

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

**Organisation:** The Law Society of New South Wales  
**Name:** Mr Gary Ulman  
**Position:** President  
**Date Received:** 22 July 2016

Our ref:GUcm1176631

22 July 2016

The Chair  
Joint Committee on the Independent Commission Against Corruption  
Parliament House  
6 Macquarie Street  
Sydney NSW 2000

By email: [ICACCommittee@parliament.nsw.gov.au](mailto:ICACCommittee@parliament.nsw.gov.au)

Dear Chair,

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

Thank you for the opportunity to provide a submission on the Inspector's Review of the Independent Commission Against Corruption (ICAC).

The Law Society notes that ICAC is an independent body established to (among other things) investigate, expose and prevent corruption involving or affecting public authorities and public officials. The Law Society recognises the importance of ICAC in protecting the rule of law, in particular by ensuring that no person is above the law.

The ICAC may, if it is satisfied that it is in the public interests to do so, conduct a public inquiry. In determining whether or not it is in the public interest to conduct a public inquiry, the Commission must consider:

- (a) the benefit of exposing to the public, and making it aware, of corrupt conduct;
- (b) the seriousness of the allegation or complaint being investigated;
- (c) any risk of under prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry);
- (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of persons concerned.

The Law Society notes that there are sound policy reasons for conducting public inquiries, which provide transparency in the way that the ICAC operates, and promote public awareness of, and confidence in, those operations. Public inquiries may also act as a deterrent to others who may be tempted to engage in corrupt conduct in the future.

However, the Law Society also notes that ICAC has extraordinary powers that override a number a fundamental rights and principles, such as the privilege against self-incrimination and the right to silence. It is important to place reasonable limits on the circumstances in which such powers may be exercised to protect the community against unwarranted intrusions on their civil liberties.

In particular, the Law Society notes the importance of procedural fairness in the conduct of public inquiries; and the need to be mindful of the impact hearings can have on the reputations of those called to give evidence, and about whom evidence is given.

The Law Society submits that affected parties should be able to apply to ICAC for a matter to be heard in private, either in whole or in part. An independent avenue to appeal such a determination would also be needed, for example, to the Supreme Court. The timeframe for lodging an appeal would need to be relatively short so that the ICAC proceedings are not unduly delayed.

Finally, the Law Society notes the decision of the High Court in *X7 v Australian Crime Commission & Another* [2013] HCA 29, which considered the issue of compulsory examination and the subsequent use of that evidence in criminal proceedings. The impact of this decision for bodies such as ICAC is uncertain. The Law Society suggests further consideration of this issue in the context of this Inquiry.

Please do not hesitate to contact [REDACTED] Principal Policy Advisor, on [REDACTED] or [REDACTED] if you would like to discuss this further.

Yours sincerely,



Gary Ulman  
**President**