

**ANNUAL REPORT OF INSPECTOR PURSUANT TO SECTION
137 OF THE INDEPENDENT COMMISSIONER AGAINST
CORRUPTION ACT 2017 OF EVALUATION OF THE
INDEPENDENT COMMISSIONER AGAINST CORRUPTION
PURSUANT TO SECTION 136 OF THE ACT**

September 2023

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1. Executive Summary

1. This is my Annual Report as Inspector of the Independent Commissioner against Corruption for the financial year 2022-2023 pursuant to sections 136 and 137 of the *Independent Commissioner against Corruption Act 2017* ("ICAC Act"). Those provisions, respectively, require the 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. This is the fourth such report that I have prepared since my 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. It is also the last Annual Report that I will present during my current term as Inspector which expires on 27 September 2023.
2. As required by the legislation, I have evaluated the performance of the OICAC for the financial year 2022-2023 and set out the results of that evaluation below. In summary, I am generally satisfied with the present performance of the OICAC under Independent Commissioner Michael Riches, who commenced his role on 6 July 2021, succeeding the founding Commissioner Mr Kenneth Fleming QC who retired on 5 July 2021. That said, I consider there is room for improvement in several areas and through a number of mechanisms. An example might be the establishment of a position of Chief Executive Officer and appointment of an appropriately qualified person. I am happy to discuss these matters at any time.
3. In last year's 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.

2. Functions and Duties of Inspector - Statutory Framework

Section 134 of the ICAC Act 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) If a person is appointed as Inspector for less than 5 years, the person may be reappointed, if still eligible, but not so that the aggregate period of appointment exceeds 5 years.

4. Subsections (1A) and (1B) were added by amendment to the legislation after my appointment so did not apply to my appointment. See *Integrity and Accountability Legislation Amendment Act 2019*. Section 18 of that Act amended section 134 of the ICAC Act to insert the two sub-sections in question. I fully support those provisions. The Territory Legislature to which, through the Chief Minister, the Inspector ultimately reports, should be involved in the appointment of the Inspector.
5. The Administrator of the Northern Territory appointed me as Inspector of the Office of the Independent Commissioner against Corruption (OICAC or Office of the ICAC)

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Northern Territory on 28 September 2018 and made a Determination of Conditions of Inspector at an Executive Council Meeting on 29 November 2018. 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.

6. My appointment as Inspector of the Northern Territory ICAC is for a term of five years pursuant to section 134 of the ICAC Act. Section 134 (5) presently provides, in effect, that no person can serve as Inspector longer than five years. Consequently, my current term as Inspector will end in a few days on 27 September 2023. Presently before the Legislative Assembly is the *Independent Commissioner against Corruption Amendment Bill 2023* (the Amendment Bill) which will delete the existing section 134(5) and insert the following in lieu thereof:

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.

7. The Amendment Bill is based substantially, but not entirely, on a review carried out by Mr Greg Shanahan PSM who reported in January 2022. I dealt with his Report and my submissions to him in my Annual Report for 2021-2022. I am happy to say that Mr Shanahan accepted the bulk of my submissions which are now reflected in the Amendment Bill. As I understand the position, it is unlikely that the Bill will be passed and receive assent before 27 September 2023, so the position remains that my current term will end on that date.
8. Section 135 of the ICAC Act specifies the following as functions of the Inspector:
 - (a) to evaluate the performance of the ICAC and report on the evaluation;
 - (b) to receive and deal with complaints about the ICAC or members of ICAC staff;
 - (c) to make recommendations to the ICAC or public bodies regarding practices or procedures in relation to performance of functions under the Act;
 - (d) to perform other functions conferred on the Inspector under the ICAC Act.

Additional functions have been conferred on me under other legislation as referred to in paragraphs 20–21 below.

9. The Amendment Bill proposes to make some changes to section 135 by inserting in place of the existing section 135(1)(b) the following:

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(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;

I support this aspect of the Amendment Bill which is intended to define more precisely the conduct upon which the Inspector should focus.

10. It is also proposed to include the following as section 135(1A):

(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.

The purpose of this provision, 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.

11. The Amendment Bill inserts a new section 134A "Protection of Inspector", as follows:

The Inspector has, in the performance of the Inspector's functions under this Act, the

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same protection and immunity as a member of a court has under the Courts and Tribunals (Immunities) Act 2008.

12. The Amendment Bill inserts 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.

I support inclusion of this provision which 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:

- (e) whether the ICAC and members of ICAC staff acted within power and in compliance with the Act and any other Acts or subordinate legislation;
- (f) whether the ICAC has implemented any previous recommendations made by the Inspector;
- (g) 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. I have done so and have taken account of the Commissioner's 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.

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 Amendment Bill will also insert the following provisions which are intended to give the Inspector power to compel the provision of information with a view to making

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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,

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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.

This provision was recommended by Mr Shanahan after a submission from me in which I provided the language of the suggested amendment, which is 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. My submission to Mr Shanahan preceded the complaints made to my Office concerning the Darwin Turf Club investigation discussed below. I may have considered deploying such powers, had I possessed them as Inspector at the time, to enable me to come to a definite conclusion about the lawfulness of the secret recordings made during that investigation. In the absence of such a provision, I could not do so. Should any future Inspector be confronted with a similar situation, there will be, on passage of the amendments, sufficient power to take any necessary action.

