack of procedural fairness, and poor investigation practices:

"The analysis of the Commission's investigation and Report conducted in the preceding pages of my Report has uncovered a situation so serious and so far removed from what is expected of a law enforcement body invested

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<sup>1</sup> Inspector's Report, Pursuant to Section 89(1) of the *Police Integrity Commission Act 1996* Dealing with Complaints made by [REDACTED] arising out of Police Integrity Commission's Whistler Report, 9 March 2011, para 134.

<sup>2</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 19 October 2011, para 377.

<sup>3</sup> Ibid, para 377.

<sup>4</sup> Ibid, para 383.

<sup>5</sup> Ibid, para 383.

<sup>6</sup> Ibid, para 385.

<sup>7</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 2 April 2009, para 10.

<sup>8</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 2 April 2009, para 7.

<sup>9</sup> Ibid, para 6.

with very considerable resources and the powers of a Royal Commission as to be well-nigh incomprehensible".<sup>10</sup>

8. These do not represent isolated findings. In 2009 the Committee of the Office of the Ombudsman and the Police Integrity Commission requested the Inspector of the PIC to consider making a Special Report regarding the cumulative effect of multiple critical reports, and whether they amounted to systematic failures by the PIC<sup>11</sup>. The Inspector of the PIC found in the resulting report:

In my opinion my Reports when read as a whole, and having regard to the fact that they deal with complaints arising from three separate public Reports made by the Commission to the Parliament, containing adverse opinions damaging to the reputations of those involved, do reveal systemic and substantive problems underlying the practices and procedures adopted by the Commission<sup>12</sup>.

9. The conclusion these deficiencies are systematic and entrenched was again reached in another report two years later<sup>13</sup>.
10. This assessment of the PIC was not confined to the Inspector. In relation to Operation Rani, the Commissioner of Police obtained a review of the PIC's findings by Senior Counsel. This review concluded: *"none of the specific adverse findings made in the Operation Rani report against either [redacted] or [redacted] were justified"*<sup>14</sup>.
11. The disclosure of information by the Commission has also been problematic. In February 2011 the then Minister for Police made a written request to the Inspector to ascertain whether the PIC had breached secrecy provisions by leaking information from confidential hearings to the media<sup>15</sup>. In his Annual Report, the Inspector stated:

Despite the seriousness of the breach of the Commission's confidential processes demonstrated by this unauthorised release of confidential information, the PIC informed me that it had not itself initiated an internal investigation with a view to establishing how the breach of its security had occurred.<sup>16</sup>

12. The Inspector has also criticised the PIC's practices in relation to publication of certain information regarding the outcome of Commission adverse findings. In one matter, despite a finding by the Inspector the Commission no authority to publish the adverse findings, and

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<sup>10</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 19 October 2011, para 376.

<sup>11</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 2 April 2009, para 1.

<sup>12</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 2 April 2009, para 6.

<sup>13</sup> Special Report of the Inspector of the Police Integrity Commission Pursuant to Section 101 of the *Police Integrity Commission Act 1996*, 19 October 2011, para 377.

<sup>14</sup> Memorandum of Advice of Mr P Taylor SC, para 171.1.

<sup>15</sup> Inspector of the PIC Annual Report 2010-11, para 124.

<sup>16</sup> Ibid, para 134.



no reliance should be placed on those opinions and recommendations the Commission published information implying the individual's employment had ended as a result of the adverse findings.<sup>17</sup>

13. The behaviour demonstrated by the PIC falls so far short of the standard of integrity and professionalism required of the police officers the PIC oversights. This has resulted in operations being so flawed they could not be relied upon. At the same time they denied the officers involved procedural fairness, damaging their careers and causing them significant personal harm.

## Reforms

14. The PANSW considers there are a number of reforms which would ensure reliability and fairness of Commission activities, without imposing any limit on the Commission's investigative powers or capacity to detect and expose corruption. These reforms focus on:
  - a. The accountability mechanisms for the Commission, including the Inspector and the Parliamentary Committee, and
  - b. Reducing the harm caused by hearings examining as yet unsubstantiated allegations, and
  - c. Mandatory processes which improve the procedural fairness of Commission activities.
15. As stated by the Inspector, the Commission is best able to perform its function when the public can have confidence in the "propriety of the conduct of the ICAC itself"<sup>18</sup> and the following recommendations seek to ensure the propriety of the Commission's conduct.

