

# Report by Inspector pursuant to section 140(3) of the Independent Commissioner against Corruption Act 2017

March 2023

This Report deals with complaints made to me by Mr Damien Moriarty, through email letters dated 30 July 2021 and 5 September 2022 from his solicitor, Mr Patrick Cozens of Cozens Johansen. I will attach those letters to this Report. As Mr Cozens indicates in the second letter, I notified him by email dated 25 August 2021 that I would defer dealing with Mr Moriarty's complaints until conclusion of the Supreme Court proceedings which he had initiated against the Independent Commissioner against Corruption (ICAC). That, in effect, occurred when her Honour Justice Kelly handed down her judgment in the proceedings on 23 June 2022.

## Legislative Background

The Independent Commissioner against Corruption Act (NT) 2017 specifies (section 135(1)(b)) that my functions as Inspector include receiving and dealing with complaints about the ICAC and officers of the OICAC. 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, a complaint may only be upheld if it demonstrates some form of misconduct, maladministration, denial of procedural fairness or an erroneous approach to the legislation on the part of the ICAC. I regard maladministration as including conduct which is unreasonable, arises from improper motives or takes irrelevant matters into account.

## Mr Moriarty's Complaints

I summarise the complaints set out in the letters referred to as follows:

1. The ICAC failed to advise Mr Moriarty that he was under investigation at the time of the examinations which occurred on 16 April 2020 and 8 October 2020 and, indeed, represented that he was not under investigation at that time.
2. The ICAC failed to provide Mr Moriarty with a contemporaneous opportunity for re-examination at the relevant time.
3. The ICAC failed to accord procedural fairness to Mr Moriarty before making adverse findings applicable to him.
4. The ICAC failed to put all adverse matters to Mr Moriarty in examination.
5. The ICAC failed to permit Mr Moriarty timely access to the annexures referred to in the report extract.
6. Mr Moriarty was compelled to resort to legal correspondence with the ICAC to obtain access to information to which he was entitled.
7. The ICAC behaved improperly by covertly recording Ms Anya Lorimer and by failing to disclose the existence of the recording in question to Mr Moriarty or his legal representatives.
8. The ICAC made inconsistent statements concerning the distinction between investigation reports and public statements under the ICAC Act and conducted litigation (using public funds) advancing a legal interpretation he did not believe to be true (in breach of the model litigant rules).

By email dated 19 December 2022, Mr Cozens indicated that he accepted those eight points as a sufficiently accurate summary of the substance of Mr Moriarty's complaint.

## Factual Background

On 24-25 July 2021, the ICAC submitted to the then Chief Minister and the then Minister for Racing, Gaming and Licensing a Report pursuant to section 50 of the *Independent Commissioner against Corruption Act 2017* (ICAC Act) entitled “*Investigation into the application of award and expenditure of a grant to the Darwin Turf Club Inc for a public grandstand*”. This Report related to an investigation by the ICAC into a grant made by the Northern Territory government to Darwin Turf Club Inc (DTCI) to build a grandstand and into the fact that the contract to build that grandstand was awarded to a company associated with the then Chairman of DTCI. The Report contained several adverse findings concerning Mr Moriarty and his conduct both personally and as a member of the board of the DTCI. I need not set them out they appear in paragraphs 457-459 (personal adverse conduct findings) and paragraphs 439-440, 442, 446 (adverse findings as DTCI Board member). They are quoted by Kelly J in [8]-[9] of her Honour’s judgment: [2022] NTSC 46. Contemporaneously, The ICAC issued a Public Statement purportedly pursuant to section 55 of the ICAC Act which was in substantially identical terms to the section 50 Report.

There is considerable overlap between Mr Moriarty’s complaint to me and the subject matter of the proceedings before Kelly J. This can be seen from comparing the grounds for challenging the validity of the ICAC Report in the proceedings before her Honour with the grounds of complaint to me which I have set out above. The ground of challenge before her Honour are set out in [69] of her Honour’s judgment and were as follows:

**Ground 1:** *The defendant had no jurisdiction to make the Adverse Findings against the plaintiff in circumstances where the plaintiff was not informed that he was under investigation at the relevant times.*

**Ground 2:** *The defendant failed to afford the plaintiff procedural fairness by not informing the plaintiff that he was under investigation and/or positively assuring him that he was not under investigation until after the proposed findings were made.*

