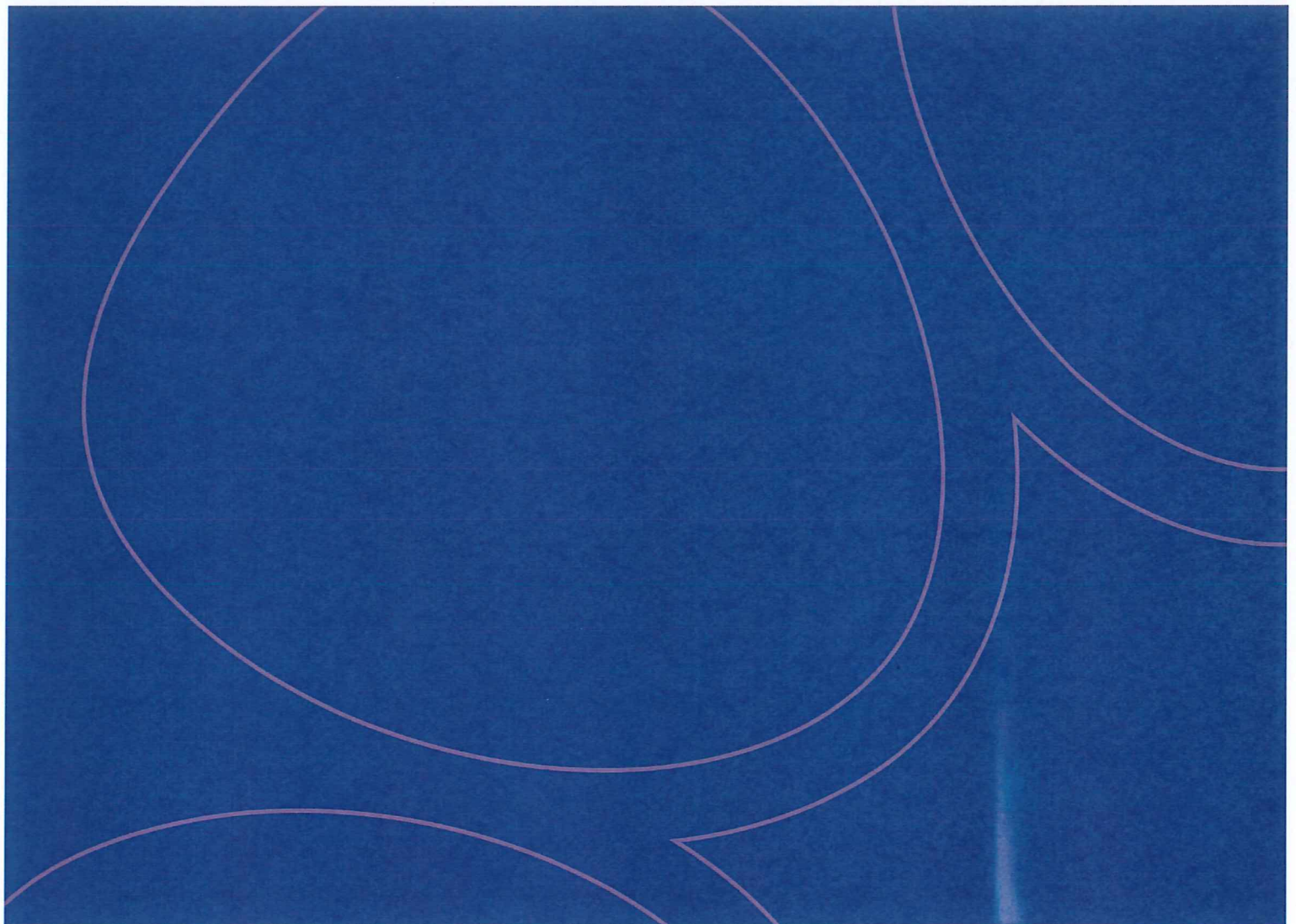


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137 OF THE INDEPENDENT COMMISSIONER AGAINST  
CORRUPTION ACT 2017 OF EVALUATION OF THE  
INDEPENDENT COMMISSIONER AGAINST CORRUPTION  
PURSUANT TO SECTION 136 OF THE ACT**

