

SPECIAL REPORT OF INSPECTOR PURSUANT TO SECTION 140 OF THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION ACT 2017 AND EVALUATION OF THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION

September 2024



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 INDEPENDENT COMMISSIONER AGAINST CORRUPTION

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1. Executive Summary

1. This is a Special Report which I make as Inspector of the Independent Commissioner against Corruption for parts of the financial year 2022-2023 pursuant to section 140 of the *Independent Commissioner against Corruption Act 2017* ("ICAC Act"). Ordinarily, I would be obliged by sections 136 and 137 of the ICAC Act, as Inspector, to evaluate the performance of the ICAC for a financial year and to provide the Report to the ICAC Minister, that is, the Chief Minister, within three months after the end of the financial year to which the report relates. I am unable to provide a section 136 evaluation and a section 137 report and am not required to do so by the ICAC Act because I was not Inspector for the entire financial year 2023-2024. I explain below in more detail the relevant circumstances but my original 5 year term as Inspector expired on 27 September 2023 and my new 5 year term did not commence until 21 December 2023. Thus, there was almost three months in the 2023-2024 financial year where I did not hold office as Inspector, had no statutory powers and performed no functions. For similar reasons, in 2019, because my original term commenced approximately three months after the beginning of the financial year, I presented a report under section 140, not section 137. Nevertheless, as I did in 2019, in this section 140 Special Report I will perform the evaluation referred to in section 136 of the ICAC Act for the period of the financial year during which I was Inspector. This is the sixth section 137 or section 140 report that I have prepared since my original appointment by the Administrator of the Northern Territory as Inspector of the Office of the Independent Commissioner against Corruption (OICAC or Office of the ICAC) Northern Territory on 28 September 2018.
2. I have evaluated the performance of the OICAC for the financial year 2023-2024. My conclusion is that, while there are positive aspects to the performance of the OICAC, it is difficult to be wholly satisfied with the performance of the OICAC over the period I am considering. The work of the agency has undoubtedly been disrupted by the fact that the Independent Commissioner Mr Michael Riches has been on leave since early June 2024 continuing to the date of this Report. The circumstances in which that occurred are well known and need not be repeated here. As a result, several reports in respect of OICAC operations have not been completed. I note that the Acting Independent Commissioner has, since the end of the financial year, taken steps, for example by retaining outside counsel to conclude the work in question. There are more persistent problems such as chronic understaffing and the related difficulty of obtaining appropriately qualified staff. Undoubtedly, these matters and the

circumstances surrounding the Independent Commissioner going on leave have had an impact on staff morale. There have also been funding issues although I note that there has been an increase in funding for the 2024-2025 financial year.

3. In my Annual Report for 2022-2023 I said this:

In [the 2021-2022] Report I mentioned that there had been a substantial increase in the number and complexity of complaints received by my office. In the financial year 2019-2020, I received seven complaints, only two of which were of any real substance. In contrast, in 2020-2021, I received more than double the number received in the previous reporting period. I stated in last year's Report "This trend has continued and, in addition, the complaints received have raised difficult issues, some of which I have determined adversely to the OICAC, as discussed below". The rate of increase has slowed, in the current reporting period I received eight complaints of substance. Two of those eight complaints arose ultimately from events that occurred in relation to the Darwin Turf Club investigation and before the current Independent Commissioner took office.

4. The trend referred to in the quoted passage appears to have reversed and in financial year 2023-2024, I received 16 complaints most of which did not raise any substantial issues. I detail the manner in which I dealt with those complaints below, including the 5 complaints made during the gap period between the expiration of my previous term and my re-appointment on 21 December 2023.

2. Functions and Duties of Inspector - Statutory Framework

5. Section 134 of the ICAC Act now following passage of the *Independent Commissioner against Corruption Amendment Act 2023* (the Amending Act) which came into force on 13 November 2023 provides as follows:

134 Appointment of Inspector

(1) The Administrator must appoint an eligible person to be the Inspector for this Act.

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

(1B) The Minister must table a copy of the appointment in the Legislative Assembly within 6 sitting days after the appointment is made.

(2) A person is an eligible person for appointment as Inspector if:

(a) the person is an eligible person to be appointed as the ICAC; and

(b) the person is not and has not been, at any time in the previous 12 months:

- (i) the ICAC; or
- (ii) a member of ICAC staff.