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 which will be made to the legislation by the Amendment Bill relates to the qualification for appointment as Inspector and to the staff of the Inspector. Currently, eligibility for appointment of the ICAC precludes someone with "recent political affiliation" in the last five years. This period is proposed to be increased to 10 years and will apply to the ICAC and staff. By virtue of section 134(2)(a) of the Act, this change will also apply to the Inspector and the Inspector's staff. These changes will not have retrospective application. "Recent political affiliation" is defined as follows:

a person has a recent political affiliation if, at any time during the previous 5 years, the person:

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- (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*
- (d) *made a reportable donation to a political party, or an associated entity of a political party, in the Territory or elsewhere in Australia.*

As it happens, these provisions would not have prevented my appointment as Inspector in 2018 had they been in force at that time.

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 and the 2021-2022 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. Section 71A of the *Police (Special Investigative and Other Powers) Act 2015*

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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.*

Pursuant to section 71A(3) quoted above, I appointed a member of the ICAC staff to conduct the audit required by section 71A(1) on 15 May 2022. That staff member performed the audit required and reported the results of the audit to me pursuant to section 71A(4) on 17 June 2022. I determined that the Report and its delivery to me as Inspector complied with section 71A of the *Police (Special Investigative and Other Powers) Act 2015*. There were no authorities issued in the current reporting period and consequently no occasion to conduct an audit.

20. 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.*

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- (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.*

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. There have been attempts over the years to persuade the Commonwealth to change this, but they have to date been unsuccessful, although there have been recent

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developments and actions by the Commonwealth Government which give hope that this issue may finally be resolved.

21. 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.*

22. 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

23. The Inspectorate maintains the following website, to which I invite reference, and the

stated methods of contact, particularly for the making of complaints:

- (h) 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;
 - (i) 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.
24. 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.
25. 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. That, unfortunately, has not been possible over the last few years because of the Covid-19 pandemic and the associated border closures. In the relevant reporting period, I visited Darwin in the weeks of 19 September 2022, 19 June 2023 and 18 September 2023, for the purpose of carrying out the evaluation of the performance of the OIICAC required for this Report and met with Mr Riches for that purpose on several occasions. During the visit I made in the week of 18 September 2023, in addition to meeting with the Independent Commissioner, I met with a number of his senior staff, including the Director Operations, the Director Prevention and Engagement, General Counsel, the Director Intelligence and Reviews and the Acting Director Corporate Services. I did not meet during that week Ms Loudon, the Executive Director and Assistant Commissioner but I had met with her during my earlier 2023 visit and in Sydney in July 2023 when I also met with Mr Riches.

4. Administrative Matters

26. 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

27. 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. I am pleased to report that such a relationship exists (in my perception), between myself and the Commissioner, Michael Riches and the ICAC staff with whom I have dealt.
28. Relations between myself and the Office of the ICAC have been formalised by a Memorandum of Understanding (MOU) executed by the Commissioner 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.
29. Pursuant to the MOU (and section 138 of the ICAC Act), the Commissioner has disclosed a number of matters to me.
30. I am satisfied, subject to the matters referred to in paragraphs below, that the 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. Darwin Turf Club Investigation

31. I dealt at some length in my Annual Report for 2021-2023 with the difficult and complex issues that arose from this ICAC Investigation. I have nothing to add to what I said then except to mention that the Independent Commissioner issued a Public Statement On 18 July 2022 and thus within the current reporting period in the following terms:

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 republish 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 republish 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 republish 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.

32. Related to the Darwin Turf Club Investigation was a complaint by Mr Damien Moriarty which I mention in the following section Complaints.

7. 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. While there are no criteria specified for dealing with complaints (an issue Mr Shanahan has addressed in his Discussion Paper and which is dealt with in the proposed amendments to the ICAC Act), I consider, nevertheless that a complaint may only be upheld if it demonstrates some form of impropriety or erroneous approach, whether factually or legally on the part of the ICAC. Certainly, it is not enough, for example, that I might not have reached the same decision as that which is the subject of the complaint. 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

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impropriety on the part of the ICAC 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. In the following paragraphs I will set out the complaints I regard as sufficiently significant to be drawn to the attention of the Chief Minister and, through her, to the Legislative Assembly. I do so because I dealt with some of the complaints by letter to the complainant rather than by a formal report to the Chief Minister, as I am entitled to do by reason of section 138(3) of the ICAC Act referred to in the preceding paragraph. As a result, those complaints and my disposition of them are not public and, subject to protecting the identity of the complainant where appropriate, I believe both the Minister responsible for the ICAC Act and the Northern Territory public should be aware of both the complaints and my determinations of them, as will occur on tabling of this Annual Report. In choosing to anonymise a name or, alternatively, choosing not to anonymise that name, I have taken account of sections 91-93 of the ICAC Act.

35. I received a complaint on behalf of Mr Damien Moriarty arising from the Darwin Turf Club Investigation referred to in the preceding section of this Report by letters dated 30 July 2021 and 5 September 2022. I determined that Complaint by my Report by Inspector pursuant to section 140(3) of the Independent Commissioner against Corruption Act 2017 which I presented to the Chief Minister on 6 March 2023. As that Report was tabled in the Legislative Assembly and appears on my website as Inspector, I will not repeat here what I said in the Report, other than to say that ultimately I dismissed Mr Moriarty's complaint.