**September 2020**



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## 1. INTRODUCTION

1. The Administrator of the Northern Territory appointed me as the Inspector of the Office of the Independent Commissioner Against Corruption (OICAC or Office of the ICAC) Northern Territory on 28 September 2018. I am also the Inspector of the New South Wales Independent Commission Against Corruption having been appointed to that office on 1 July 2017.
2. My appointment is for a term of five years pursuant to section 134 of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act). Section 134(5) provides, in effect, that no person can serve as Inspector longer than five years. Consequently, I will cease my role as Inspector no later than 27 September 2023.
3. The Administrator made a Determination of Conditions of Inspector at an Executive Council Meeting on 29 November 2018.
4. I am required by section 136 of the ICAC Act to evaluate the performance of the ICAC for a financial year and required by section 137 to provide the report to the ICAC Minister, (the Chief Minister) within three months after the end of the financial year to which the report relates.
5. The 2019-20 financial year is the first full financial year since the institution of the Office of the ICAC and my appointment as Inspector. Consequently, this is my first annual report under section 137 of the ICAC Act on my evaluation under section 136 of the Act of the performance of the ICAC for a full financial year. The report which I provided on 30 September 2019 was not an annual report but rather a special-purpose report pursuant to section 140(3) of the ICAC Act. Nevertheless, as is apparent from that report, I dealt with the matters that I would be required to deal with if it had been the annual report under section 137 of the ICAC Act.

## 2. FUNCTIONS AND DUTIES OF INSPECTOR - STATUTORY FRAMEWORK

6. Section 135 of the ICAC Act specifies the following as functions of the Inspector:
- a. to evaluate the performance of the ICAC and report on the evaluation;
  - b. to receive and deal with complaints about the ICAC or members of ICAC staff;
  - c. to make recommendations to the ICAC or public bodies regarding practices or procedures in relation to performance of functions under the Act;
  - d. to perform other functions conferred on the Inspector under the ICAC Act.

Subject to the matters referred to in paragraphs 12-14 below, no additional functions have been conferred on me under the ICAC Act or any other Act.

7. As stated above, section 136 requires the Inspector to evaluate the performance of the ICAC. In doing so, the Inspector must consider:
- a. whether the ICAC and members of ICAC staff acted within power and in compliance with the Act and any other Acts or subordinate legislation;
  - b. whether the ICAC has implemented any previous recommendations made by the Inspector;
  - c. any other matters the Inspector considers relevant.
8. Section 137 requires the Inspector to give a copy of the proposed report on evaluation to the ICAC and to afford a reasonable opportunity to comment on the proposed report and to include a fair representation of the ICAC's comments in the report. Section 137(3) & (4) require the Inspector to provide the report to the Chief Minister within three months of the financial year to which it relates and the Chief Minister is required to table this in the Legislative Assembly within six sitting days.
9. Section 138 deals with complaints about the ICAC, the ICAC's office and ICAC staff members. It permits any person to complain about such people to the ICAC itself or to the Inspector. If the complaint is made to the ICAC, the ICAC must notify me as Inspector

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within 14 days. I am empowered (section 138(3)) to deal with a complaint in any manner I consider appropriate.

10. Under section 139, the Inspector is entitled to full and free access to the ICAC premises and all items in the possession and control of the ICAC for an evaluation under section 136 and dealing with a complaint under section 138.
11. Section 140 provides the Inspector with further powers, but it is unnecessary to set them out here. Section 142 deals with staff of the Inspector and, in effect, enables staff of an existing agency to be allocated to me as Inspector.
12. The *Surveillance Devices Act 2007* (NT) confers a significant additional function on me as Inspector. That legislation relevantly provides, as follows:

**64A Inspection of ICAC records by Inspector**

- (1) The Inspector must, from time to time, inspect the records of the ICAC to decide the extent of compliance with this Act by ICAC officers.
- (2) For the inspection, the Inspector:
  - (a) after notifying the ICAC, may enter at any reasonable time a place occupied by the ICAC; and
  - (b) is entitled to have full and free access at all reasonable times to all records of the ICAC that are relevant to the inspection; and
  - (c) may require an ICAC officer to give the Inspector information that:
    - (i) is in the officer's possession or to which the officer has access; and
    - (ii) is relevant to the inspection.
- (3) The ICAC must give, and ensure other ICAC officers give, the Inspector any assistance the Inspector reasonably requires to enable the Inspector to perform functions under this section.

**64B Inspector's reports on investigations**

- (1) The Inspector must make a written report to the Minister at six monthly intervals on the results of each inspection under section 64A.
- (2) The Minister must table a copy of the report in the Legislative Assembly within six sitting days after receiving the report.

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No warrants have been issued pursuant to this legislation to the ICAC or to any officer thereof and consequently there has been no occasion for me to carry out the inspection required by section 64A or make the report required by section 64B of this Act. I understand that this position is shortly to change, and I will be required to carry out the functions imposed on me by this legislation. I will do so and propose to furnish the six-monthly reports required in approximately March and September each year while I remain Inspector.