**Ground 3:** *The defendant failed to afford the plaintiff procedural fairness by failing to ensure and/or permit re-examination of, or submissions by, the plaintiff prior to the making of the proposed findings.*

**Ground 4:** *The defendant failed to afford the plaintiff procedural fairness by failing to put all matters on which the proposed findings and Adverse Findings were allegedly based to the plaintiff in examination.*

### **Grounds 5 and 6: Adverse Findings against the Board**

**Ground 5:** *The defendant failed to afford the plaintiff procedural fairness by failing to ensure that he was on notice of a risk of adverse findings to him and/or had an opportunity to respond to any proposed adverse findings in his capacity as a member of the Board on matters the subject of the inquiry.*

**Ground 6:** *The defendant had no jurisdiction to make the findings about the Board without ensuring the plaintiff was on notice of a risk of adverse findings to him and/or that he was given an opportunity to respond to any such proposed adverse findings in his capacity as a member of the Board on matters the subject of the inquiry.*

**Grounds 8 and 9: failure to consider the plaintiff's Response**

**Ground 8:** *The defendant failed to afford the plaintiff procedural fairness and/or his reasoning was not objectively reasonable by failing to:*

*(a) Consider and evaluate rational arguments of the plaintiff in his Response said to displace the basis for adverse findings and failing to provide reasons for their rejection.*

*(b) Alternatively, failure to give proper, genuine and realistic consideration to the plaintiff's Response. [Grammar and punctuation in the original.]*

**Ground 9:** *The defendant erred by failing to take into account a relevant mandatory consideration being the plaintiff's Response.*

**Grounds 7 and 10: making findings without evidence**

**Ground 7:** *The defendant erred by making findings in the Report that had no evidentiary basis or which could not be reasonably made on the evidence or reasonably inferred from facts found.*

**Ground 10:** *The defendant erred by making findings (ie the Adverse Findings) that had no evidentiary basis or which could not be reasonably made (sic) on the evidence or reasonably inferred from facts found.*

**Ground 11:** *The defendant denied the plaintiff procedural fairness by failing to ensure that any relevant exculpatory material of information was disclosed to the plaintiff.*

**Ground 12:** *The defendant published the Report in a manner that was not authorised pursuant to s 50 and/or s 55 of the ICAC Act.*

Her Honour rejected all these grounds except 5 and 6 which she upheld. Her Honour made declarations upholding the successful grounds as follows:

*(a) The defendant failed to afford the plaintiff procedural fairness by failing to ensure that he was given notice of a proposal to make findings of unsatisfactory conduct and breach of public trust against him in his capacity as a member of the DTCL Board and to afford him the opportunity to respond to such proposed findings.*

*(b) The defendant failed to give the plaintiff a reasonable opportunity to respond to proposed findings that he was guilty of unsatisfactory conduct and breach of public trust in his capacity as a member of the DTCL Board as required by s 50(2) of the ICAC Act and, accordingly had no jurisdiction to make those findings against him. [207]*

The question arises as to how I should approach her Honour's decision insofar as it overlaps with Mr Moriarty's complaints to me. I have concluded that I should accept each of her Honour's conclusions and not revisit or reconsider their objective correctness. Her Honour's decision is, after all, a conclusive (at least between the parties) determination of the law of the Northern Territory in general and the correct construction of the ICAC Act in particular.

The following paragraphs set out my conclusions in relation to Mr Moriarty's complaints taking into account the findings made by Kelly J in her judgment.

**Complaint 1: The ICAC failed to advise Mr Moriarty that he was under investigation at the time of the examinations which occurred on 16 April 2020 and 8 October 2020 and, indeed, represented that he was not under investigation at that time.**

Mr Moriarty was examined on two occasions, on 16 April and 8 October 2020. The notices requiring his attendance at the examinations stated that he was not under investigation. Mr Moriarty complains that he was, in fact, under investigation at the time when the notices were issued and when the examinations took place and that the ICAC's ultimate conclusions were rendered invalid by the failure to inform him of the fact that he was under investigation.

