REPORT ON AN ADMINISTRATIVE MATTER: JOINT CONFERENCE OF PARLIAMENTARY INSPECTORS 7 MAY 2015

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

17 June 2015

This is a short report to inform the Joint Standing Committee for the Corruption and Crime Commission of Western Australia of a conference held in Melbourne on 7 May 2015 with my counterparts, and their key staff, from New South Wales, Victoria and Queensland.

In November 2014 I proposed to my counterparts a conference in order to build a cooperative relationship between us, to discuss individual and common oversight issues, to gain a better understanding of the functions and powers we share and those we do not, and to use our collective standing to progress matters which affect all of us, including the absence of an audit power of warrants obtained and affidavits used by anti-corruption agencies under the *Telecommunications (Interception and Access) Act 1979 (Com).*

My proposal was well received by the Hon David Levine AO RFD QC, Inspector of the Independent Commission Against Corruption and the Inspector of the Police Integrity Commission in New South Wales, Mr Robin Brett QC, Inspector of the Victorian Inspectorate and Mr Paul Flavell, Parliamentary Inspector of the Crime and Corruption Commission in Queensland. It appears that elsewhere, in jurisdictions where there is an integrity agency such as the Corruption and Crime Commission, there is no such office as that of the Parliamentary Inspector.

Our conference was hosted by Mr Brett QC at his Inspectorate in Collins Street, Melbourne. He has a staff of nine, and the Inspectorate's premises, which include a formal hearing room, occupy an entire floor of a large office building.

Mr Brett QC acknowledged the size of the premises, but explained that the Victorian Government, when his Inspectorate was created two years ago, insisted on security grounds that no other tenant should occupy the same floor. As a consequence, a large portion of the premises are fully equipped for a far greater number of staff, but are unoccupied.

One of the principal benefits of the soon to be provided accommodation for my office, apart from those concerned to provide adequate facilities of an appropriate standard, will be the great improvement in the security aspects of the tenure of the Office when the newly renovated and refurbished premises finally become available.

We discussed, at length, our respective functions and powers, and those of the agencies we oversee. It is fair to say that many of our functions and powers are similar. We also discussed the cultural problems which are evident in some of the agencies we oversee, the solution for which, when they occur, we agreed, can only be for the Parliamentary Inspector, or his equivalent, to take an approach, in the exercise of his oversight role, which encourages openness and co-operation and, where disagreements occur, does not cause the agencies with which we are concerned to retreat into a bunker of hostility and defensiveness.

Two issues dominated our discussions.

The first issue was our inability to audit the activities of the agencies we oversee when those activities involve the use of their powers under the *TI Act*. All of us agreed that this situation is incompatible with the principals of oversight and transparent

accountability, particularly when the powers under the legislation are uniformly acknowledged as the most intrusive, and are often used.

I am pleased to say that the efforts of Western Australia in recent years to address this problem (demonstrated by the Committee's reports *Death of a Witness* (24 February 2011) and *Surveillance & Accountability: A Gap in the Oversight Umbrella?* (8 November 2012), and the resulting correspondence between the Attorney General of Western Australia with his Commonwealth counterpart), although unsuccessful at this point in time, were highly regarded by the others.

Mr Levine shared with us his correspondence with the Commonwealth Department of the Attorney General in which he advocated for the *TI Act* to be amended to provide the Inspectors in each State with the power to audit their agency's warrants and supporting affidavits. Our intention is to collectively pursue this issue with the Commonwealth Attorney-General by way of correspondence jointly signed.

The second issue was the High Court's recent decision in *Independent Commission Against Corruption v Cunneen* [2015] H.C.A. 14 (15 April 2015), and the Bill (Independent Commission Against Corruption Amendment (Validation) Bill 2015) the New South Wales Government recently introduced to legitimise (in a legislative sense) the excesses manifest in the Commission's conduct.

So far as we are concerned in W A, I have provided some views upon the potential impact of the decision in the context of the amendments made in 2014, which I understand will soon be proclaimed to come into operation as from 1 July. I refer to the opinion I gave by my letter to the Committee dated 20 April 2015. I see no need to resile from the views there expressed, as a result of the discussion held at the meeting of the Parliamentary Inspectors.

Indeed, all present thought that their legislation, subject to minor differences in the wording of the various Acts, would sustain the more limited interpretation given to the N S W legislation on probity grounds by the High Court, rather than the more expansive interpretation advanced to the Court by ICAC, which, at this time at least, has been retrospectively validated by the N S W legislature.

We agreed that our conference should be held annually, and Mr Levine has offered to host the next conference in Sydney sometime in 2016.

I table this Report for the benefit of the Committee, and respectfully suggest there is no purpose served by its tabling in Parliament.

HON MICHAEL MURRAY AM QC
PARLIAMENTARY INSPECTOR