13. Section 71A of the *Police (Special Investigative and Other Powers) Act 2015 (NT)* requires me as Inspector to conduct an audit of ICAC records in relation to an authority to acquire and use an assumed identity at least every six months while an authority is in force and at least in the six months after the authority has ended. The actual terms of the legislation are as follows:

**71A Audit of records – the ICAC**

- (1) The Inspector must arrange for the records kept under section 70 by the ICAC for each authority in relation to the ICAC to be audited:
  - (a) at least once every six months while the authority is in force; and
  - (b) at least once in the six months after the cancellation or expiry of the authority.
- (2) The audit is to be conducted by a person appointed by the Inspector.
- (3) The person appointed to conduct the audit:
  - (a) may be a member of ICAC staff; and
  - (b) must not be a person:
    - (i) who granted, varied or cancelled any of the authorities to which the records under section 70 relate; or
    - (ii) who is or was an authorised person under any of the authorities to which those records relate.
- (4) The results of an audit are to be reported to the Inspector.
- (5) In this section:  
member of ICAC staff, see section 4 of the ICAC Act.

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No application for such an authority has been made to date by the ICAC which means that it has not been necessary for me to perform my duties under this legislation. The ICAC has advised that an update package will be prepared for me, as the Inspector, prior to any application being made under this Act.

14. Sections 15, 16, 16A and 16B of the *Telecommunications (Interception) Northern Territory Act 2001* provide:

**15 General power to inspect and report on ICAC records**

(1) The Inspector may at any time:

- (a) inspect the records of the ICAC to determine compliance by the ICAC and members of ICAC staff with Part 2, Division 2 during any period; and
- (b) report to the Minister about the results of the inspection.

(2) The Inspector may do anything necessary or convenient for the purposes of subsection (1).

**16 Regular inspections of ICAC records**

(1) At least once in each period of 6 months, the Inspector must inspect the records of the ICAC to determine compliance by the ICAC and members of ICAC staff with Part 2, Division 2 since the last inspection.

(2) Not later than 3 months after the end of each financial year, the Inspector must report in writing to the Minister on the results of inspections carried out in that financial year.

**16A Report on contravention**

If, as a result of an inspection, the Inspector is of the opinion that the ICAC or a member of ICAC staff has contravened the Commonwealth Act or the ICAC has contravened section 8C(a), the Inspector must:

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- (a) allow the ICAC an opportunity to provide written comments in respect of that matter; and
- (b) include in the report under section 15(1)(b) or 16(2):
  - (i) a report on the contravention; and
  - (ii) a copy of the written comments of the ICAC.

**16B Notification of report**

If the Inspector has provided a report under this Division to the Minister, the Inspector:

- (a) must notify the Commonwealth Minister, in writing, that the report has been given; and
- (b) must provide the ICAC with a copy of the report.

The ICAC has advised that telecommunications interceptions will require further legal authority as an 'enforcement agency' under the Commonwealth Act. The ICAC has been in negotiations with the Commonwealth Department of Home Affairs for an extended period to bring about the required legislative reform. The ICAC has indicated that an update package will be prepared for me, as the Inspector, prior to any application being made under this Act. Thus, it has not been either necessary or possible for me to exercise my powers under this legislation. There may, in fact, be an issue in relation to this matter. I am aware in my capacity as Inspector of the NSW ICAC that, to date, the Commonwealth has declined to permit persons in the position of Inspector to have access to telecommunications intercept material for the purpose of performing an audit. There have been attempts over the years to persuade the Commonwealth to change this, but they have to date been unsuccessful.

15. A number of other legislative matters should be mentioned. The first is that in August 2019, and so during the financial year considered in this Report, the Legislative Assembly passed the Bill which has now become the *Integrity and Accountability Legislation*



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*Amendment Act 2019. Section 18 of that Act amends section 134 of the ICAC Act to insert, after section 134(1), the following provision:*

*1A the appointment may be made only after receiving a recommendation of the Legislative Assembly.*

I fully support this amendment (which did not apply to my appointment). The Territory Legislature to which, through the Chief Minister, the Inspector ultimately reports, should be involved in his or her appointment as such.

16. The second is that on 20 February 2020 the Legislative Assembly passed a resolution establishing a Standing Committee on the ICAC in the following terms:

*(1) That this Assembly establishes a Standing Committee on the ICAC and designates it to receive reports and perform other functions in relation to the Independent Commissioner Against Corruption (Commissioner) pursuant to Section 5 of the Independent Commissioner Against Corruption Act 2017 (the Act).*

*(2) The functions of the Committee are to:*

*(a) perform the functions of the Assembly Committee under the Act;*

*(b) examine each Annual Report of the Commissioner and the Inspector under section 128 and 137 of the Act;*

*(c) report to the Assembly on matters relating to tabled reports which have been referred to the Legislative Assembly by the Commissioner under section 53 and 54 of the Act;*

*(d) examine trends in similar bodies in Australia and internationally, including trends in the legislation and administration of these bodies, to ensure the NT ICAC remains fit-for-purpose.*

*(3) The Committee's functions do not include:*

*(a) investigating a matter relating to particular conduct, or*

*(b) reconsidering a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or*

*(c) reconsidering the findings, recommendations, determinations or other decisions*

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*of the Commissioner or the Inspector, in relation to a particular investigation, preliminary inquiries, audit, review, referral, or complaint.*

*(4) The membership of the Committee will be two Government Members of which one will be Chair and the other the Deputy Chair of the Committee, one Opposition Member and one non-party aligned Member. Membership of the Committee will be subject to conflict of interest considerations to ensure members are free from perceived or actual bias.*

I welcome the establishment of the Standing Committee and look forward to working with it and its members to the extent that they feel desirable. I am happy to discuss any matter relating to my office as Inspector with the Committee, whether formally or informally, except those proscribed by paragraph 3 of the resolution.