(3) The Inspector holds office:

- (a) for the period, not exceeding 5 years, specified in the instrument of appointment; and
- (b) on the conditions (including conditions about remuneration, expenses and allowances) determined by the Administrator.

(4) The Inspector's conditions of office:

- (a) cannot provide any conditions (for example as to remuneration) that are contingent on the Inspector's performance in office; and
- (b) cannot be varied during the Inspector's term in office.

(5) A person who is or was the Inspector may be reappointed, if still eligible, for one further period not exceeding 5 years, specified in the instrument of appointment.

6. The amendment of sub-section (5) permitted my reappointment in December 2023. Previously, the legislation had precluded an Inspector from serving more than one 5 year term. The Administrator of the Northern Territory first appointed me as Inspector of the OICAC Northern Territory on 28 September 2018 and secondly on 21 December 2023. I was the Inspector of the New South Wales Independent Commission against Corruption having been appointed to that office on 1 July 2017. That role ceased on 30 June 2022. On 1 July 2022 I commenced a five-year term as Inspector of the New South Wales Law Enforcement Conduct Commission.
7. My current appointment as Inspector of the Northern Territory ICAC is for a term of five years pursuant to section 134 of the ICAC Act and as a result of section 134(5) quoted above cannot again be renewed.
8. Section 135 of the ICAC Act specifies the following as functions of the Inspector:
 - (a) to evaluate the ICAC's performance and report on the evaluation;
 - (b) to receive and deal with complaints of improper conduct by the ICAC or a member of ICAC staff or of conduct, though not amounting to improper conduct, by the ICAC or a member of ICAC staff, which:
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect; or
 - (ii) arises, wholly or in part, from improper motives; or
 - (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration; or
 - (iv) involves a denial of procedural fairness; or
 - (v) arises, wholly or in part, from a mistake of law or fact; or

(vi) is conduct of a kind for which reasons should have (but have not) been given;

(ba) to evaluate any aspect of the ICAC's operations or any conduct of a member of ICAC staff;

(c) to make recommendations to the ICAC or public bodies regarding practices or procedures in relation to the performance of functions under this Act;

(d) to perform other functions conferred on the Inspector under this or another Act.

(1A) Despite subsection (1), the functions of the Inspector do not include receiving and dealing with complaints or matters under the Public Sector Employment and Management Act 1993 .

(2) The Inspector is not subject to direction by any person about the way the Inspector performs the Inspector's functions.

9. Additional functions have been conferred on me under other legislation as referred to in paragraphs below. The language now included in sub-section (b) by the Amending Act was added at my suggestion to give greater specificity to the type of conduct on the part of the ICAC or ICAC staff that should be the subject of the Inspector's powers.
10. The purpose of this section 135(1A), which is based on a recommendation made by me, is to direct complaints relating to employment matters within the ICAC Office to the Commissioner for Public Employment. As I have pointed out in previous Annual Reports, I received several complaints concerning employment matters such as alleged bullying and harassment. I do not, and it is unlikely that any future Inspector will, have anything approaching the expertise of the Commissioner for Public Employment and staff in relation to such matters and it is a more efficient use of Territory resources that the Commissioner for Public Employment, not the Inspector, deal with such matters. It was pursuant to this provision that certain allegations against the ICAC were referred, on my recommendation, to the Commissioner for Public Employment in June 2024.
11. The Amending Act inserted a new section 134A "Protection of Inspector", as follows:
- The Inspector has, in the performance of the Inspector's functions under this Act, the same protection and immunity as a member of a court has under the Courts and Tribunals (Immunities) Act 2008.*

12. The Amending Act also inserted a new section 135A, as follows:

The Inspector may do all things necessary or convenient to be done for, or in relation to, the performance of the Inspector's functions.

This provision is intended to ensure that the Inspector has all the powers necessary to perform his or her functions.

13. 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 ICAC 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.
14. 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. While this is a report pursuant to section 140, I have provided this report to the Acting Independent Commissioner and have taken account of her comments in concluding the final version of this Report. Sub-sections 137(3) and (4) require the Inspector to provide the report to the Chief Minister within three months of the end 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. Once again, while not strictly applicable I propose in respect of this report to comply with those provisions.
15. 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 within 14 days. I am empowered under (section 138(3)) to deal with a complaint in any manner I consider appropriate. 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.

16. The Amending Act also inserted the following provisions intended to give the Inspector power to compel the provision of information with a view to making more effective the performance of his functions particularly in relation to allegations of misconduct against the ICAC and staff of the ICAC:

139A Power to require person to attend Inspector for questioning etc.