## Accountability

### Inspector

16. The Inspectors of the ICAC and PIC has performed a valuable role. As indicated by the *Inspector's Report to the Premier: The Inspector's Review of the ICAC* however, the resources provided for the Inspector are inadequate to ensure accountability of the Commission's activities; a single matter has occupied the entirety of the resources of the Inspector for nearly 2 years.<sup>19</sup>
17. The Inspector must have the capacity to thoroughly consider and investigate if necessary, any complaints it receives about the Commission. The PANSW recommends the Inspector also be fully resourced to increase its proactive auditing function. An increased proactive auditing role will be a crucial accountability mechanism to ensure all processes of the

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<sup>17</sup> Inspector of the Police Integrity Commission. Annual Report 2010-11, para 94 to 123.

<sup>18</sup> Office of the Inspector of the Independent Commission Against Corruption, *Report to the Premier: The Inspector's Review of the ICAC*, 12 May 2016, p1.

<sup>19</sup> Office of the Inspector of the Independent Commission Against Corruption *Report to the Premier: The Inspector's Review of the ICAC*, 12 May 2016, p16.



Commission are subject to scrutiny.

18. This Inquiry should also consider whether the legislation establishing the Inspector's functions should specify activities of the Commission which must be subject to auditing by the Inspector (which would be inclusive, rather than exhaustive, allowing the Inspector to decide whether any additional oversight activity would be effective). These should include auditing:
  - a. A percentage, set in the legislation, of:
    - i. Commission investigations,
    - ii. Application for warrants, and execution of warrants,
    - iii. Summons issued,
    - iv. Non-publication orders issued,
  - b. Disclosures of information/evidence made by the Commission to other agencies, individuals, or the media,
  - c. The triaging of matters, and whether the allocation of matters is appropriate according to the scope of the Commission,
  - d. Compliance with Commission policies/procedures/guidelines (see below),
  - e. Any other activities the Inspector considers appropriate.
19. The Inspector should include a statistical report on the audits conducted in each category in its annual report. By reporting on the auditing function in aggregate, there is no risk of prejudicing an individual matter.
20. The 2015 Annual Report of the Office of the Inspector of the PIC reports the Inspector audited two Commission investigations. The PANSW believes an increased auditing function, covering a larger sample of Commission activities, and audits both specific to investigations, as well as targeting specific Commission activities or processes, will ensure the Commission exercises its powers reliably and fairly.
21. The PANSW acknowledges the Inspector currently conducts audits into specific categories of Commission activities, as demonstrated by the section of the Inspector's website: *Audit Reports under Section 57B(1)(a) of the ICAC Act*. The PANSW submits the resourcing of the Inspector should be increased to enable the Inspector to increase the coverage of its audits, and to conduct the audits each year.
22. Consideration should also be given to the desirability of appointing an Assistant Inspector with experience and expertise in auditing and compliance work, to supplement the legal qualifications of the Inspector with a complimentary skill set.
23. This accountability mechanism would in no way detract from the ability of the Commission to detect and expose serious corruption. It would simply require an increased provision of information from the Commission to the Inspector, increasing transparency.

## **Policies**

24. Law enforcement agencies, including the NSW Police Force, have extensive policies, procedures and guidelines which provide detail on how powers and functions are to be performed and executed in an operational context. Commissions such as ICAC should have equally extensive policies to ensure its activities accord with the intended practical operation.
25. These policies should provide for the practical implementation of the Commission's legislative powers and constraints, and could address some of those concerns reported in the Inspector Report on Operation Hale and the Report to the Premier: The Inspector's Review of the ICAC.
26. The Inspector should be given the legislative function of:
  - a. Regularly assessing the adequacy of the policies, procedures and guidelines written by the Commission, and publicly reporting its findings (in Annual Reports and Special Reports) and
  - b. Auditing the Commissions compliance with those policies.
27. This would ensure the Commission develops policies which establish policies which are appropriate for performing Commission functions, but also establish a standard for the propriety of the Commission's conduct , to which the Commission will be held accountable.

