

**REPORT ON AN ADMINISTRATIVE MATTER:  
JOINT CONFERENCE OF PARLIAMENTARY  
INSPECTORS IN BRISBANE ON  
3 OCTOBER 2018**

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

11 October 2018

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

This year Ms Karen Carmody, Parliamentary Inspector of the Crime and Corruption Commission in Queensland, hosted our conference at Parliament House in Brisbane on 3 October 2018.

The delegates were myself and my professional assistant, Mr Alder; Mr Bruce McClintock SC, Inspector of the Independent Commission Against Corruption in New South Wales (and who was recently appointed the Inspector of a new integrity commission to be formed in the Northern Territory, the Commissioner of which will be Mr Ken Fleming QC from Queensland); the Hon Terry Buddin SC, Inspector of the Law Enforcement Conduct Commission in New South Wales; Ms Angela Zekanovic, Principal Legal Adviser to the Hon Buddin SC; Mr Eamonn Moran QC, Inspector of the Victorian Inspectorate; the Hon Kevin Duggan QC, Reviewer of the Independent Commission against Corruption in South Australian, and Mr Mitchell Kundie, Principal Lawyer for Ms Carmody in Queensland.

Ms Carmody led a general discussion throughout the day about individual and common issues and developments in our oversight functions and accountability to our respective Parliaments.

Ms Carmody explained that complaints about the Queensland Commission are made directly to her Parliamentary Committee rather than to her office, and the investigation and resolution of these complaints by her and Mr Kundie are monitored by the Committee. However, she said a bill is being prepared to empower her to receive complaints and to unilaterally initiate investigations.

The Hon Kevin Duggan QC was recently appointed Reviewer of the South Australian Commission, but has not been given staff to assist him. Nor is it clear that he will be given any. He has, however, been given an office to conduct his oversight responsibilities and uses a private secretary to settle his correspondence.

In contrast to Mr Duggan QC's circumstances, Mr Eamonn Moran of Victoria who was appointed to his position earlier this year, has a staff number of 17 and is presently negotiating with the Government to increase that number to 25, as he sees that number as essential to fulfilling the responsibilities of his office. However, he oversees not only the IBAC but also the Victorian Ombudsman, Officer of the Victorian Information Commissioner, the Chief Examiner, Victorian Auditor-General's Office and the Victorian Chief Examiner.

In NSW the respective offices of the Inspectors of ICAC and the Law Enforcement Conduct Commission are more sparsely provided with legal and administrative support, but it should be remembered that together they perform the oversight role of an office such as mine.

Ms Carmody asked for observations about our perceptions of the effectiveness of each of our offices, and whether our respective functions and powers (which are similar) are satisfactory to achieve the level of effectiveness sought by our Parliaments. My

response, and that of the other delegates, was that a significant level of effectiveness has been achieved within the scope of my functions and powers (which I said were quite adequate in most circumstances).

As part of this exchange, it was noted that, for example, the scope of the function to audit the operations of each of our Commissions for the purpose of monitoring compliance with the laws of the State, was affected by our offices' ability to audit those operations in 'real time', contemporaneously with the exercise by a particular Commission of the power under review.

The performance of this function in this proactive way is, of course, subject to our offices' resources, but it has the potential of avoiding, rather than responding to, our respective Commission's acts perceived to be beyond their statutory power. The desirability of being able to extend the oversight in that way beyond 'manner and form' compliance with the law, to review substantive 'merits based' issues, was discussed.

Reference to the involvement of some of my colleagues in the review of the process of hearings conducted by the Commissions, including the performance of counsel assisting, led to an inconclusive debate about the issue of public vs private hearings. This is a matter currently under consideration in South Australia. The conference was interested in my report of the paper I presented, concerning proposals to establish a Commonwealth Integrity Commission, and the discussion which had ensued, at the Australian Institute of Administrative Law conference in Sydney on 27 September 2018.

There was discussion about the difficulties associated with addressing Commissions' use of criminal-like terminology to categorise the conduct of an investigated person in their published reports (such as 'corrupt', 'bribery', 'fraudulent', 'misappropriation' and 'stealing') when their governing statute (such as s 217A of our Act in respect of our Commission) prohibits the publication of opinions which say a person has committed a criminal or disciplinary offence (an issue which has given rise to two complaints to me in response to two recent Commission reports tabled in Parliament).

For instance, Mr McClintock SC explained that ICAC Commissioners seek to justify the use of such terminology by saying that an investigated person is corrupt because had the evidence established by the Commission been used in a trial, the person would likely have been convicted of the offence of corruption.

Similar reasoning has been used by our Commission in similar circumstances, including when s 4(c) of our Act is used as the basis of an opinion of serious misconduct against a person when that person has not been tried and convicted of a criminal offence which carries a term of imprisonment of two or more years.

The difficulty involved in the interpretation of this provision is clear. It is a matter which is one of a number which I hope to have the opportunity to discuss with Commissioner McKechnie QC before I report (with recommendations) to the Joint Standing Committee.

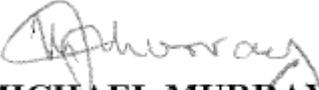
Finally, we discussed our inability to generally audit affidavits used by our respective commissions to obtain warrants under the *Telecommunication (Interception and*

*Access) Act (Com) 1979. Your recent efforts to finally solve this issue through our Attorney General by having the Act amended, encouraged the delegates and, may I say, stood in contrast to any other efforts by the governments of their states to address the issue (apart from New South Wales).*

The next conference will be held in Melbourne in 2019.

I make this Report for the benefit of the Committee, and respectfully suggest that no purpose would be served by tabling it in Parliament.

I would be happy to discuss the conference with the Committee should you so wish.



**HON MICHAEL MURRAY AM QC**  
**PARLIAMENTARY INSPECTOR**