(1) The Inspector may require the ICAC or any member of ICAC staff to attend the Inspector to answer questions or produce documents in relation to a complaint being dealt with or an evaluation being conducted by the Inspector.

(2) The person required to attend must be given a written notice requiring the person to attend at a specified time and place.

(3) The notice may require the person to bring and produce to the Inspector specified items, or items of a specified kind, in the person's possession or control relevant to the matter.

(4) The Inspector may require a person attending to do one or more of the following:

(a) take an oath to answer all questions truthfully;

(b) answer a question relevant to the matter asked by the Inspector;

(c) produce any items in the possession or control of the person relevant to the complaint or evaluation.

139B Inspection and copies of documents

(1) The Inspector may inspect any documents or other items produced to the Inspector under this Act.

(2) The Inspector may:

(a) retain any document or other item produced to the Inspector for any reasonable period the Inspector thinks appropriate; and

(b) make a copy of or take an extract from any document produced to the Inspector if the Inspector is of the opinion the copy or extract is relevant to a function of the Inspector in relation to a matter under this Act.

(3) If the retention of a document or other item ceases to be reasonably necessary for the matter to which it relates, the Inspector must return the document or other item to a person who is entitled to possession of the document or other item, on request of the person,

unless the document or other item is required as evidence for an offence against this Act or another law of the Territory.

139C Assistance

(1) The Inspector may engage any assistance the Inspector thinks appropriate in relation to a complaint being dealt with or an evaluation being conducted by the Inspector.

(2) For subsection (1), the Inspector may, in writing, authorise any person engaged to inspect and report to the Inspector on any document or other item relevant to the complaint or evaluation.

These provisions are based on the New South Wales legislation. During my five year term as Inspector of the New South Wales Independent Commission against Corruption, there was no occasion for me to deploy these powers. I hope there will be no need to do so during the remainder of my term as Inspector in the Northern Territory, but it is wise that an Inspector have such powers so that they may be deployed if and when it becomes necessary.

17. 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 the Inspector.
18. A further and significant change made to the legislation by the Amending Act relates to the qualification for appointment as Inspector and to the staff of the Inspector. Prior to the Amending Act, eligibility for appointment of the ICAC precluded someone with "recent political affiliation" in the last five years. This period is increased to 10 years and will apply to the ICAC and staff. By virtue of section 134(2)(a) of the Act, this change applies to the Inspector and the Inspector's staff. "Recent political affiliation" is now defined as follows:

a person has a recent political affiliation if, at any time during the previous 10 years, the person:

- (a) was a member of the Legislative Assembly or a local government council; or*
- (b) was an office holder or elected representative of a political party in the Territory or elsewhere in Australia; or*
- (c) was a member of staff of a minister or the Leader of the Opposition; or*
- (e) was a member of a political party or a non-NT political party; or*

(d) made a reportable donation to [various political entities in the Territory or elsewhere in Australia].

19. The *Surveillance Devices Act 2007* 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.*

As was the case at the time of the 2019-2020, the 2020-2021, the 2021-2022 and the 2022-2023 Annual Reports, 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.

20. Section 71A of the *Police (Special Investigative and Other Powers) Act 2015* 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.*

During the 2021-2022 financial year and pursuant to section 71A(3) quoted above, I appointed a member of the ICAC staff to conduct the audit required by section 71A(1). That staff member performed the audit required and reported the results of the audit to me pursuant to section 71A(4) during the same financial year. It has not been necessary to repeat this exercise because there were no authorities issued or in force during the current reporting period and consequently no occasion to conduct an audit.

21. 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:

- (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.

22. The ICAC has advised that telecommunications interceptions will require further legal authority as an 'enforcement agency' under the Commonwealth Act. The ICAC has commenced negotiations with the Commonwealth Department of Home Affairs and subsequently the Commonwealth Attorney-General's Department to bring about the required legislative reform. The ICAC has indicated that an updated 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 became aware in my former 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. Nor has the Commonwealth legislation been amended to extend to the OICAC power to apply for and obtain warrants under this legislation.

23. 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 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 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.*
24. I welcomed the establishment of the Standing Committee at the time and have appeared before it on several occasions. 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.