17. Finally, on the topic of legislation, I should point out that the *Public Employment and Management Act 1993 ("PSEMA")*, the *Financial Management Act 1995* and the *Information Act 2002* do not apply to my office. The latter Act contains a specific exemption in section 49E thereof. While this legislation does not apply to me or my Office, I hope that I have complied, nevertheless, with section 5F of the *PSEMA* and the following parts thereof, *mutatis mutandis*:

*(1) The performance and conduct principle is that a public sector officer must do the following:*

*(a) carry out the officer's duties as follows:*

*(i) objectively, impartially, professionally and with integrity;*

*(ii) to the best of the officer's ability;*

*(iii) in accordance with the Act and any code of conduct applicable to the officer under section 16(2)(c);*

*(b) treat other public sector officers, other persons in the workplace and members of the public fairly, equitably and with proper courtesy and consideration;*

*(c) ensure effective, efficient and appropriate use of public resources;*

*(d) avoid actual or apparent conflicts of interest between personal or other interests and duties as a public sector officer . . . .*

### 3. MY BACKGROUND

18. So the Chief Minister and the Legislative Assembly, including the members of the newly established Standing Committee, understand my background and experience, I have

been a practising barrister since 1983 based principally in Sydney. My experience relevant to my role as Inspector is that I prepared a Report into the ICAC legislation of New South Wales in 2005 and in 2015, with the Honourable AM Gleeson AC QC, former Chief Justice of Australia, prepared a report into the further issues regarding that legislation. Both such reports were prepared for the New South Wales Government.

19. As stated above, I was appointed Inspector of the New South Wales ICAC from 1 July 2017 and have performed that role since. Like the Northern Territory Inspector's appointment, it is a part-time position.

#### 4. THE NORTHERN TERRITORY INSPECTORATE

20. While the matters referred to in the following paragraphs precede the financial year with which I am dealing, as this is my first Annual Report, it is appropriate that I repeat what I said in last year's Preliminary Report. I visited Darwin from 23-26 September 2018 to undertake preliminary discussions with the responsible officers of the former Department of the Chief Minister (DCM) and with Mr Kenneth Fleming QC whose appointment as Commissioner had by then been announced.
21. Key outcomes of the meeting with DCM officers were:
- a. arrangements for creation of a website, which has been operative since late 2018. The address is <https://oiicac.nt.gov.au>. That website describes the nature of the office, the procedure for complaints, how the Inspector is accountable and contact details;
  - b. establishment of methods of contact. These are principally for receiving complaints and liaising with DCM. The email addresses are: [Bruce.Mcclintock@oiicac.nt.gov.au](mailto:Bruce.Mcclintock@oiicac.nt.gov.au); [inspector@oiicac.nt.gov.au](mailto:inspector@oiicac.nt.gov.au); [admin@oiicac.nt.gov.au](mailto:admin@oiicac.nt.gov.au). The second address is the one specified on the website for receiving complaints;
  - c. creation of a secure and independent records management system;
  - d. enabling remote access to my websites;

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- e. the provision of dedicated administrative resources to manage the website and monitor my email traffic. Ms Maria Mohr undertook responsibility for my office assisted by Ms Mel Griffith.
- 22. One further matter dealt with was responsibility for funding my office and remuneration. That is now the responsibility of DCM. It would have been inappropriate for my office to be an expense of the ICAC (which had been proposed) because of the nature of the relationship between the Inspector and the ICAC established by the legislation.
- 23. I have since visited the Northern Territory on four occasions, 2-6 December 2018, 24-27 February 2019, 19-23 August 2019 and 9-14 February 2020. Each visit was either for the purpose of advancing the establishment of the Inspector's office, liaising with the ICAC or carrying out the evaluation of the performance of the ICAC required by the Act.
- 24. During the December 2018 visit I had the privilege of being the keynote speaker on a Northern Territory Government Human Resources Forum on Integrity in the Public Service. Interest in integrity issues and the newly created Office of the ICAC was extremely high from the Territory public servants present and showed in the lengthy question and answer session that followed my presentation.
- 25. The purpose of the August 2019 visit was to carry out the evaluation of the ICAC's performance and prepare the 2019 Preliminary Report. I had lengthy meetings with the Commissioner himself, Mr Matthew Grant, General Manager and Ms Kelly Bennett who was acting in the position of Director Investigations.
- 26. There were a number of purposes to the February 2020 visit. I met Mr Fleming QC and Mr Grant for the purposes of considering and evaluating the functioning of the Office of the ICAC. In addition, I met senior officers of the Department of the Chief Minister including Ms Jodie Ryan and Ms Maria Mohr. Ms Mohr is my contact in the Department, the staff of which provide support to me in carrying out my statutory functions. In addition, I met with Ms Telfer, the Northern Territory Commissioner for Public Employment. I regard one of my obligations as Inspector to be to educate and inform Northern Territory public servants and members of the public of my role and the role of the ICAC, as well as illustrating to such people the damage that official corruption can