## **Parliamentary Committee**

28. The PANSW supports Inspector Recommendation 13 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.
29. Currently there are potentially obstacles to the Committee holding the Commission accountable for its conduct. Subject to safeguards for operational matters, the Committee must be able to obtain information necessary to assess whether the Commission is performing its functions as intended, and is acting with propriety.

## **Hearings and publication of evidence**

### **Examinations should be held in private**

30. The PANSW supports Recommendation 1 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.
31. Examinations should be held in private.
32. Many police officers have suffered significant harm to their reputations, careers and wellbeing as a result of PIC hearings investigating allegations which are later shown to be false. While allegations remain unsubstantiated, officers are tarnished by the publicising of the allegations. It often takes many years for them to clear their name, by which time the damage is irreversible. The PANSW understands this to be a similar deficiency identified in

the processes of the ICAC.

33. Conducting hearings in private would reduce this damage for individuals who were subsequently found to have not engaged in wrongdoing. At the same time, corruption would still be exposed, as reports could still be published at the conclusion of the investigation.

### Public interest in referral to other agency

34. The PANSW also supports Recommendation 4 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.
35. In deciding whether to conduct an investigation, and whether to conduct a hearing as part of an investigation, the Commission should have to consider whether the public interest would be better served by the matter being dealt with by another agency.

### Code for Commission Hearings

36. The PANSW also supports Recommendation 16 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.
37. The PANSW acknowledges the Commission is “not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.”<sup>20</sup>
38. However, given the concerns expressed about the conduct hearings, the Inspector’s Recommendation (establishing a Code or set of Rules to apply to the conduct of hearings) would improve the public’s trust in the propriety of the Commission’s conduct.
39. The PANSW also submits the Act should contain a provision specifying the Commission owes witnesses procedural fairness, and then the Code/Rules should provide practical processes which ensure this is upheld.

## Processes to ensure Procedural Fairness

### Information provided to persons summonsed to examinations

40. The PANSW supports Recommendation 3 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.
41. The Commission should be required to inform summonsed witnesses of the matters the person will be questioned about.
42. There should be **NO** provision that a failure to do so does not invalidate or affect the examination.
43. The Inspector should audit the compliance with this requirement. If there is any exemption to this requirement (for example if the disclosure would prejudice an investigation) the

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<sup>20</sup> *Independent Commission Against Corruption Act 1996*, s17(1).



Commission should be obliged to notify the Inspector of any instance in which it does not make the disclosure, and provide its reasons for doing so.

44. This Inquiry should also give consideration to the extent of the information the Commission is obliged to provide.
45. The experience in relation to the Police Integrity Commission has demonstrated examinations often relate to matters which occurred many years before the examination, and involves complicated evidence and detailed courses of events. In these circumstances, it is surely more conducive to accurate and informed evidence being provided if witnesses are notified of the nature of the matters about which they will be questioned, and evidence which has already been obtained by the Commission regarding those matters.
46. Consideration should be given to the utility of witnesses being provided with the information currently held by the Commission which is relevant to the questions the witness will be asked. This will allow the witness to properly brief their legal representative and re-familiarise themselves with their recollection of the events about which they will be questioned.

#### Disclosure of information to the media

47. Just as public hearings can cause significant damage to individuals, so too can the Commission providing information to the media for publication. A number of complaints upheld by the Inspector of the PIC have been based on the publication and widespread attention of damaging materials or adverse findings which were unreliable, breached principles of procedural fairness and natural justice, or resulted in no formal outcomes.
48. This Inquiry should consider strategies to ensure the Commission only provides information to the media in appropriate circumstances. The presumption should be that the Commission utilise its formal mechanisms for exposing corruption, such as reports or referrals of matters. The disclosure of information to the media for matters which are still ongoing, and therefore are as yet unsubstantiated, should be prohibited.
49. The ICAC and PIC have existing obligations under legislation and their media policies regarding disclosures. The media policies state the Commission will provide information to the media if it is in the public interest to do so. For the same reason public hearings should not occur (highlighted above, and in the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*) Commissions should not be disclosing information to the media about ongoing matters. The PANSW can see no reason why such a disclosure would be necessary, given the Commission can report at the conclusion of the investigation.
50. If disclosures to the media do occur, their propriety should be audited by the Inspector.

