

UPDATE

SA Premier Announces Creation of Independent Commission Against Corruption ***"Good governments have nothing to hide"***

Following yesterday's Cabinet meeting, the Premier Jay Weatherill and the Attorney General John Rau announced that the State Government will introduce an Independent Commission Against Corruption (ICAC). Such a move is proposed to ensure a greater level of independence and accountability in SA's public institutions. In turn, this is intended to improve community confidence in public administration.

The commentary below is based upon information provided by the Department of the Premier & Cabinet and the Office of the Attorney-General and with reference to how existing ICACs currently operate interstate.

Proposed Model

Whilst many details of how the ICAC will operate are yet to be determined, the Premier has indicated that it will be in a similar manner to those in other States.

It will be headed by an Independent Commissioner, who will be appointed for a term of seven years. It will also have its own in-house investigators. The Commissioner will be accountable to Parliament only through an annual report, and the Government will not have any powers to direct the Commissioner. The ICAC's powers will be considerable, including:

- criminal investigative powers;
- coercive powers to search and seize;
- powers to conduct electronic surveillance;
- undercover operations powers; and
- powers to compel answers from witnesses.

Who Can Be Investigated

The ICAC's investigative powers will undoubtedly extend to all holders of public office and public institutions, including local government (elected members and officers), public sector agencies and employees, government departments, members of Parliament, ministers, the judiciary and the Governor.

How Will Complaints be Received

At this point in time it is proposed that the Office of Public Integrity (OPI) will remain the first port of call for all complaints regarding the conduct of public officers or institutions. The OPI will determine whether a complaint should be referred to the ICAC, or to another statutory agency such as the Ombudsman, the Auditor General or the Police Complaints Authority. The OPI will be overseen by the Commissioner and hence the Commissioner will be in a position to decide which complaints will be investigated by the ICAC. Furthermore, the OPI will be required to notify the Commissioner of any complaint involving allegations of corruption in public agencies. The Commissioner will also have the ability to oversee the investigation of complaints which are directed to other statutory agencies.

How an Investigation Will Proceed

Where the Commissioner decides that a complaint will be investigated by the ICAC it is proposed that the investigation will be undertaken in confidence, unless the Commissioner decides, at his/her absolute discretion, that it is in the best interests of the investigation that details of it be publically disclosed. However, Mr Rau has indicated that public disclosure will be the exception rather than the rule. Therefore, in most instances, Parliament and the public will not learn

of ICAC investigations until the Commissioner releases his/her annual report. Even then, it appears possible that this report may not contain full disclosure of investigations.

Where an investigation leads the Commissioner to conclude that an individual has been involved in criminal conduct, it is anticipated, based on the ICAC models in other States, that the Commissioner would have the power to make a recommendation to the Director of Public Prosecutions to prosecute that individual. However, the Government is yet to release details of how this aspect of the ICAC will operate.

Educative Responsibilities

The ICAC will also be required to provide public institutions with anti-corruption information and training.

As many of you will be aware, we have for a number of years been preparing for the inevitability of the establishment of an ICAC type body in South Australia. Accordingly, we will continue to provide you with further information and relevant advice as more details of the SA ICAC are made known. We are also here to assist with any questions that you have.

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