This complaint was one of the bases of Mr Moriarty's challenge to the validity of the ICAC findings before Kelly J-see Grounds 1 & 2 quoted above. Kelly J comprehensively rejected both grounds-see [70]-[93] and [101]-[113] of the judgment. In respect of Ground 1 her Honour expressed the essential basis for the conclusion as follows:

*[91] There is nothing in the ICAC Act that compels the ICAC to require a person whose conduct is the subject of an investigation to attend for examination, and, if the person is not required to attend for examination, there is nothing in the ICAC Act apart from s 50(2) which requires the ICAC to tell the person that their conduct is being investigated. In fact under s 147(1) of the ICAC Act, the ICAC is empowered to issue a written notice to a person directing the person not to disclose (inter alia) that an investigation is being conducted. The evident purpose of that is to enable the ICAC to investigate suspected corrupt or improper conduct without warning those suspected of being involved that the ICAC is doing so. It is only at the point when the ICAC is proposing to make an adverse finding about a person in an investigation report that the ICAC is obliged to give the person an opportunity to respond to the adverse material.*

*[92] So far as the Personal Adverse Findings are concerned, that procedure was followed in this case. Before finalising the Report, the defendant wrote to the plaintiff advising that he proposed making adverse findings against him; providing him with a copy of the proposed adverse findings; and inviting his response which, in due course, was given.*

In respect of Ground 2 before her Honour which also relied on the failure to inform Mr Moriarty that he was under investigation, her Honour's reasoning was as follows:

*[113] However, although the plaintiff no doubt feels aggrieved that he was misled in this way, and is no doubt entitled to feel so, I do not think that this procedural irregularity resulted in a practical injustice which would warrant the Court making the declaration sought in relation to the Personal Adverse Findings for a number of reasons.*

*[114] First, I am not convinced that the plaintiff would, or could, have done anything different at the Second Examination if the notice to attend had contained the required warning. The plaintiff was legally represented at the Second Examination. He was obliged to answer the questions put to him and to answer them honestly. The only thing the plaintiff can say might have been done differently is that he might have been more circumspect, and taken stronger steps to protect his interests, including taking*

*further steps to ensure he was given an opportunity for re-examination and submissions before the preparation of the Personal Natural Justice Extract. He might also have sought leave to participate in or test the evidence given at other examinations or hearings. The plaintiff did not give evidence that he would have taken any of these steps if given the requisite notice.*

\* \* \* \*

*[117] Second, it is difficult to see how the plaintiff could have done anything other than what he did to counter the prospect of the Personal Adverse Findings being made – that is to provide the defendant with the Response. The plaintiff submitted that the matters in the Response may have caused the defendant not to have made the Personal Adverse Findings against the plaintiff if the opportunity had been given before the proposed findings had been formulated. I do not see why that would have been so.*

*[118] Given the nature of the questioning at the Second Examination in relation to the Moriarty Statements, and the nature of the Personal Adverse Findings, it is not clear how any such hypothetical actions might have led to a different result, at least in relation to the Personal Adverse Findings. This ground of review has not been made out.*

I see no reason to differ from her Honour's conclusions which seem to me to be obviously correct. This ground of complaint to me is not made out.

Nevertheless, I have concerns about the procedures adopted in this case. While I agree with her Honour's rejection of these grounds, it seems to me that it would have been prudent to advise Mr Moriarty that he was under investigation in the notices issued to him. I have raised this matter with the current Independent Commissioner who has informed me that he will take a different approach and advise the person that they are under investigation if there is any possibility that the person will later be the subject of adverse comment. That seems to me to be the preferable approach.

**Complaint 2: The ICAC failed to provide Mr Moriarty with a contemporaneous opportunity for re-examination at the relevant time.**

This complaint was also determined by Kelly J who comprehensively rejected it. See [141]-[146]. I need only quote the following passages:

*[144] The plaintiff was in fact offered the opportunity for re-examination and to make submissions after he was served with the Personal Natural Justice Extract and he rejected the offer saying that, on reviewing the material, it could adequately be dealt with by way of submission. Following that, the plaintiff, through his solicitors, submitted the Response.*

*[145] The requirement to afford the plaintiff procedural fairness did not require that the plaintiff be examined at all, let alone re-examined, and the plaintiff was at liberty to make submissions to the ICAC at any time. The fact that he felt no need to do so until served with the notice under s 50(2) that the ICAC was considering making adverse findings against him is neither here nor there. That is the purpose of s 50(2). The scheme of the legislation provides for the ICAC to investigate matters – in secret if appropriate – and then, if the ICAC proposes making adverse findings against a person, to give that person a reasonable opportunity to respond to the adverse material.*

This basis of complaint seemed to me to be entirely without merit.