3. The Northern Territory Inspectorate

25. The Inspectorate maintains the following website, to which I invite reference, and the stated methods of contact, particularly for the making of complaints:
- (d) 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;
 - (e) Methods of contact. These are principally for receiving complaints and liaising with CM&C. The email addresses are: Bruce.Mcclintock@oiicac.nt.gov.au; inspector@oiicac.nt.gov.au; admin@oiicac.nt.gov.au. The second address is the one specified on the website for receiving complaints.
26. Funding for my office and remuneration is the responsibility of CM&C. 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.
27. My appointment as Inspector is part-time and I perform my duties on an "as needed" basis. I have, since my appointment in 2018, tried to visit Darwin at least twice a year to monitor the performance of the OIICAC and otherwise carry out my statutory duties as Inspector. In the course of 2023-2024, I visited Darwin on 3 occasions.

28. Although it took place after conclusion of the reporting period, it is worth mentioning that on 1 August 2024, I hosted, in my capacity as Northern Territory Inspector the annual meeting of Australian integrity inspectors or parliamentary commissioners. This was attended by representatives of the equivalent bodies from the Commonwealth, Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Western Australia. I am grateful to the Northern Territory Government and the Chief Minister's Department for providing the facilities necessary for this valuable conference.

4. Administrative Matters

29. Administrative support is being provided to me in my capacity as Inspector by officers of CM&C, specifically, by Ms Jean Doherty and by Ms Mel Griffith. The latter manages document retention on my behalf. Both 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.

5. Relations with the Office of the ICAC

30. 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. Until Independent Commissioner Riches went on leave in June 2024, such a relationship existed (in my perception), between myself and him.
31. Relations between myself and the Office of the ICAC were formalised by a Memorandum of Understanding (MOU) executed by Commissioner Fleming and me in April 2019. A copy of the MOU was attached to the Preliminary Report that I submitted to the Chief Minister on 30 September 2019. Commissioner Riches and I were in the course of finalising such a document when he went on leave in June 2024.
32. Although not strictly pursuant to the MOU but in accordance with the principles it embodies and pursuant to section 138 of the ICAC Act, the Independent Commissioner and Acting Independent Commissioner have disclosed a number of matters to me.

I am satisfied, subject to the matters referred to in paragraphs below, that the Independent Commissioner, Acting Independent 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.

6. 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. As a matter of statutory construction, that remit must be considered in the light of the types of conduct now referred to in section 135(1)(b) following the Amending Act. 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 on the part of the ICAC, including the types of conduct referred to in section 135(1)(b), to be convincingly established 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 made to me.
34. During 23-2024, my office received 16 complaints. Of these, I did not have jurisdiction as Inspector in respect of seven, because they did not involve the OICAC but other agencies or entities in the Northern Territory and, in one case, Queensland. Accordingly, I dismissed them. In the case of seven complaints, the complainant failed to provide any evidence which could, if established, amount to misconduct on the part of the OICAC within the meaning of section 135(1)(b) of the ICAC Act. Accordingly, I dismissed those complaints. One complainant withdrew their complaint, so it was unnecessary for me to determine it. One final complaint appeared to me to have substance (without in any way prejudging its merits) but because of a considerable lapse of time since the events in question and, more importantly, the death of a key person involved I did not consider that I could fairly determine it without potential injustice. As a matter of discretion, I decided not to investigate the matter and to dismiss the complaint.

7. Evaluation of the Performance of the ICAC and the Office of the ICAC

35. The OICAC provided me with it's a complete version of its Draft Annual Report for the 2023-2024 financial year on 23 September 2023. I will not repeat or attempt to summarise the Annual Report - it is, or will be, publicly available by the time I present this Report.
36. Nothing in what follows should be interpreted as a criticism of the staff of the OICAC or any officer thereof. In my evaluation, all OICAC offices and staff members have worked hard to advance the aims of the agency in what have been unquestionably difficult circumstances.
37. The difficulties confronting the agency appear to me to be the following:
- a. the agency has not been able to attract sufficient staff to perform its functions adequately. As at the approximate conclusion of the reporting period 2023-2024, the agency had actual FTE of 21.2 against a budgeted FTE of 28. Thus, it was then understrength by approximately 25%. The position has worsened since then. When one employee's maternity leave commences shortly, there will be actual FTE of 16 against budgeted FTE of 28. At the time of writing, therefore, the agency is 41% understrength. In addition, the absence on leave of the Independent Commissioner has itself had an impact on the output of the agency because it has prevented completion of a number of significant reports and items of work. No agency in the position of the OICAC can perform its important public duties adequately while so greatly understaffed. There are a number of reasons for the understaffing, but no blame can be laid at the feet of the Independent Commissioner or the Acting Independent Commissioner who have made considerable efforts to recruit staff.
 - b. Staff morale and job satisfaction have been low for some time and continue to be so. There are a number of causes such as the disruption resulting from the Independent Commissioner's leave and the events leading up to it. This itself has been responsible for difficulties in retaining staff.
 - c. The disruption caused by circumstances in which the Independent Commissioner went on leave and by the circumstances surrounding the allegations which led to the enquiry currently being conducted under the authority of the Commissioner for Public Employment.
 - d. I suspect that there are other difficulties confronting the OICAC but I am not in a position to assess them. In any event, those isolated above are sufficient to explain my concerns about the agency's performance in the period 2023-2024.