## Reports

### Removal of Reports from Publication

51. As demonstrated at the beginning of this submission, there have been numerous Reports by the Police Integrity Commission with significant deficiencies in reliability and fairness. Despite these deficiencies being brought to light by the Inspector, or the Commission evidence being found to be unreliable by other law enforcement agencies or the Court, these reports remain in publication, causing damage to the individuals named.
52. The PANSW therefore recommends this Inquiry consider the provision of an avenue for affected individuals to seek Reports be removed from publication. This is consistent with Recommendation 15 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*, which recommends an "Exoneration Protocol". The PANSW supports the Inspector's Recommendation 15, and also asks the Inquiry to consider an exoneration protocol in circumstances where no prosecution occurs; the Inspector's Recommendation 15 appears to outline a protocol when a prosecution is unsuccessful, but limiting the protocol to these circumstances would mean Reports which are so unreliable they never proceed to prosecution would not be subject to the protocol.

### Findings of Reports – s74BA

53. The PANSW supports Recommendation 6 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*. Subsection (2) of section 74BA negates the intent of subsection (1).
54. Therefore, subsection (2) should be deleted.

## Non-disclosure

55. Individuals may, due to various forms of involvement with the Commission, be subject to secrecy obligations or restriction on publication orders under sections 111 and 112.
56. There are important reasons why disclosure of information must be restricted, and the PANSW does not seek to undermine those objectives. However, there are circumstances where the health and rights of individuals are adversely affected by these restrictions where disclosure would not undermine those objectives. These include disclosures made for the purposes of:
  - a. Seeking legal advice and providing comprehensive legal instructions in relation to proceedings (criminal or disciplinary) related to Commission investigations;
  - b. Applying for legal assistance, such as ex gratia assistance from the Attorney General, for legal fees incurred;
  - c. Obtaining medical treatment, accessing statutory medical entitlements, obtaining any relevant legal advice or assistance on those entitlements, and
  - d. Making a complaint to the Inspector.



57. Disclosures for these purposes relate to the health and safety of individuals, and fundamental legal rights. It is also difficult to envision how disclosures made in those circumstances would undermine the objectives of the secrecy and restriction provisions.
58. Therefore the PANSW recommends the secrecy and restriction provisions exempt disclosures made for those purposes.

## **Criminal Charges**

### **Publication when prosecution recommended**

59. If criminal charges are laid in connection with a matter the Commission has investigated, the Commission should be obliged to take all reasonable steps to ensure it does not prejudice proceedings relating to those charges.
60. This should include delaying the publication of reports, transcripts or any other communication of findings until proceedings are finalised, including appeals.
61. The Commission publishes investigation reports, findings of corrupt conduct, recommendations for prosecution or disciplinary action, hearing transcripts, and media releases produced by an investigation.
62. This facilitates the Commission's ability to expose corruption to the public.
63. However, the timing of the publication or disclosure of that material can have a significant impact on people's right to a fair trial. Once that information is in the public domain, the person may be pre-judged as guilty by members of the public by virtue of the coverage of the Commission investigation.
64. Therefore, if the Commission recommends persons for consideration for prosecution, or it is reasonably foreseeable the Commission will refer a matter or evidence to an investigative or prosecutorial agency for the purposes of prosecution, the Commission should be prohibited from publishing reports, findings or transcripts, or in any other way publishing the assessments or opinions of the investigations, until all proceedings are finalised.