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**Complaint 3: The ICAC failed to accord procedural fairness to Mr Moriarty before making adverse findings applicable to him.**

This ground of complaint is equivalent to Grounds 5 and 6 before her Honour, that is, the matters upon which Mr Moriarty succeeded in the proceedings. Her Honour expressed her conclusions in respect of this matter as follows:

*[135] In failing to give the plaintiff notice of the proposed findings of unsatisfactory conduct and breach of public trust against the Board of which he was a member, and by taking the quite extraordinary step of directing the other Board members not to disclose that information to the plaintiff on pain of criminal sanction, the defendant deprived the plaintiff of knowledge of the issues – namely the issue of whether the primary factual findings warranted findings of unsatisfactory conduct and breach of public duty on the part of the Board members, and the opportunity to be heard in relation to those issues.*

*[136] The defendant pointed out that in his Response, the plaintiff did provide a response to some of the proposed primary findings but did not respond to others. That is understandable given that the Personal Natural Justice Extract did not give notice that those primary findings were to be used to make findings of unsatisfactory conduct and breach of public trust against the plaintiff and other Board members. If the plaintiff had been given the appropriate notice of those proposed findings, his approach may well have been different. He was not given that opportunity.*

*[137] This, it seems to me, is a failing by the defendant akin to the second category referred to by Gageler and Gordon JJ in WZARH referred to at [115] above. The procedure adopted by the defendant in itself failed to afford a fair opportunity to the plaintiff to be heard on the issue of whether the primary findings of which the plaintiff was made aware, justified the findings of unsatisfactory conduct and breach of public trust by the plaintiff and other Board members. In such a case, the practical injustice lies in the denial of an opportunity which in fairness ought to have been given, and this justifies the making of a declaration unless it can be shown that the failure did not deprive the person of the possibility of a successful outcome. [64]*

*[138] In this case it has not been shown that the failure to accord procedural fairness in this respect did not deprive the plaintiff of the possibility of a successful outcome. It is not the case that if the primary findings are accepted, they lead inevitably to the conclusions set out in the Board Adverse Findings. I have found against the plaintiff on the ground of review which alleges that there was no evidence on which the Adverse Findings (including the Board Adverse Findings) could have been made. That is not the same as saying that such findings flow inevitably from the primary findings. It is arguable that some or all of them do not. The plaintiff was denied the opportunity to be heard on that issue, which was a live issue.*

*[139] The other Board members were unable to discuss the proposed adverse findings against them with either Mr Dixon or the plaintiff. Quite apart from handicapping the other Board members' ability to respond to the proposed adverse findings against them (a matter that has no relevance to the present proceeding) this meant that the plaintiff was not given notice of the defendant's proposal to make adverse findings against him in his capacity as a member of the Board as required by s 50(2) of the ICAC Act. An essential pre-condition to the making of valid findings adverse to the plaintiff in his capacity as a director of DTIC was not complied with. Further, as explained above this amounted to a denial of procedural fairness.*

Undoubtedly, this complaint is well-founded. The real question arises, however, as to what action I should take. On the one hand, her Honour's decision in this respect and the consequential declarations granted by her Honour have dealt with the matter. In addition, because of her Honour's decision, the ICAC has removed the Report from its website and, as I understand the position, it is no longer publicly available. The present Commissioner on 18 July 2022 issued the following Public Statement:

*In light of the recent findings of the Honourable Justice Kelly in Moriarty v ICAC [2022] NTSC 46, I recently removed from my office's website my predecessor's Public Statement in relation to the investigation into the Darwin Turf Club Grandstand Grant. I did so because Justice Kelly's findings required me to remove certain parts of the Public Statement before it was republished.*

*I have determined that I will not exercise the power to re-publish that Public Statement on the ICAC website.*

*In light of my decision not to re-publish the Public Statement on the website, parties the subject of adverse findings made by my predecessor in that Public Statement, Mr Brett Dixon, Mr Matthew Moss and the Darwin Turf Club Incorporated have discontinued judicial proceedings they commenced against me in respect of that Public Statement. I have previously commented publicly on certain aspects of the Turf Club investigation in the public domain. I do not intend to make any further comment on that investigative process, or the findings reached by my predecessor in his report and Public Statement. In deciding not to re-publish the Public Statement, it should not be understood that I accept all of the criticisms made by parties about that Public Statement, or the findings made by the former Commissioner.*

*My decision not to re-publish the Public Statement and the discontinuance of the Supreme Court challenges which have followed will put an end to contests which have been an unfortunate distraction to the important work of my office.*

In such circumstances, it does not appear to me that any of the actions available to me will achieve anything.