36. On 23 November 2022, I received a complaint from a complainant I shall refer to as Complainant B, who had been the person whose conversation was secretly recorded during the Darwin Turf Club Investigation as I described in my Annual Report for 2021-2022 and have mentioned above. The complaint was in the following terms:

I have read your Annual Report and tabled paper, number 706 and I refer to sections 39 - 45 (attached)

I'm writing to you because I'm named in your report and I can't understand how you can be satisfied my personal legal rights under the Surveillance Devices Act 2007 (NT) (section 11) have not been breached by ICAC in the Turf Club Investigation.

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I passed the attached statement onto ICAC Inspector Mr Michael Richie on Tuesday, 6 September 2022 who emailed me a reply the same day stating.... you can be assured that the ICAC Inspector is aware of all of the circumstances surrounding the recording. Nevertheless, I will provide a copy of your email to the Inspector for his consideration.

I can see from your report corrective measures were put in place by ICAC, however the people employed by ICAC who conducted or authorised this have never been held to account, including Mr Fleming QC who was the Commissioner at the time. My personal legal rights have been breached and it is a criminal act from people in a position of power.

With reference to your tabled report, section 46, if you are still unable to determine what actually occurred or you do not have the power under the ICAC Act to investigate further, surely this should be referred by yourself or Mr Richie to the police.

I have included Police Commissioner Mr Jamie Chalker into this communication. I believe you are someone of integrity and you need to be aware I tried to make an official statement to the police. I contacted Mr James O'Brian on the 21 July of the Special References Unit of the NT Police after I was made aware what had happened. I was prepared to make a formal statement after I was satisfied I could prove beyond reasonable doubt and had evidence, five ICAC staff, who did not have a warrant and carried out the operation with intent to breach the act by deliberately setting up devices to transmit the conversation to a third party.

I believe the police were already aware of the matter from the Moriarty case discoveries, and Mr O'Brian told me Mr Carl Day was going to take a formal statement - it is now 23rd November and this is still yet to occur.

I have also included the Chief Minister Natasha Fyles into this communication because she is someone who I do actually still trust and I believe at this point she needs to be aware so it can't be pushed aside again.

As much as I would like to move on, I will not get closure until this is addressed. The longer this is not managed properly the greater the injustice.

37. I responded to Complainant B on 28 November 2022 and dealt with the complaint in the following terms:

Thank you for your email dated 23 November 2022.

May I clarify several matters? First, I have not expressed any view, in my Annual Report or

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otherwise, that your personal legal rights were not infringed by the recording without your knowledge of the conversation with you by staff of the then Independent Commissioner against Corruption. Specifically, I have not made any finding that the staff in question did not breach the relevant provisions of the Surveillance Devices Act 2007. Rather, for the reasons I expressed in my now tabled Annual Report, the powers that I have under the Independent Commissioner against Corruption Act 2017 do not realistically permit me to take the matter any further or to come to any concluded view about the issue.

Secondly, I note that you have copied the Commissioner of the Northern Territory Police, Mr Jamie Chalker, with your email to me, so the Northern Territory Police are aware of the matter, even if they were not previously. It is a matter for the Northern Territory Police what, if any, action they take.

Finally, I remain of the view that the recording of the conversation with you by staff of the Independent Commissioner against Corruption without your knowledge and consent was, as I said in my Annual Report “entirely inappropriate and unfair and should not have occurred” and represented “a serious breach of trust” towards you as well as the other persons who were recorded without their knowledge.

38. On 17 August 2022, I received a complaint from Mr Ashley Brown who had been the subject of a Report by the previous Independent Commissioner Mr Ken Fleming QC. That Report, which is publicly available on the ICAC website [Investigation into the conduct of Ashley Brown](#), made very serious adverse findings against Mr Brown, including findings of knowing dishonesty and corrupt conduct. Mr Brown’s complaint was in the following terms:

I would like to lodge a formal complaint against the former ICAC Commissioner Mr Ken Fleming for publishing false and misleading information in his ICAC report about myself. Mr Fleming has written in the report about an alleged stealing incident by me of property belonging to RDH and it took me 9 days to remove the funds from my bank account to another bank account.

POINTS OF CONSIDERATION:

Stealing offence - for a stealing offence to occur as you are aware there has to be an intent to permanently deprive the owner of property. This was not established by ICAC as it was not the case. I had full intention of returning the property to its owners once my surgery was completed. If they could not be located I was going to put the money into the RDH

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Trust. I tried to get this money to the RDH Trust 48 hours after my operation by using one of the Security Staff, but after 5 days of trying I was informed to just fix it up myself when I left hospital, which I did, hence the 9 days wait.

I had a list of the owners in my diary so I knew who owned what and how much. ICAC did not even ask if I had this or where it was, even after I told them.

Anungra guidelines - at no stage was I advised I had a right to remain silent or allowed to call legal support. I was just interviewed, nor did the people investigating me tell me where they were from. They used the information from this interview to form the opinion that it was a stealing offence without following the proper guidelines for an interview. They also refused me legal advice on this matter as well.

Investigators: The investigators never told me where they were from or what they were investigating. They failed to cover the elements of the offence of stealing and just made the assumption that it was a stealing due to the fact that I put the money in my account, and not establishing the reason for it or what happened to the money after my surgery. Once again I cannot see how they can publish this information on a website for all employers to see when there is no offence in the first place.

