

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE INDEPENDENT COMMISSION AGAINST CORRUPTION AND
THE INSPECTOR
OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

This Memorandum of Understanding ("MOU") is made on the 26th of September 2022 between the Independent Commission Against Corruption ("the Commission") and the Inspector of the Independent Commission Against Corruption ("the Inspector").

1. BACKGROUND

1.1. The Inspector's role was created by the *Independent Commission Against Corruption (Amendment) Act 2005* which inserted Part 5A into the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). The relevant provisions commenced operation on 1 July 2005.

1.2. The principal functions of the Inspector are set out in section 57B of the ICAC Act:

(1) The principal functions of the Inspector are:

(a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and

(b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and

(c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and

(d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

(a) contrary to law, or

(b) unreasonable, unjust, oppressive or improperly discriminatory, or

(c) based wholly or partly on improper motives.

(5) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:

(a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and

(b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any affected person.

1.3. Section 57C of the ICAC Act sets out the powers of the Inspector and provides as follows:

The Inspector:

(a) may investigate any aspect of the Commission's operation or any conduct of officers of the Commission, and

(b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and

(c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and

(d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operation or any conduct of officers of the Commission, and

(e) may investigate and assess complaints about the Commission or officers of the Commission, and

(f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and

(g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

2. PURPOSE

2.1. To set out arrangements for liaison between the Commission and the Inspector concerning referral of matters, access to information and points of contact between both agencies.

3. INTENT

3.1. The Commission undertakes to co-operate fully and frankly with the Inspector and her staff in order to assist the discharge of the Inspector's functions under the ICAC Act.

4. LIAISON

4.1. The primary point of liaison will be between the Inspector and the Chief Commissioner.

4.2. The Inspector, the Chief Commissioner and other Commissioners agree to meet once a quarter, to discuss relevant issues and raise any matters touching on the Inspector's functions and the conduct of the Commission. Each of the attendees will keep their own short notes of these meetings. The location of the meeting will alternate between the Inspector's office and the Commission's office.

4.3. When the Inspector or her staff need information relating to the exercise of her functions or powers this will be raised with the Chief Commissioner. In the absence of the Chief Commissioner, this will be raised with another Commissioner. In the absence of the Chief Commissioner or other Commissioner, this will be raised with the Solicitor to the Commission.

4.4. When the Inspector and/or her staff propose to interview a Commissioner in connection with a complaint, the Chief Commissioner will be notified wherever possible.

4.5. When the Inspector and/or her staff propose to interview any of the Chief Executive Officer, Executive Directors or any other staff of the Commission in connection with a complaint, the Chief Commissioner will be notified wherever possible.

4.6. The Commission acknowledges however, there may be occasions where the Inspector and her authorised staff may need to act without prior notice as outlined in paragraphs 4.3,4.4 and 4.5.

4.7. Written correspondence from the Commission to the Inspector will be addressed to the Inspector and marked "Private and Confidential"

Office of the Inspector of the Independent Commission Against Corruption

GPO Box 5341

SYDNEY NSW 2001

Or by email to oiicac_executive@oiicac.nsw.gov.au

5. NOTIFICATION OF COMPLAINTS OF MISCONDUCT BY THE COMMISSION TO THE INSPECTOR

5.1. The Commission (usually through the Solicitor to the Commission) will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission that comes within the principal functions of the Inspector.

5.2. All such matters will be communicated to the Inspector in writing unless urgent, in which case the Inspector will be told and then it will be confirmed in writing.

5.3. The Commission will handle such matters unless the Inspector indicates that she will deal with the matter directly. If the Commission handles it, it will keep the Inspector informed of progress.

5.4. The Commission is to advise whether the material or any part of it provided to the Inspector by the Commission about a complaint is confidential.

5.5. The Commission will make information concerning the Inspector's role and functions publicly available. This includes:

a. having appropriate information about the Inspector and links to the Inspector's website on the ICAC webpage

b. advising complainants of the functions of the Inspector and providing the Office's contact details

c. providing the information to whoever asks for it.

6. REGULAR PROVISION OF INFORMATION TO THE INSPECTOR

6.1. The Chief Commissioner will arrange for a copy of the reports, meeting papers, minutes and out of session records of the following meetings to be provided to the Inspector as soon as possible after each has concluded:

a. Audit and Risk Committee (ARC)

b. Executive Management Group (EMG)

c. Investigations Management Group (IMG) (with information in the IMG reports relating to telecommunications interception redacted to comply with the requirements of the *Telecommunications (Interception and Access) Act 1979*)

d. Prevention Management Group (PMG).

6.2. The Inspector and/or her staff may attend the ARC meeting as an observer.

6.3. The Chief Commissioner will provide to the Inspector:

a. a monthly report setting out the Commission's use of its statutory powers

b. a quarterly Assessments Section report setting out the number of matters received by the Commission during the quarter, a breakdown of the matters (including complaints by Government sector and Government function), the number of matters escalated to investigation and the number or current operations. The report will include the information reported for the previous two quarters for the purpose of comparison.

6.4. After the execution of this MOU, the Chief Commissioner will provide the Inspector with copies of the current:

a. Operations Manual

b. Investigation Policy Framework

c. Corruption Prevention Policy Framework, and

d. the Commission's Memoranda of Understanding with other agencies.

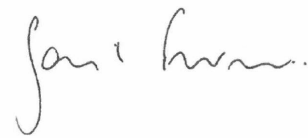
6.5. The Chief Commissioner will provide the Inspector with copies of the documents in paragraph 6.4 when they are updated.

7. REVIEW

7.1. This MOU may be reviewed at any stage at the request of either party.



The Hon. John Hatzistergos AM
Chief Commissioner of the ICAC



26 September 2022

Gail Furness SC
Inspector of the ICAC