That does not mean I approve of a failure to accord procedural fairness on the part of the ICAC. I do not. Indeed, if I had come to similar conclusions to her Honour, but there had been no finding by the Supreme Court of the Northern Territory that Mr Moriarty had been denied procedural fairness, I would have upheld such a complaint. But the existence of such a finding appears to me to make any action I might take both unnecessary and pointless.

I should add that, on the materials before me, I see no evidence of any wilful misconduct on the part of the ICAC in relation to this matter.

#### **Complaint 4: The ICAC failed to put all adverse matters to Mr Moriarty in examination.**

This, too, was the subject of complaint in the proceedings before Kelly J. Her Honour thought it had no merit and I agree. Her Honour expressed herself as follows:

*[148] The plaintiff contends that these matters were not put to him during the First and Second Examinations and that this failure amounted to a failure to accord the plaintiff procedural fairness. This contention cannot be accepted. There is no obligation under the ICAC Act for the defendant to require a*



*person against whom the ICAC is contemplating making adverse findings to attend for examination at all, let alone an obligation to put to the person during such an examination all matters that might later be the subject of adverse findings against the person. The only obligation of that kind, if the ICAC proposes to make an adverse finding about a person, is the obligation in s 50(2) to give the person a reasonable opportunity to respond to adverse material and to include a fair representation of the response in the report.*

*[149] There is nothing in the ICAC Act to suggest that the ICAC is obliged to hold an oral hearing and there is no general principle of administrative law that an oral hearing is a necessary aspect of the requirement to accord procedural fairness.*

**Complaint 5: The ICAC failed to permit Mr Moriarty timely access to the annexures referred to in the report extract.**

This basis of complaint does not seem to have been the subject of explicit complaint in the proceedings before Kelly J. While regrettable and I see no valid reason why Mr Moriarty should not have been given access to this material, I do not think that it can be said to amount to misconduct, maladministration or a denial of procedural fairness. I have raised the matter with Mr Riches the current Independent Commissioner who informs me that he would take a different approach and permit access to materials of this type.

**Complaint 6: Mr Moriarty was compelled to resort to legal correspondence with the ICAC to obtain access to information to which he was entitled.**

While I accept that Mr Moriarty's requests for access to the relevant materials were reasonable and should have been dealt with sooner, I do not consider the fact that he was forced to resort to letters from his solicitors to obtain such access amounts to any form of maladministration, misconduct or denial of procedural fairness.

**Complaint 7: The ICAC behaved improperly by covertly recording Ms Anya Lorimer and by failing to disclose the existence of the recording in question to Mr Moriarty or his legal representatives.**

I dealt with this matter in my Annual Report for the 2021-2022 year which is available on the ICAC website. See [39]-[48] thereof. I need only quote [48]:

*48. Regardless of the question whether there was a breach of the Surveillance Devices Act, I wish to record my view, which I have expressed to the Commissioner; that the conduct in question was entirely inappropriate and unfair and should not have occurred. It represents a serious breach of trust towards those people who were unknowingly recorded.*

I have accepted the present Commissioner's assurance that it will not happen again. I am content with the way with which I dealt with the matter in the Annual Report and see no need for further action.

**Complaint 8: The ICAC made inconsistent statements concerning the distinction between investigation reports and public statements under the ICAC Act and conducted litigation (using public funds) advancing a legal interpretation he did not believe to be true (in breach of the model litigant rules).**

In a letter to me dated 5 September 2022, Mr Moriarty's solicitor explained this complaint in the following terms:

*[On] 24 June 2021, a report in substantially identical terms to the Report, with the title 'Investigation Report' was sent to the Hon Michael Gunner, Chief Minister, and the Hon. Natasha Fyles, Minister for Racing, Gaming and Licensing. The letter of transmittal from the Commissioner stated that the report was sent pursuant to s 50 of the ICAC Act, and a public statement would be issued pursuant to s 55 of the ICAC Act. The public statement was the Report previously complained of by our client, which was in identical terms save for the term 'investigation report' was replaced with 'public statement', the deletion of certain names, and various minor typographical and formatting variations. In the ICAC General Report tabled 28 July 2022, Mr Riches says (at page 7) "There is no mechanism by which an investigation report can be published", and "A public statement is not the same as an investigation report. They are two different things". Concerningly, this position is entirely different to the position adopted by Mr Riches in defending this case (as shown in the submissions and judgment).*