Loss of jobs and income. This publication has cost me about 10 full time jobs in the past 12 months and about the same for the year preceding this. I have lost 100's of thousands of dollars due to this publication being allowed on the internet even though there is no offence and I have not been charged with anything. Employers are doing a search on me on the internet and finding this information then I have been sacked from jobs due to this information which is full of mistruths.

I just wish this could be rectified and removed from publications on the internet as it is false and misleading to future employers.

39. I considered Mr Brown's complaint to be entirely without merit and dismissed it on 28 November 2022 in the following terms:

Dear Mr Brown

I refer to your letter dated 17 August 2022 to the Office of the Commissioner for Public Employment which you forwarded to my office on the same date. In that letter you set out a complaint against the former Independent Commissioner against Corruption of the Northern Territory for disseminating "false and misleading information" about you.

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I have decided that your complaint has no merit and propose to dismiss it for the reasons which follow.

BASIS OF COMPLAINT

I summarise the matters about which you complain in your original 17 August email and your subsequent correspondence, as follows:

The Independent Commissioner erroneously found that you had stolen a sum of \$2635.00 belonging to patients of the Royal Darwin Hospital, which money was in your custody in your capacity as Security and Site Manager for the Hospital. You assert that you are not guilty of stealing because you had no intention to permanently deprive the true owner of property in the funds in question.

You were not advised, I assume by the Independent Commissioner, that you had a right to remain silent or were allowed to have legal support at your examination by the Commissioner.

The investigators never told you where they were from or what they were investigating.

DETERMINATION

On the evidence before him, he, Commissioner Fleming was entitled to conclude that you intended to permanently deprive the patients of the funds that had been lodged for safekeeping and were therefore guilty of stealing. You provided an explanation for the reason why the monies in question were in a bank account held by you rather than in the safe deposit boxes at the hospital. That explanation is set out in a text message from you to a colleague sent about 12 March 2020 and which is quoted in paragraph 28 of Commissioner Fleming's Report of October 2021. Commissioner Fleming dealt with your explanation in the Report as follows:

"I find the explanation contained in the text message set out above to be improbable:

- He acknowledges that the money came from the safety deposit boxes.*
- He acknowledges he put it into his account as he locked it away at his place.*
- He acknowledges that the money went missing from his office. He in no way suggests how it might have gone missing, or suggests how he recovered the money and how he took possession of it.*
- He alleges that he was waiting for 'the boss' on where he was to bank it.*

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- *He said that the car dealer 'did not take cash', suggesting to me that the money was delivered to a dealer for an unknown, but entirely inappropriate purpose.*
- *He attempts to explain his non-delivery of the money away by forgetfulness and a 'brain issue'.*

In respect of Mr Brown's credit, I take into account in these findings, his concurrent dishonesty in obtaining the position of Site and Security Manager, and his dishonesty in an investigation examination before me. I also take into account the fact that he did not disclose a conviction for stealing, albeit in 2012, when he was applying for a position as Site and Security Manager.

On the balance of probabilities I find that Mr Brown wrongfully took the money belonging to patients which was within his care and custody."

In such circumstances, the finding that you intended to deprive the true owner of property in the monies in question was correct, as was the finding that you intended to steal them.

Turning to your second basis of complaint, section 81 of the Independent Commissioner against Corruption Act 2017 abrogates the privilege against self-incrimination for persons appearing at private examinations, as you were. You were not entitled to decline to answer questions or, as you put it, remain silent. There is no merit to this aspect of your complaint. As to the further aspect of this second complaint, that is, that you were not informed that you were entitled to legal support, that also appears to me to be lacking in merit. The transcript of your examination before Commissioner Fleming on 7 April 2020, includes the following:

COMMISSIONER: -what's your full name?

MR BROWN: Ashley Grant Brown.

COMMISSIONER: Ashley Grant Brown. Thank you for coming today. I will just be formal with you for a few moments. There are things that you must know about today. I notice that you've come alone. You had an option of bringing counsel with you or a lawyer with you.

MR BROWN: I wasn't aware I could.

COMMISSIONER: Well, I'm not sure that's exactly right Mr Brown, because the documents that are served on you have all of that information set out.

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MR BROWN: *Okay.*

COMMISSIONER: *Probably in two different places, but nevertheless, are you willing to proceed without legal representation?*

MR BROWN: *Yes sir.*

You were obviously aware of your entitlement to legal representation and chose to proceed without it.

The third basis of your complaint appears to me to be equally lacking in merit. You were appearing before the Independent Commission Against Corruption and were plainly aware of the substance of the matter being investigated.

40. I received a complaint which also arose ultimately out of the Darwin Turf Club Investigation from Complainant D. Its terms and the way I dealt with it sufficiently appear from my letter to Complainant D dated 29 November 2022:

Dear [Complainant D]

I refer to your email to me dated 31 October 2022 attaching a letter to Commissioner Riches in which you complain about an alleged failure on the part of the Northern Territory Independent Commissioner Against Corruption ("the ICAC"), to protect the identities of certain operational staff members of the ICAC, including yourself.

The basis of your complaint seems to me to appear in the following paragraphs of your letter to Commissioner Riches:

Your subsequent public apology to [Complainant B] and your public statement that what happened was 'unethical' tells the lay person that what I did was in fact wrong and possibly unlawful, and has a direct impact on my professional reputation. As you are the ICAC, and the only mouthpiece of the Office, your opinion holds weight in the public forum.