38. In many respects, the performance of the OICAC has been satisfactory, indeed, more than merely satisfactory. Those matters are highlighted in the Acting Independent Commissioner's Foreword to the Draft Annual Report provided to me on 23 September 2024. They include:
- a. Education and prevention programs including engagement with the public sector agencies.
 - b. The inauguration of the Integrity Advocates Program.
 - c. Engagement with communities in remote and regional areas of the Northern Territory.
 - d. The publication of revised Mandatory Reporting Directions and Guidelines for Public Officers.
 - e. The planning and organisation of the Australian Public Sector Anti-corruption Conference which took place in Darwin on 29-31 July 2024. While the APSACC Conference occurred outside of the reporting period, the planning took place during. There is no doubt that it was an outstanding success, in my opinion, the best of the APSACC Conferences that I have attended. Many in the OICAC were involved in the planning of this event and, in my evaluation, they have done an outstanding job.
39. In other respects, I do not evaluate the performance of the OICAC as satisfactory. The underperformances can be seen from the table entitled "Reporting on Office of the ICAC's key performance indicators" which appears on page 12 of the draft Annual Report. I note 3 significant KPIs were not met. In addition, I note that no examinations took place during the reporting period. Such examinations are a tool of investigations and it is surprising that none occurred. Once again, I emphasise that this is not the fault of any individual OICAC officer. The reasons for the underperformance are undoubtedly those set out in paragraph 37 above.

8. Conclusion

40. I am satisfied that the Office of the ICAC, the Independent Commissioner, the Acting Independent Commissioner and their staff have acted within power and in compliance with the Act and other relevant legislation--see section 136(2) of the ICAC Act. and I make the evaluation set forth above of the performance of the OICAC for so much of the relevant reporting period, that is, 1 July 2023 - 30 June 2024 during which I held office as Inspector, that is, 1 July 2023-27 September 2023 and 21 December 2023-30 June 2024.

41. In compliance with section 136(2) of the ICAC Act, I provided a copy of a draft of this Report to the Acting Independent Commissioner. She provided a response to my reference to the lack of examinations during the reporting period mentioned in paragraph 39 above. Again in compliance with section 136(2) of the ICAC Act, I attach her response as Appendix A to this Report.

B. R. W. Clintock

Bruce McClintock
Inspector ICAC

APPENDIX A

Response of Acting Independent Commissioner

The Office of the ICAC premises, including the hearing room, underwent renovations in 2023. This required the entire staff to relocate to another premises as the Office was a construction zone and not accessible, including the hearing room and access to.

Those renovations were due to commence in July 2023 and as such no examinations were listed on the expectation the hearing room would be undergoing renovations. Due to circumstances outside of the control of the ICAC, those renovations did not commence until September 2023. Staff were able to return to the office premises in mid-late December 2023. Due to this, no examinations were listed for that period.

Further, under the ICAC Act there is limited use which can be made of compelled evidence obtained during examinations. For that reason, Commissioner Riches gave consideration to the use of other investigative methods of obtaining relevant evidence. It follows that examinations were not used as the primary method of obtaining evidence from witnesses (sections 50, 50A, 59 and 82 of the ICAC Act).

Commissioner Riches was focused on the voluntary provision of material and building collaborative relationships through co-operation. The Office has also been mindful of witness welfare, as it is a topic amongst integrity and anti-corruption commissions nationally. The mental health of witnesses and the stressful nature of giving evidence at a compulsory examination were considerations and Commissioner Riches determined that in some circumstances it is more appropriate to strike the balance between, effectively obtaining evidentiary material and witness welfare, by utilising methods other than compulsory examinations.