do. In performance of that obligation I had two meetings, one with Northern Territory Government Chief Executive Officers and another with Deputy Chief Executive Officers. Also, during this visit in February 2020, I had the significant benefit of attending a compulsory examination conducted by the Commissioner of a witness in the new hearing room in the Office's purpose-built premises.

27. I had intended to visit Darwin in August 2020 for the purpose of meeting with the Commissioner and the General Manager to carry out my evaluation of the performance of the Office of the ICAC for the purpose of preparing this report. Unfortunately, and to my very great regret, the ravages of coronavirus and Covid-19 in the southern states prevented me from doing so. Instead, I had on 24 and 25 August 2020 lengthy Microsoft Teams conferences with both the Commissioner and the General Manager. I do not regard that as an entirely satisfactory substitute for face-to-face meetings but there was no alternative. I am hoping to visit the Northern Territory when the travel restrictions are modified, hopefully in October 2020.

## 5. ADMINISTRATIVE MATTERS

28. Administrative support is being provided to me in my capacity as Inspector by officers of DCM, specifically, by Ms Maria Mohr, Deputy Chief Executive Officer and, in her absence on leave, by Jean Doherty, Senior Executive Director and by Ms Mel Griffith, Ms Mohr's executive assistant. They manage document retention on my behalf and, to that end, have executed Confidentiality Agreements with me. I am grateful to them and acknowledge the very great assistance and help they have given. I wish to acknowledge particularly the assistance Ms Griffith has given to me. I also acknowledge the assistance I received earlier from other Territory public servants in establishing the office of the Inspector. I have particularly in mind Keith Fernandez, Giovina D'Alessandro, Bill Whittington, Kate Brennan and Arabella Ward. All those I have mentioned are a credit to the Territory public service and their help has been invaluable.

## 6. RELATIONS WITH THE OFFICE OF THE ICAC

29. While the Office of the Inspector is independent of the ICAC and is bound to exercise a significant oversight role in relation to the Office of the ICAC under the Act, I know from previous experience that performance of the Inspector's functions is significantly enhanced by a cordial and cooperative working relationship between the Commissioner and the Office of the ICAC on the one hand and the Inspector on the other. I am pleased to report that such a relationship exists (in my perception) between myself and Mr Fleming QC and the ICAC staff with whom I have dealt.
30. Relations between myself and the Office of the ICAC have been formalised by a Memorandum of Understanding (MOU) executed by the Commissioner and myself in April 2019. A copy of the MOU was attached to last year's preliminary report.
31. Pursuant to the MOU (and section 138 of the ICAC Act), the Commissioner or the General Manager have disclosed a number of significant matters to me which I record below.
32. I am satisfied that the Commissioner and the Office of the ICAC have dealt with these matters appropriately, both in the way they investigated and in their reporting to me.

## 7. COMPLAINTS

33. As I have indicated above, section 135(1)(b) of the ICAC Act specifies that my functions as Inspector include receiving and dealing with complaints about the ICAC. Section 138(3) empowers me to deal with a complaint in any manner I consider appropriate. While there are no criteria specified for dealing with complaints, I consider, nevertheless that a complaint may only be upheld if it demonstrates some form of impropriety or erroneous approach, whether factually or legally on the part of the ICAC. Certainly, it is not enough, for example, that I might disagree with the decision of the ICAC which is the subject of the complaint to me. Further, because a decision by the ICAC to undertake an investigation involves a correlative decision by the ICAC to expend its limited resources, I consider that the ICAC must be permitted a wide discretion as to which matters it decides to investigate or not. Thus, I would require some form of impropriety

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to be convincingly established on the part of the ICAC before I upheld a complaint about a failure on its part to investigate a complaint to it. These principles have guided, and will continue to guide, my approach to dealing with the complaints which are made to me.