Your decision to do nothing and allow the public disclosure of the names of your managers, investigators and intelligence staff may have detrimental effects on their careers, reputations and livelihoods, purely due to the specialised industry that we work in. You made no attempt to protect any of us, but appeared to publicly distance yourself from us. This personally made me feel like it was an intentional manoeuvre to discredit staff that worked on the DTC investigation so they may be served up as scapegoats for any adverse outcomes which may have resulted from the judicial

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reviews.

In summary, you have two complaints, as follows:

- 1. Commissioner Riches' description of the recording of [Complainant B] as "unethical" unfairly damaged your reputation by suggesting that what you had done was wrong and possibly unlawful.*
- 2. Commissioner Riches wrongfully permitted the public disclosure of the names of members of the ICAC intelligence staff, including you, and failed to protect their identities.*

I have decided to dismiss your complaint because, after considering the matter, it appears to me that the recording of the conversation with [Complainant B] without her consent was inappropriate and because Mr Riches was not responsible for the public release of your identity. Rather, that occurred because of a decision of the Northern Territory Supreme Court and because of action by the opposing party in litigation, not any act or failure to act, by Mr Riches.

BACKGROUND

In September 2020, during an investigation into matters concerning the Darwin Turf Club ("DTC"), in your capacity as an ICAC investigator, you invited [Complainant B] to meet for an informal chat at Ray's Café in the Darwin CBD. You recorded this conversation with [Complainant B] without informing her that you were doing so or obtaining her consent for the recording. Either in the café or nearby were [other ICAC contractors or employees one of whom] was monitoring the conversation between yourself and [Complainant B] electronically.

In about January 2022, and because of legal proceedings commenced by the DTC against the ICAC and because of an enquiry by the law firm acting for the ICAC, Commissioner Riches, who had taken over the role of Independent Commissioner from Mr Fleming in July 2021, became aware of the fact that the conversation with [Complainant B] had been recorded without her consent. Mr Riches contacted [Complainant B], informed her what had occurred and apologised to her. At about this time, Mr Riches was contacted by several media organisations who had become aware of the covert recording of [Complainant B] as well as covert recordings of other persons. In response to such enquiries, Mr Riches responded that covert recordings had been made by ICAC staff and that, while doing so may not have been illegal, he regarded such conduct as inappropriate and that it would not occur while he was Independent Commissioner. The following passage from an ABC Report

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is representative:

[Mr Riches] said he apologised to [Complainant B] and informed his staff that “such conduct is not to occur”.

“In the Northern Territory it is not illegal to record a conversation to which you are a party, even if other parties to the conversation are not aware of the recording,” Mr Riches said in a statement.

“But, in my view, that is not the issue.”

“In my opinion the meeting should not have been recorded without the witness’s knowledge. I am surprised and disappointed that it occurred. I am advised that the decision to record the conversation was suggested, and approved, by persons who are no longer employed in my office.”

“Because the matter will be reviewed by the Inspector and relates to a matter currently the subject of judicial proceedings, I will not comment further.”

On 19 January 2022, during a meeting with legal representatives of the ICAC, and on legal advice, Commissioner Riches came to the view that disclosure of the material concerning the meeting with [Complainant B] was inevitable in the proceedings brought by DTC. I have considered this matter myself and have concluded that Commissioner Riches’ view that the material would be disclosed was correct.

On 28 January 2022, the ICAC legal representatives filed a copy of the transcript of the [Complainant B] conversation with the Northern Territory Supreme Court in the DTC proceedings. Your name was disclosed at that time as a result of the filing of the transcript, although [Complainant B] already knew it as did the parties to the proceedings.

By this time Mr Damien Moriarty had commenced proceedings in the Northern Territory Supreme Court against the ICAC over the DTC Report. The transcript of the [Complainant B] conversation was provided to Mr Moriarty’s solicitors who, on 18 February 2022, requested the names of the persons who could be heard on the recording. Commissioner Riches’ instructions were to resist providing those names which the ICAC legal representatives in fact did by letter dated 28 February 2022.

Mr Riches informs me that, at this point, he considered whether he should make a claim for public interest immunity over the identity of the staff members in question but concluded that such an application had scant prospect of success and, for that reason, would not be

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made. Mr Riches has also indicated that he remains of the view that such an application would have failed. I am of the same view. In other words, I disagree with the view encapsulated in your letter to Mr Riches in the following terms:

When this information came to light as part of the judicial review process, I wrote an email to both the Director of Investigations and the Investigations Manager where I outlined the possibility of utilising public interest immunity to prevent any public disclosure of not only our operatives' personal details, but also our investigation methodologies (a commonly utilised option by other law enforcement agencies). These recommendations were promptly ignored.

As stated, I do not believe such an application would have succeeded.

In addition, her Honour Justice Kelly ordered the ICAC to answer informal interrogatories, one of which sought the names of the ICAC operatives involved in the recording of [Complainant B].

Ultimately, the information contained in the answer to the interrogatory, including your name, was tendered in evidence by Mr Moriarty's counsel in the proceedings before her Honour Justice Kelly and, as is the case with all evidence in court proceedings, unless there is a contrary order, became public. This seems to have occurred with its reporting on the ABC on 3 May 2022.