I consider this complaint to be baseless. A report under section 50 is not the same thing as a public statement under section 55 of the ICAC Act. The fact that the content of both documents might be identical, or as in this case, substantially identical, makes no difference to the fact that they are different things with distinct statutory underpinnings and purposes. The argument actually put by the ICAC in the proceedings was that section 55 provided sound statutory authority for the course adopted by the previous Commissioner in issuing the public statement under section 55, even though its contents were substantially the same as the section 50 Report. This argument was upheld by her Honour in the following terms:

*[204] The plaintiff argues that because s 50 provides that an investigation report may include a finding as to whether a person has engaged in, is engaging in or is about to engage in, improper conduct and s 55 does not say that a public statement may contain such findings, s 55 did not authorise the publication of the Adverse Findings.*

*[205] The plaintiff's contention cannot be accepted. Section 59 of the ICAC Act sets out specific limitations on what can be contained in certain kinds of reports under the ICAC Act and in public statements. Such reports and public statements must not contain any material that would not be admissible in civil, criminal or disciplinary proceedings because of s 82, unless the material is already in the public domain. (Section 82 is a protective section which provides that evidence given to the ICAC in certain circumstances is not admissible in evidence against the witness in a civil, criminal or disciplinary proceeding.) There is no warrant in the ICAC Act to imply other limitations on what may be contained in a public statement provided the public statement is made for one or more of the purposes authorised by s 55. Those purposes include providing "information about a referral, including the outcome of the referral". The publication of the Report was apt to fulfil that purpose and there is no suggestion that it contained information prohibited from publication by s 59. [footnotes omitted]*

I do not see any inconsistency between the position the present Commissioner argued in the proceedings and the position he adopted subsequently. The argument was upheld by her Honour and, in the circumstances, that is sufficient warrant for putting the argument. The fact that Commissioner Riches has indicated subsequently that he will not take the same approach to section 55 public statements as his

predecessor does not provide any basis for the suggestion that Commissioner Riches breached the model litigant rules. He did not.

I dealt with aspects of this allegation in my most recent Annual Report which, for completeness, I set out below:

*[51] With great respect to her Honour, I am not sure this reasoning is convincing. The real argument is that, put shortly, Division 7 draws a very careful distinction between the various types of reports that it authorises on the one hand and public statements on the other, including specifying and so limiting the persons to whom the ICAC can give a report. The legislature did not intend, so the argument would go, to set at naught that careful structure by permitting a section 55 Public Statement to repeat verbatim, as occurred here, the entire content of a report and thus give it a wider audience than permitted for the report itself. Be that as it may, her Honour has decided the issue and the ICAC is entitled to rely upon that decision. It seems to me preferable, however, that the ICAC avoid in future the practice in question and limit Public Statements under section 55 to short summaries of the report in question. I have discussed this issue with Commissioner Riches and he has informed me that he accepts that to be the better course.*

## Conclusion

For these reasons, I do not propose to take any action in respect of Mr Moriarty's complaint to me.

Following preparation of this Report as it appears above, I provided a copy to both the ICAC and to Mr Moriarty's solicitors, Cozens Johansen, for any comments or further submissions that either might wish to make. By letter dated 26 January 2023 Commissioner Riches informed me that he accepted the draft response and did not wish to add anything. Mr Moriarty's solicitor by letter dated 15 February 2023 expressed disagreement with the draft Report. I will attach a copy of that letter to the final version of this Report to be submitted to the Chief Minister. I do not accept the validity of the criticisms made in that letter and, with one exception, do not think it necessary to provide detailed explanation for that disagreement. There is, however, one point I should mention--paragraphs 8-17 of the letter refer to her Honour Justice Kelly's finding that, while Mr Moriarty might feel aggrieved that he was misled, this was a procedural irregularity that did not result in practical injustice warranting intervention. I see no reason myself to differ from her Honour nor to change the opinions set out under the heading **Complaint 1: The ICAC failed to advise Mr Moriarty that he was under investigation at the time of the examinations which occurred on 16 April 2020 and 8 October 2020 and, indeed, represented that he was not under investigation at that time.**



Bruce McClintock  
Inspector, Independent Commissioner against Corruption  
6 March 2023