34. In the year to 30 June 2020 I received seven complaints. Of these one did not appear to me to raise any issue about the conduct of the ICAC and, so, by email dated 10 December 2019 I declined to accept for investigation and, in so far as it constituted a complaint, I dismissed it. A second complaint was received by my office by emails dated 8 and 17 January 2020. That complaint involved a decision by the ICAC not to investigate the complaint made to it by the complainant. The events which led to the complaint took place between 1993 and 2007 which was a significant factor in the ICAC's decision not to accept it for investigation. That seemed to me an entirely reasonable basis for doing so and there was no suggestion of impropriety on the part of the ICAC. Accordingly, I dismissed that complaint by email dated 10 February 2020. A third complaint was received by me on 14 February 2020. The essence of this complaint was that there had been an internal breach of confidentiality within the ICAC which had resulted in a leak to the Northern Territory News. It was unnecessary for me to deal with that complaint because it was withdrawn by the complainant after a private examination conducted by the Commissioner. That decision was notified to me by the complainant by email on 28 April 2020. I received a fourth complaint on 19 February 2020. That complaint appeared to me to border on the vexatious and I declined to deal with it. I was notified of a further and fifth matter by a senior officer of the Northern Territory Police Force on 16 March 2020. That officer had concluded, correctly in my view, that there was insufficient evidence even to reach the threshold of suspecting improper conduct on the part of the ICAC and he was informing me of the matter for transparency only. I agreed with that approach as I informed the officer in question on 17 March 2020. A sixth complaint was received by me on 27 May 2020. That matter appeared to me to raise an issue of substance, so I accepted for determination. As I am required to do by the general law, I forwarded the complaint to the ICAC on 5 June 2020 after further correspondence between me and the complainant. I received a response from the ICAC which I forwarded to the complainant for response. I have recently received a response from the

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complainant and am now in a position to finalise my investigation of the complaint, which I shall do in early to mid-October.

35. A seventh matter deserves separate treatment. The background, which will be well known to anyone reading this report, is this. On 11 November 2019, the Northern Territory Police Commissioner Mr Chalker APM referred the shooting of Kumanjaya Walker in Yuendumu which had occurred on 9 November 2019 to the ICAC as “suspected improper conduct” pursuant to section 22(5)(b) of the ICAC Act. Shortly thereafter Constable Zachary Rolfe was arrested and charged with murder. At about this time, the ICAC received a request from local aboriginal elders who sought independent oversight of the police investigation. The Commissioner, to explain his independent oversight role, attended a public rally in Alice Springs. As a result of some statements made by the Commissioner at that rally the ICAC received six complaints, five of which were anonymous. Mr Matthew Grant, the ICAC General Manager referred those complaints to me on 18 November 2019 pursuant to section 138 of the ICAC Act. I took the view that because of the possible perception of bias on the part of the Commissioner he should not be involved in the ICAC’s continuing oversight of the police investigation into the death of Mr Walker. Mr Fleming QC accepted that determination without demur. My reasons for this decision are sufficiently set out in my letter to the Chief Minister dated 2 December 2019 which was in the following terms:

Dear Chief Minister

This letter reports under section 140(3) of the [ICAC Act] on a matter that I consider needs to be brought to your attention.

On 18 November 2019, Mr Matthew Grant, General Manager of the Office of the Independent Commissioner Against Corruption (NT) forwarded to me under section 138(2) of the Act six complaints received from members the public alleging apprehended bias on the part of the Commissioner, Mr Ken Fleming QC arising from some remarks he made at a public rally on 14 November 2019 following the shooting death of Kumanjaya Walker at Yuendumu on 10 November 2019. In general terms the complaint subject to Mr Fleming having any involvement in the oversight by the Office of the ICAC of the police investigation into that death which had been referred to that Office by the Commissioner of Police, Mr Chalker on 11 November 2019.



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After considering the matter and the complaints, I came to the view that it would not be appropriate for Mr Fleming to have a role in oversight of the investigation and suggested to him, through Mr Grant, he should step aside, which he did without demur.

I am continuing to monitor the situation and the ongoing investigation which is being managed by Mr Grant pursuant to an existing delegation.

I have not annexed the complaints, but they are available.

The Chief Minister acknowledged my report by letter dated 6 December 2019.

## **8. EVALUATION OF THE PERFORMANCE OF THE ICAC AND THE OFFICE OF THE ICAC**

36. The Office of the ICAC has provided me with the following report:
  - a. Draft Annual Report on 17 September 2020.
37. I will not repeat or attempt to summarise the Annual Report - it is, or will be, publicly available by the time I present my report.
38. In addition, as I have mentioned above, I have had lengthy and helpful online meetings with the Commissioner and General Manager.
39. I set out below my views as the present situation of the Office of the ICAC and my evaluation of its performance. I also indicate and reflect on a number of issues the ICAC now faces. In doing so, I wish to emphasise that I evaluate the performance to date of the Office of the ICAC, the Commissioner and General Manager as extremely satisfactory, as I did my Preliminary Report last year. Any comments I make should not be interpreted as criticisms of them. They have created, virtually from scratch, an organisation which, if properly resourced, will be an effective anti-corruption agency and an asset to the public administration of the Northern Territory.
40. In the 2019 Preliminary Report I set out a three phase strategic plan leading to a fully functional integrity agency, as it had been identified to me by the General Manager. That strategic plan was in the following terms:

## 8.1. Establishment:

*The establishment phase recognises the urgency to launch and socialise a functioning Commission.*

## 8.2. Physical environment:

*Design, fund and equip a premises capable of catering for a fully funded ICAC (forward focus).*

*Procure equipment vehicles, communications, physical exhibit management requirements.*

*Contract out computer forensics, surveillance and telephone intercept.*

*IT - source a case management system and leverage access to specific law-enforcement databases and licenses.*

## 8.3. Documents & Processes:

*Develop a bespoke staffing model, draft job descriptions, recruit a high-performance team within NTPS guidelines and implement a performance management process with individual charters.*

*Develop investigation plans, risk matrices and action registers, suitable for complex investigations.*

*Import and fine-tune instruments to exercise coercive powers and service examinations. Develop a transparent referral assessment process that showcases independence and objectivity.*

## 8.4. Business planning cycle:

*Draft Budget Estimates and Key Performance indicators, funding cases and our annual reporting template.*

## 8.5. Socialisation:

*Develop a stakeholder engagement strategy, intranet presence and marketing strategy, designed to integrate the Commission into the wider NTPS and inform the public that "the doors are open".*

## 8.6. Normalisation:

*The normalisation phase requires us to "lead" the Commission by formalising its identity and "manage" the Commission by identifying potentially fatal risks and treating them.*

### **8.7. Vision mission - (Leading):**

*Create a vision, mission and business plan with milestones and deliverables capable of driving operational activity and satisfying government expectation in terms of the efficiency and effectiveness.*

### **8.8. Governance Framework - (Managing):**

*Commissions typically assess the framework of other government agencies which guides them towards stronger frameworks and an enhanced corruption prevention stance. Accordingly we need to develop policy, procedure, practice, internal audit processes and risk treatments to protect the Commission's position and reputation.*

### **8.9. Operational Activity:**

*Initial operational activity will be reactive and opportunistic, rather than pursuing our strategic objectives. This provides an opportunity to bond the team and test our processes. We will make mistakes during this period and will need to phase operational activity and consider our public profile.*

### **8.10. Understanding the Environment:**

*Conducting an environmental scan of our jurisdiction is crucial to (1) identify areas of greatest risk/threat to allow us to prioritise our resourcing and (2) establish a baseline to measure our outcomes, both quantitative and qualitative.*

### **8.11. Strategic Focus:**

*The timings of the establishment and normalisation phases are scalable and dependent on external support provided by government and internal efficiencies that we create. The next challenge lies in maintaining our operational tempo, whilst looking over the horizon, creating a Commission capable of servicing future requirements.*

### **8.12. Capability development:**

*Government have a vision derived from public expectation and articulated through the Act and subsequent speeches and releases.*

*We inform government of the size of the problem, (based on our environmental scan) and develop our capability and capability picture, which will assist in redressing the misconduct and corruption problem.*

*We perform a national stock-take of integrity agency capabilities and approach government in terms of capability and capacity, supported by business cases and funding submissions.*

### 8.13. Maximising Impact:

*The integrity agency will service a large jurisdiction with very limited resources. The Act allows for a number of outcomes ranging from: education and prevention, "devices" to affected agencies, parliamentary reports, private and public hearing outcomes and monitoring and reviewing recommendations to ensure ongoing accountability.*

41. At the time of my 2019 Preliminary Report, Stage I Establishment had been substantially completed and Stage II Normalisation was underway.
42. The Office of the ICAC is now fully operational, that is, it has completed the Establishment and Normalisation phases referred to in paragraph 40 of last year's Preliminary Report. As at 30 June 2020 it had 22 full-time equivalent employees ("FTE") an increase from 12 FTE as at 30 June 2019. On creation, the Office of the ICAC comprised of the Commissioner himself, and the employees (including three investigators) transferred from the Office of the Commissioner for Public Interest Disclosures a total of nine personnel. It has relocated to purpose-built premises at Level 7, 9 Cavenagh Street, Darwin. Very significantly, it has completed procurement of a Case Management System. Such a system is critical for the operation of a body such as the OICAC which could not function effectively without it.
43. The Office of the ICAC now has five functional units under the Commissioner and the General Manager. Those units are:
  - Prevention and Engagement
  - Assessments
  - Investigations
  - Corporate Services
  - Executive
44. The functions of each of these units have been explained to me as follows:
  - The Prevention and Engagement unit deals generally with the education and prevention of corrupt conduct function. It develops prevention and communication strategies and works with public bodies to implement tactics that, for example, foster a culture of reporting of potential corrupt conduct across agencies. As I said



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in my 2019 Preliminary Report, the function of corruption prevention through education is, in my view, of at least equal significance to the investigation function. Obviously, it is better that corruption is prevented rather than occurring and being later detected.