DETERMINATION

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 impropriety or an erroneous approach to the legislation on the part of the ICAC.

Turning, first, to your complaint that Commissioner Riches' description of the recording of [Complainant B] as "unethical" unfairly damaged your reputation by suggesting that what you had done was wrong and possibly unlawful, I regret to say that I agree with Commissioner Riches and his description of the conduct in question. As I said in my Annual Report for the year ended 30 June 2022, it seems to me to have been entirely inappropriate to have recorded [Complainant B] without her consent. I consider that to be the case

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whether or not there was a breach of the Surveillance Devices Act 2007. I note the following passage of your letter to Commissioner Riches:

As to the circumstances surrounding [Complainant B], it was not my decision to record the conversation with her, but at the time I agreed with others to the value of this approach, as it was never intended as an evidence gathering enterprise, but solely for intelligence gathering purposes. The purpose of the operation was to obtain intelligence in relation the culture of the DTC board and the relationships between the individual board members. This is a common tactic utilised by law enforcement agencies to obtain intelligence data and reveal opportunities to progress investigations.

It does not appear to me that the reasons you express in that passage provide a satisfactory basis for recording [Complainant B] without her consent.

For these reasons, I have determined that this first aspect of your complaint should not be upheld.

Turning then to deal with the second aspect of your complaint it seems to me that the release of your name was not the consequence of action or inaction by the ICAC but rather came about because of a decision of the Northern Territory Supreme Court and action by the legal representatives of the opposing party, Mr Moriarty, for which the ICAC is not responsible.

Practically speaking, the disclosure of your identity was probably inevitable once litigation had been commenced in the Northern Territory Supreme Court over the DTC Investigation. Steps taken during that investigation, including the covert recording of a DTC board member, were obviously relevant to that litigation and I find it difficult to see any principled basis for resisting such disclosure. Certainly, as I have said above, a public interest immunity claim seemed to me unlikely to succeed.

But none of these are matters for which Mr Riches can bear responsibility. They resulted, either from the commencement of litigation itself, from orders made by the judge hearing the proceedings or from disclosures required by law in the proceedings. Moreover, they arose out of events before Mr Riches commenced his term as Independent Commissioner. In such circumstances, I am unable to see any impropriety, misconduct or erroneous approach to the legislation on the part of the ICAC or Commissioner Riches.

For these reasons, I have determined to dismiss your complaint.

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41. On 15 October 22, I received a similar complaint from another ICAC contractor or staff member whom I shall refer to as Complainant E. Its terms and the manner with which I dealt with it sufficiently appear from the terms of my letter to Complainant E of 29 November 2022:

I refer to your email to me dated 15 October 2022 in which you complain about an alleged failure on the part of the Northern Territory Independent Commissioner against Corruption ("the ICAC"), Mr Michael Riches, to protect the identities of certain operational staff members of the ICAC, including yourself. I have decided to dismiss your complaint because, after considering the matter, it appears to me that Mr Riches was not responsible for the public release of your identity. Rather, that occurred because of a decision of the Northern Territory Supreme Court and because of action by the opposing party in litigation, not any act or failure to act, by Mr Riches. Background In September 2020, during an investigation into matters concerning the Darwin Turf Club ("DTC"), an ICAC investigator, [Complainant D], invited [Complainant B] to meet for an informal chat at Ray's Café in the Darwin CBD. [Complainant D] recorded his conversation with [Complainant B] without informing her that he was doing so or obtaining her consent for the recording. Either in the café or nearby were Mr Craig MacPherson, a contractor engaged by the ICAC, Mr Richard Osborne, the ICAC Manager Investigations and yourself. At the time you were employed by the Department of Local Government, Housing and Community Development. Mr MacPherson was monitoring the conversation between [Complainant D] and [Complainant B] electronically. I infer that you listened to at least some parts of the conversation as it was being monitored by Mr MacPherson. If that is not correct, please let me know. At that time, Mr Ken Fleming QC was the Independent Commissioner. In about January 2022, and because of legal proceedings commenced by the DTC against the ICAC and because of an enquiry by the law firm acting for the ICAC, Commissioner Riches, who had taken over the role of Independent Commissioner from Mr Fleming in July 2021, became aware for the first time of the fact that the conversation with [Complainant B] had been recorded without her consent. On 19 January 2022, during a meeting with legal representatives of the ICAC, and on legal advice, Commissioner Riches came to the view that disclosure of the material concerning the meeting with [Complainant B] was inevitable in the proceedings brought by DTC. I have considered this matter myself and have concluded that Commissioner Riches' view that the material would be disclosed was correct. Commissioner Riches then took steps to inform [Complainant B] of what had occurred, and of the fact that she had been recorded without her consent. I do not consider Mr Riches' actions in this respect to be relevant to dealing

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with your complaint and will not set them out. On 28 January 2022, the ICAC legal representatives filed a copy of the transcript of the [Complainant B] conversation with the Northern Territory Supreme Court in the DTC proceedings. The names of those involved on the ICAC side, other than [Complainant D], were not disclosed. By this time Mr Damien Moriarty had commenced proceedings in the Northern Territory Supreme Court against the ICAC over the DTC Report. The transcript of the [Complainant B] conversation was provided to Mr Moriarty's solicitors who, on 18 February 2022, requested the names of the persons who could be heard on the recording. Commissioner Riches' instructions were to resist providing those names which the ICAC legal representatives in fact did by letter dated 28 February 2022. Mr Riches informs me, and I accept, that the release of your name came about as follows:

- On 4 March 2022, Mr Moriarty's application to vacate the trial date was heard by Kelly J. Justice Kelly refused the application, but ordered that the plaintiff issue 'informal interrogatories in relation to the 'secret recording' by close of business today Friday 4 March 2022' and 'The Defendant issue a response to the interrogatories by close of business on Monday 7 March 2022. At that stage it was inevitable that further information would have to be disclosed in respect of the [Complainant B] recording.*
- Interrogatories were received on 4 March 2022, including the question 'Who are the persons other than [Complainant D] identified in the transcript to the conversation following the secretly recorded conversation with [Complainant B]? What were their roles at ICAC at the time?'*
- Following discussion with senior and junior counsel, and in consultation with [Complainant D] and the former Commissioner, responses to the interrogatories were prepared and provided. The responses identified [a number of OICAC personnel, and Complainant E] as other individuals whose voices were heard on the recording. Mr Riches informs me that, at this point, he considered whether he should make a claim for public interest immunity over the identity of the staff members in question but concluded that such an application had scant prospect of success and, for that reason, would not be made. Mr Riches has also indicated that he remains of the view that such an application would have failed. I am of the same view. In the circumstances set out above, it is apparent that the release of your name came about because of compulsory process of the Northern Territory Supreme Court, that is, the order by her Honour Justice Kelly that the ICAC answer the informal interrogatories by the date specified, 7 March 2022. As one of the interrogatories was a question directed towards*

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identifying persons (other than [Complainant D]) referred to in the transcript of the conversation, an honest and accurate answer would necessarily reveal your name. Interrogatories are a form of court process under which a party is required to give written answers to questions served by the opposing party in the litigation. It was not open to the ICAC to refuse to answer the question because it had been ordered to do so and such a refusal would constitute a contempt of court, as would a failure to answer it accurately and honestly. Ultimately, the information contained in the answer to the interrogatory, including your name, was tendered in evidence by Mr Moriarty's counsel in the proceedings before her Honour Justice Kelly and, as is the case with all evidence in court proceedings unless there is a contrary order, became public. This seems to have occurred with its reporting on the ABC on 3 May 2022. It follows that your name was revealed because of an order made by her Honour Justice Kelly that the ICAC answer the interrogatory in question and it's tender in evidence by Mr Moriarty's counsel.

DETERMINATION

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 impropriety or an erroneous approach to the legislation on the part of the ICAC. Approaching the matter in this way, it seems to me that Mr Riches' response to you in his email dated 4 May 2022 in which he stated that "The evidence that was reported was evidence that was given in judicial proceedings. The evidence was released by the court, not by this office" is entirely correct. Put another way, the release of your name was not the consequence of action or inaction by the ICAC but rather came about because of a decision of the Northern Territory Supreme Court in action by the legal representatives of the opposing party, Mr Moriarty, for which the ICAC is not responsible. In such circumstances, I am unable to see any impropriety, misconduct or erroneous approach to the legislation on the part of the ICAC or Commissioner Riches. For these reasons, I have determined to dismiss your complaint.

42. I dealt with, and dismissed, three other complaints during the reporting period but I do not think it is necessary to set out the details of those complaints in this Report. If the Chief Minister or the Committee wish to know the details of these complaints

I am happy to provide them.

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

43. As stated above, this is the fourth Annual Report that I have prepared since my appointment as Inspector and since the OICAC became fully operational. I prepared, in 2019 a Preliminary Report at a time when the OICAC was still substantially in start-up mode. Anyone who wishes may refer to my 2019 Preliminary Report and my 2020, 2021 and 2022 Annual Reports to understand the situation of the OICAC for the periods covered in those reports.
44. The OICAC provided me with its Draft Annual Report for the 2022-23 financial year on 7 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. In connection with the point made in the preceding paragraph I note and agree with the content of Mr Riches' Commissioner's Foreword to the 2022-23 OICAC Annual Report.
45. I note the present organisation of the Office of the ICAC which differs from that which applied under the previous Commissioner. There are two main output groups, OICAC Operations on the one hand and Corporate and Governance on the other. OICAC Operations expressed intended outcome is improvement in the integrity of Northern Territory public administration. It has four functional units:
- Legal Unit
 - Operations Unit
 - Strategic Intelligence and Reviews Unit
 - Prevention and Engagement Unit
46. The functions of each of the functional units are as follows:
- The Operations Unit was recently established to combine the assessment and investigation functions. Combining the two business areas created efficiencies with staffing as well as streamlining the transition of reports to investigation or referral.
 - All reports made to the OICAC are assessed and recommendations made as to what, if any, action should be taken. The decision rests with the ICAC or delegate. The Operations Unit also reviews responses received from referral entities on any action taken in respect of a referral or as a result of preliminary inquiries.