### **Commission Activity When Proceedings on Foot**

65. Section 18 of the Act provides for the Commission to:
- a. commence, continue, discontinue or complete any investigation,
  - b. furnish reports in connection with any investigation,
  - c. do all such acts and things as are necessary or expedient for those purposes,
- despite any proceedings that may be in or before any court, tribunal, coroner, Magistrate or other person.
66. If a matter is already subject to prosecution or the other proceedings listed, there is unlikely any need for the Commission to conduct an investigation into conduct to which those

proceedings relate; such conduct has already been detected and exposed.

67. Therefore, the Commission should be prohibited from the listed activities in relation to conduct which is subject to current charges/proceedings, to ensure the Commission investigation does not prejudice those proceedings.
68. Should the above recommendation not be adopted, there needs to at least be further protections preventing the prejudicing of a fair trial.
69. Firstly, if proceedings have commenced, the Commission should be required to obtain the approval of the relevant court, tribunal, coroner, Magistrate or other persons, before commencing, continuing or completing an investigation.
70. If approval is granted, the Commission should be required to take all reasonable steps to ensure the conduct of the investigation does not prejudice those proceedings.
71. Finally, the Commission should be prohibited from the following activities until the proceedings are finalised (including any appeals):
  - a. Conducting a compulsory examination of a person if the examination relates to an conduct for which that person has been charged,
  - b. Conducting a compulsory examination of a person with sufficient interest in a Coronial Inquiry,
  - c. Obtaining a warrant under the Surveillance Devices Act in relation to persons identified in (a) or (b),
  - d. Conducting a public hearing about conduct which is relevant to those proceedings,
  - e. Disclosing evidence obtained over the privilege against self-incrimination to an investigation or prosecution team involved in the proceedings, and
  - f. Publishing a report.

## Recommendations

### Inspector

#### Recommendation 1

The Inspector should perform an expanded function in proactive auditing of all processes of the Commission.

This expanded function should be expressed in the Act, and the Inspector should be given the resources necessary to fulfil this function.

#### Recommendation 1A

Consideration should be given to whether the Act should specify activities of the Commission which must be subject to auditing by the Inspector (which would be inclusive, rather than exhaustive, allowing the Inspector to decide whether any additional oversight activity would be effective). This should include auditing:

- a) A percentage, set in the legislation, of:
  - i. Commission investigations,
  - ii. Application for warrants, and execution of warrants,
  - iii. Summons issued,
  - iv. Non-publication orders issued,
- b) Disclosures of information/evidence made by the Commission to other agencies, individuals, or the media,
- c) The triaging of matters, and whether the allocation of matters is appropriate according to the scope of the Commission,
- d) Compliance with Commission policies/procedures/guidelines (see below),
- e) Any other activities the Inspector considers appropriate.

#### Recommendation 1B

The Inspector include a statistical report on the audits conducted in each category in its annual reports.

#### Recommendation 1D

Consideration should be given to the desirability of appointing an Assistant Inspector with experience and expertise in auditing and compliance work, to supplement the legal qualifications of the Inspector with a complimentary skill set.

#### Recommendation 2

The Inspector should be given the legislative function of:

- a) Regularly assessing the adequacy of Commission policies, procedures and guidelines written by the Commission, and publicly reporting its findings (in Annual Reports and Special Reports), and

- b) Auditing the Commission's compliance with those polices, under the functions specified in Recommendation 1A.

## Parliamentary Committee

### Recommendation 3

The PANSW supports Inspector Recommendation 13 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

## Hearings

### Recommendation 4

The PANSW supports Recommendation 1 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

Examinations should be held in private

### Recommendation 5

The Act should contain a provision specifying the Commission owes witnesses procedural fairness.

### Recommendation 6

The PANSW supports Recommendation 16 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

A Code or Regulation should establish procedures for Commission Hearings. This Code or Regulation should provide practical processes to ensure witnesses are afforded procedural fairness, in accordance with the obligation referred to in Recommendation 5.

## Notice to Witnesses

### Recommendation 7

The PANSW supports Recommendation 3 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

The Commission should be required to provide information to witnesses summonsed of the matters the person will be questioned about.

### Recommendation 7A

There should be **NO** provision that a failure to do so does not invalidate or affect the examination.