- The Assessments unit, as its name suggests, has the function of reviewing all complaints and reports which come into the Office of the ICAC to determine their eligibility for investigation by the Office. It applies the criteria established by the ICAC Act and makes recommendations to the Commissioner based on an assessment of whether the conduct in question is serious, systemic, sensitive and whether it is reasonably contemporary as opposed to historic. In addition the unit deals with or oversees referrals to other agencies.
  - The Investigations unit, once again as the name suggests, carries out the Office of the ICAC's investigation function.
  - The Corporate Services unit supports the operational requirements of the OICAC by managing finance, human resources, governance, risk and business services.
45. As at the present time, the OICAC has 22 full-time equivalent employees, an increase from 12 FTEs a year ago. It had an operational budget of \$5.6 million for the 2019-20. There was a surplus of \$1.303 million in that period.
46. I note that the OICAC has adopted a Strategic Plan setting out its vision for the period 2020-2023. I note the following matters about the Strategic Plan;
- It expresses the vision of the OICAC as a 'prosperous corruption-free Territory' and its mission as one to 'support and empower Territorians to prevent, detect and respond to improper conduct'.
  - The aims expressed are to 'reduce improper conduct, demonstrate accountability, strengthen confidence in OICAC and public administration and build organisational capabilities and capacity'.
  - The expression of values such as integrity, courage, accountability and collaboration.

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I also note that the Strategic Plan expresses the OICAC's areas of focus for 2021 in the following terms:

- Continue to safeguard the identity of protected persons (whistleblowers) and security of information.
- Conduct comprehensive environmental analysis to determine corruption risks and hotspots.
- Refine our High Performance Framework and internal processes with a focus on maximising delivery functional objectives.
- Ensure a fit-for-purpose agency in relation to legislative and policy reform and human capital growth.
- Implement a strategy to foster a proactive reporting culture and coordinate responses to improper conduct.
- Continue to improve access to OICAC services for all Territorians.

I evaluate the OICAC's performance in these respects as entirely satisfactory.

47. I evaluate these arrangements as satisfactory. The resource issues to which I referred in last year's Preliminary Report appear to me to have been resolved.
48. Key decision-making committees have been established, the Corporate Executive Committee, the Operations Committee and the Audit, Risk and Compliance Committee. I propose to monitor these Committees and audit their minutes.
49. A fully functioning office is now established with high quality staff.

## 9. COMPLAINTS AND COMPLAINT ASSESSMENTS

50. From 1 July 2019 to 30 June 2020 the Office of the ICAC received 385 reports of conduct alleged to fall within the statutory concepts of improper conduct, corrupt conduct, misconduct, unsatisfactory conduct and breach of public trust as those terms are defined in sections 9-13 of the ICAC Act. Of these 148 were mandatory reports. I

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note that the OICAC has published mandatory reporting directions and guidelines set out the requirements for a public body, public officer, or the community, to report suspected improper conduct.

51. The Office of the ICAC informs me that of those 347 have been assessed, of which 54 have been referred to other agencies for action, 31 progressed to preliminary enquiry stage and 56 passed for investigation. The assessment staff are currently processing reports at an average rate of 20 per fortnight. It would be unrealistic to expect any higher rate given the complexity of any such assessment.
52. I am satisfied that the assessment process and the procedures established to deal with the reports are appropriate.
53. I am also pleased to note that the matters determined and accepted for investigation are progressing to finality and to hearings.
54. The OICAC has produced in the period 2019 - 2020 substantial investigation reports as follows:
  - Investigation Report - Speaker of the Legislative Assembly
  - Investigation Summary - Anzac Hill High School
55. In summary, my evaluation of these matters is that the Office of the ICAC is dealing with them in a satisfactory manner. In relation to the reports referred to in the preceding paragraph I evaluate them as extremely satisfactory.

## **10. PUBLIC AND PUBLIC SERVICE EDUCATION**

56. An important aspect of any integrity agency is an educative function. That is, to make known both to the public and public officers the functions of the agency and to emphasise corruption prevention to them so that they clearly understand the necessity for integrity in public office.
57. My evaluation of these functions is that they have been performed satisfactorily by the Office of the ICAC. It is clear that the office has achieved significant penetration into the community and the public service.

## 11. CONCLUSION

58. I am satisfied that the Office of the ICAC, the Commissioner himself and his staff have acted within power and in compliance with the Act and other relevant legislation.

*B. R. W. McIntosh*

Bruce McClintock SC

Inspector ICAC

30 September 2020