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- The Operations Unit supports the ICAC to investigate alleged improper conduct as directed. A range of methodologies using traditional and contemporary investigative techniques are used to collect evidence, including taking statements, obtaining business and financial records, and conducting private examinations.
 - The Legal Unit through the General Counsel and legal staff provide legal advice and support to the ICAC and OICAC staff. The staff act as Counsel Assisting the ICAC during private examinations. The General Counsel and Legal Unit staff also support the ICAC in discharging his statutory functions by reviewing assessment and investigative recommendations, providing legal advice on education and prevention activities, and supporting the ICAC to meet strategic priorities.
 - The Prevention and Engagement Unit delivers awareness, engagement and prevention activities to public sector agencies and local government councils, other organisations and the community. The unit develops prevention and engagement strategies and resources, and works with public bodies to increase awareness of improper conduct and foster a culture of reporting.
47. The Corporate Services Unit supports the operational requirements of the OICAC by managing finance, human resources, governance and risk, and business services. Corporate Services also works with other NT Government agencies and external contractors to coordinate business services that include procurement, work health and safety (WHS), records management, information and communications, and technology support. The Executive Support Officers provide administrative and secretariat services to the ICAC and other directors.
48. As at the final pay period in June 2023 (pay period 26), the OICAC had 25.8 full-time equivalent employees, an increase from 23.5 FTEs at June 2022, following a decrease from 31 FTEs as at June 2021, with 22 at June 2020 and 12 at June 2019. It had total income of \$6.24 million compared to \$7.59 million for the 2021-22 financial year, \$7.47 million for 2020-21 and \$6.09 million for 2019-20. I note that the Commissioner anticipates a reduction in the OICAC's budget for 2023-24 and has taken steps to deal with that anticipated reduction, for example, by not filling staff vacancies.
49. I note that the OICAC adopted a Strategic Plan setting out its vision for the period 2022 to 2026. I note the following matters about the Strategic Plan:
- It expresses the vision of the OICAC as a prosperous corruption-free Territory and its mission as one to support and empower Territorians to prevent, detect

and respond to improper conduct.

- The aims expressed are to reduce improper conduct, demonstrate accountability, strengthen confidence in OICAC and public administration and build organisational capabilities and capacity.
- The expression of values such as integrity, courage, accountability and collaboration.

50. I evaluate the OICAC's performance in these respects as satisfactory.

9. Public and Public Service Education

51. An important aspect of any integrity agency is an educative function. That is, to make known both to the public and public officers the functions of the agency and to emphasise corruption prevention to them so that they clearly understand the necessity for integrity in public office.

52. My evaluation of these functions is that they have been performed satisfactorily by the Office of the ICAC. It is clear that the office has achieved significant penetration into the community and the public service.

10. Complaints and Complaint Assessments

53. A total of 398 allegations were assessed in 2022-23 (including allegations received in the previous financial year). Of the allegations assessed:

- 131 were referred to a referral entity.
- Fifteen allegations were, or are, the subject of a preliminary inquiry by the ICAC.
- A further 14 allegations were, or are, the subject of investigation by the ICAC.
- No further action was taken in respect of 249 allegations.

54. I am satisfied that the assessment process and the procedures established to deal with the reports are appropriate, as are the operations of the Assessment Unit.

55. In summary, my evaluation of these matters is that the Office of the ICAC is dealing with them in a satisfactory manner.

11. Operations Unit

56. I note the following passage from the OICAC draft 2022-23 Annual Report:

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The Operations Unit had 14 allocated positions as at 30 June 2023. Three positions were vacant at the reporting date.

- *Director Operations (one)*
- *Manager Operations (three)*
- *Senior Operations Officers (three) (one position vacant as at reporting date)*
- *Operations Officers (three)*
- *Senior Assessment Officer (one)*
- *Senior Monitor and Assessment Officer (one) (one position vacant as at reporting date)*
- *Assessment Officer (one) (one position vacant as at reporting date)*
- *Operations Support Officer (one)*

The unit committed its resources to improving existing policies and procedures, and commenced the initial phase of the agency's new operations compliance framework.

57. I also note from the draft Annual Report that, in the period 1 July 2022 to 30 June 2023, the ICAC had 17 active investigations at the start of reporting period. Commissioner Riches commenced 10 investigations during the reporting period, of which four investigations were joint investigations with another agency. During the reporting period, 10 investigations were finalised with 17 investigations carried forward into the new financial year.

12. Some Qualifications

58. It should be apparent from what I have written above that I evaluate the manner in which the OICAC performed its significant public functions as generally satisfactory. That conclusion applies to the conduct of the agency in the reporting period 1 July 2022 to 30 June 2023. It will be apparent from the views I have expressed above and from my Report for the 2021-2022 period that I take a different view about matters which occurred before the commencement of the present Commissioner's term of office. The issues that concerned me then have not continued and have been substantially resolved. Although the agency undoubtedly faces the challenges of any small tightly funded government entity and while my meetings with senior staff revealed that there are some issues with staff morale, I consider that the agency is now functioning relatively effectively. I am considering what, if any steps, I should take to enhance the performance of what is an important Northern Territory government

agency which, adequately funded and managed, is capable of significantly improving
Territory governance.

13. Conclusion

59. I am satisfied that the Office of the ICAC, the Commissioner himself and his staff have acted within power and in compliance with the Act and other relevant legislation and I evaluate the performance of the OICAC overall as satisfactory for the relevant reporting period, that is, 1 July 2022 - 30 June 2023.
60. As this is my last report for the term of office as Inspector of the ICAC, I will conclude by saying that it has been a privilege to have served as Inspector for the last five years and I am grateful for the opportunity to have come to know to some extent the people of the Northern Territory and the challenges and opportunities it faces.



Bruce McClintock
Inspector ICAC