### Recommendation 7B

If there is any exemption to this requirement (for example if the disclosure would prejudice an investigation) the Commission should be obliged to notify the Inspector of any instance in which it does not make the disclosure, and provide its reasons for doing so.

### **Recommendation 7C**

This Inquiry should also give consideration to the extent of the information the Commission is obliged to provide. The PANSW submits witnesses be provide with the information held by the Commission which is relevant to the questions the witness will be asked.

## **Disclosures to the Media**

### **Recommendation 8**

The disclosure of information to the media for matters which are still ongoing, and therefore are as yet unsubstantiated, should be prohibited.

The Commission should utilise its formal mechanisms for exposing corruption; producing reports or referring matters to other agencies, rather than utilising publicity surrounding the matter.

### **Recommendation 8A**

If disclosures to the media do occur, their propriety should be audited by the Inspector.

## **Exoneration Protocol**

### **Recommendation 9**

The PANSW supports Recommendation 15 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

The Act should establish an "Exoneration Protocol".

### **Recommendation 9A**

The Inquiry considers provision for an exoneration protocol in circumstances where no prosecution occurs, in addition to the Protocol proposed by the Inspector.

## **Section 74BA**

### **Recommendation 10**

The PANSW supports Recommendation 6 of the *Inspector's Report to the Premier: The Inspector's Review of the ICAC*.

Subsection (2) of section 74BA should be deleted.

## **Exemptions to Restriction on Publication Orders and Secrecy Provision**

### **Recommendation 11**

Restrictions on publication and secrecy provisions contain exemptions, providing disclosures made for the following purposes do not breach the order or provision:

- a) Seeking legal advice and providing comprehensive legal instructions in relation to any proceedings (criminal or disciplinary);
- b) Applying for legal assistance, such as ex gratia assistance from the Attorney General, for legal fees incurred in the above circumstances;



- c) Obtaining medical treatment, accessing statutory medical entitlements, and obtaining any relevant legal advice or assistance on those entitlements, and
- d) Making a complaint to the Inspector.

## **Interaction between Commission Investigations and Criminal Charges**

### **Recommendation 12**

If the Commission recommends persons for consideration for prosecution, or it is reasonably foreseeable the Commission will refer a matter or evidence to an investigative or prosecutorial agency for the purposes of prosecution, the Commission should be obligated to delay the publication of reports, transcripts or any other communication of findings or evidence until proceedings are finalised, including appeals.

### **Recommendation 13**

Currently, section 18 of the Act allows the Commission to:

- a) commence, continue, discontinue or complete any investigation,
- b) furnish reports in connection with any investigation,
- c) do all such acts and things as are necessary or expedient for those purposes,

despite any proceedings that may be in or before any court, tribunal, coroner, Magistrate or other person.

This provision should be reversed: the Commission should be prohibited from the listed activities in relation to conduct which is subject to current charges/proceedings, to ensure the Commission investigation does not prejudice those proceedings.

### **Recommendation 13A**

In the alternative, if Recommendation 13 is not adopted and the Commission retains the ability to investigate conduct subject to current charges/proceedings, the following protections should be enacted:

- a) If proceedings have commenced, the Commission should be required to obtain the approval of the relevant court, tribunal, coroner, Magistrate or other persons, before commencing, continuing or completing an investigation.
- b) If approval is granted, the Commission should be required to take all reasonable steps to ensure the conduct of the investigation does not prejudice those proceedings.
- c) The Commission should be prohibited from the following activities until the proceedings are finalised (including any appeals):
  - i. Conducting a compulsory examination of a person if the examination relates to an conduct for which that person has been charged,
  - ii. Conducting a compulsory examination of a person with sufficient interest in a Coronial Inquiry,
  - iii. Obtaining a warrant under the Surveillance Devices Act in relation to persons identified in (a) or (b),
  - iv. Conducting a public hearing about conduct which is relevant to those proceedings,

- v. Disclosing evidence obtained over the privilege against self-incrimination to an investigation or prosecution team involved in the proceedings, and
- vi. Publishing a report.

The PANSW thanks you for the opportunity to contribute to this Inquiry. We are happy to provide further information or appear before the Committee if requested.