

**REPORT ON AN ADMINISTRATIVE MATTER:
JOINT CONFERENCE OF PARLIAMENTARY
INSPECTORS 21 SEPTEMBER 2017**

Sections 199 and 201 of the *Corruption, Crime and Misconduct Act 2003 (WA)*

2 October 2017

This is a short report to inform the Committee of the occasion of the annual conference conducted with my counterparts, and their key staff, from New South Wales, Victoria and Queensland.

This year I hosted our conference at the Esplanade Hotel in Fremantle on 21 September 2017, and it was a tremendous success.

The delegates were Mr Bruce McClintock SC, Inspector of the Independent Commission Against Corruption in New South Wales; Mr Terry Buddin SC, Inspector of the Law Enforcement Conduct Commission in New South Wales; Ms Susan Raice, Principal Legal Adviser to both Mr McClintock SC and Mr Buddin SC; Mr Robyn Brett QC, Inspector of the Victorian Inspectorate; Mr Neal Jedwab, Chief Operating Officer for the Victorian Inspectorate; Ms Karen Carmody, Parliamentary Inspector of the Crime and Corruption Commission in Queensland, and Mr Mitchell Kundie, Principal Lawyer for Ms Carmody.

The principal discussions during this year's conference focussed on the following topics.

The inability to audit affidavits used by our respective commissions to obtain telecommunications interception warrants

As seen in my previous two reports to the Committee concerning our interstate conferences, and as mentioned in my annual reports and other correspondence with the Committee during my term, the Commonwealth Attorney General has not granted me and my counterparts a general power to audit affidavits used by our respective commissions to obtain warrants under the *Telecommunication (Interception and Access) Act (Com) 1979*.

This lacuna in our otherwise complete audit powers continues to prevent the use of telecommunication interception from being forensically scrutinised. A sense of hopelessness was expressed by us over the stagnation around this issue.

However, I proposed that we try once more to inject some momentum into correcting this situation, and in this respect we intend to jointly write another letter, through the Committee and our Attorneys General, to the Commonwealth Attorney General. I hope that you will support us in this ongoing endeavour.

Approach adopted by our respective commissions to investigating misconduct by their own officers

We discussed the cultural and other factors which drive defensive responses to external scrutiny which is common in our respective commissions when confronted with internal wrongdoing. In relation to our State's commission, I explained the terms of sections 196(4) and (9) of our Act and the commission's insistence that an allegation of wrongdoing made against one of its officers, which might have as one of its dimensions an industrial aspect, takes precedence over the exercise of my powers and functions – even if this approach defeats the proper criminal investigation by the police of conduct which might be criminal in nature. This is a continuing issue in all jurisdictions to varying degrees.

The conduct of public and private hearings by our respective commissions

Mr Bruce McClintock SC discussed the nature of complaints he is investigating about the improper conduct of counsel assisting ICAC hearings in recent years. This led to an in-depth discussion about the advantages, disadvantages and problems with public and private hearings, and the measures taken by our respective commissions to, on the one hand, fulfil their statutory purposes of investigating misconduct, and on the other hand protect the reputations of those people caught-up in the investigations and subsequently publicly named.

In particular, the workability of a recommendation made by Mr McClintock SC's predecessor, the Hon David Levine QC, that an 'exoneration' mechanism – a means of reversing a publicly-expressed opinion of misconduct or corruption by ICAC against an individual who is subsequently acquitted by a court of law on a criminal charge that pertains to the conduct in question – be introduced into NSW's legislation was debated.

As the Committee is aware, such opinions expressed by our respective commissions (which do not carry the force of law) can cause great harm to an individual, especially in cases where the individual is not criminally prosecuted (and convicted) in respect of the conduct alleged.

Public Interest Monitors

Mr Terry Buddin SC told the conference that the NSW Government is proposing to create a Public Interest Monitor, and that he and his office may assume responsibility for this role.

The function of a PIM is to take part in the application process before courts of law by law enforcement agencies and integrity commissions for the issue of surveillance device warrants and telecommunications interception warrants. The PIM represents the public interest and argues, in appropriate circumstances, against the issue of the warrant.

The PIM is given the affidavit relied on by the agency so applying in time to read and consider all the materials before the application is placed before the judge. The PIM appears before the judge with the applying officer or that person's lawyer, and may raise objections about aspects of the grounds for the warrant beforehand so that the agency may address legitimate evidentiary concerns.

Any application for a warrant might be made at any hour of the day, so the responsibilities of a PIM remain alive around the clock.

Very helpful information was given to the conference by Ms Carmody about the onerous obligations entailed in performing the role of a PIM, and the beneficial effect on the application process the role has, as she previously was the PIM for Queensland. She said that, on average, 650 warrant applications per year were made during her term. She was assisted by two Assistant PIMs and an administrative officer in order to properly fulfil the obligations of their office.

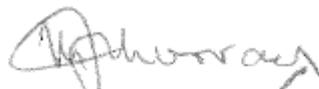
Mr Buddin SC said that if he and his office are given the PIM obligations in NSW, he will be confronted by approximately 3000 warrant applications per year. Needless to say, he had his reservations about the prospect that faces him, and about the substantial increase in resources that it will take to undertake the role should the government proceed with its suggestion.

A range of more minor issues were also discussed by the delegates.

All delegates, and in particular the newly-appointed Mr Buddin SC, Mr McClintock SC and Ms Carmody, afterwards expressed their gratitude for the insights gained during the conference, and believe, as I do, that the conferences should continue on a yearly basis. This being the case, the next conference will be held in Brisbane in 2018.

I table this Report for the benefit of the Committee, and respectfully suggest there is no purpose served by its tabling in Parliament.

I remain happy to discuss the conference with you should you so wish.



HON MICHAEL MURRAY AM QC
PARLIAMENTARY INSPECTOR