



The Hon Tony Fitzgerald AC QC and The Hon Alan Wilson QC  
Commissioners  
Crime and Corruption Commission  
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**File ref:** 20220407  
**Your ref:** 602456/1, 6119188

Dear Commissioners

Thank you for your letter inviting me to make a submission to your inquiry. I apologise for the delay in responding.

I provide the following information.

#### **Use of seconded police officers**

My office has not used seconded police officers for investigations. I have no intention of doing so in the foreseeable future.

Neither my office nor I have the statutory function to initiate prosecutions. The decision to commence a prosecution rests with the Northern Territory (NT) Police or the NT Director of Public Prosecutions. I think that separation is appropriate.

#### **Issues arising from use of seconded police**

See above.

#### **Expertise, qualifications and training**

All of my investigators have completed, at a minimum, a Certificate IV in government investigations. They all have law enforcement or military investigation experience.

Investigators are not left to conduct investigations on their own. I lead all investigations, with input from legal practitioners and investigators. I find this multidisciplinary approach ensures that inevitable gaps in experience, training or skill can be accommodated.

#### **Decision to commence a prosecution**

The current process for the commencement of a prosecution is documented in a memorandum of understanding (MoU) between my office, the NT Director of Public Prosecutions (DPP) and the NT Police. I attach a copy for your information. The Commissioner of the NT Police, the NT DPP and I consent to its publication, although I note that the document will shortly be reviewed and will likely be amended to simplify processes and to reflect the views of the new DPP and me as the new Commissioner. To that end publication may be of little utility.

#### **Referrals to the DPP**

The process for referral of matters to the DPP is outlined in the MoU attached to this letter.

#### **Other practices related to prosecutions**

A prosecution has yet to be commenced following an ICAC investigation in the Northern Territory. I do not have any further information of value to be provided at this time.

## Welfare of individuals

Thus far all NT ICAC investigations have been conducted in private. While the ICAC Act empowers the Commissioner to hold a public inquiry, that power has not yet been used. If such a power were to be used, the matters set out in Schedule 1 of the ICAC Act must be considered. I draw your attention particularly to clause 5 of Schedule 1, which provides that:

*Matters should be dealt with by the ICAC in private, unless it is in the public interest to do otherwise, taking into account the following:*

- (a) the desirability of the public sector being open and accountable to the public;*
- (b) the benefit of exposing improper conduct to public scrutiny;*
- (c) the extent to which allegations of improper conduct are already in the public domain;*
- (d) the extent to which allegations of improper conduct raise issues of continuing public interest;*
- (e) the risk that a person may suffer undue hardship, including undue prejudice to the person's reputation;*
- (f) the needs of persons who have assisted identifying or investigating improper conduct and particularly the need to protect information that may identify those persons;*
- (g) any views expressed by persons who would be affected by a decision whether to handle a matter in private or public;*
- (h) the educational value and benefit to research and policy development of sharing details of matters about which the ICAC has particular knowledge.*

At an individual level when a person is issued with a notice to attend for an examination, that notice is accompanied by a list of services that may be available to provide mental health support. The person is provided with contact details of a nominated staff member, who is not connected with the investigation, but is available to answer questions the person may have in relation to the examination.

That allocated staff member will greet the person on arrival for his or her examination and will be available to assist the person in respect of refreshments, use of toilet facilities and to answer any questions about the process.

If my staff or I identify any concerns about imminent risks to the safety of a witness, appropriate steps will be taken, including advising appropriate authorities.

## Oversight

I am subject to oversight by an Independent Inspector (see ICAC Act Part 7, Division 4).


I am also the subject of oversight by the Legislative Assembly Standing Committee on the ICAC. The functions of the Committee are to:

- *perform the functions of the Assembly Committee under the Act*
- *examine each Annual Report of the Commissioner and the Inspector under section 128 and 137 of the Act*
- *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.*

I do not think it is for me to comment upon the effectiveness of those oversight bodies.

I trust this information is of assistance.

Yours sincerely



**Independent Commissioner Against Corruption**

7 April 2022

**Encl:** MoU – Interagency Collaborative Working Arrangements for Internal Investigations of Misconduct

# Memorandum of Understanding

## Interagency Collaborative Working Arrangements for Internal Investigations of Misconduct

Between:

The Independent Commissioner  
Against Corruption

and

The Director of Public Prosecutions

and

Northern Territory Police Fire and Emergency  
Services

Office of the  
Independent  
Commissioner  
Against  
Corruption



DIRECTOR  
OF PUBLIC  
PROSECUTIONS  
NORTHERN TERRITORY



**NT POLICE,  
FIRE & EMERGENCY  
SERVICES**

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## **The Parties**

This Memorandum of Understanding (MOU) is made between the Office of the Independent Commissioner against Corruption (NT) (OICAC), the Director of Public Prosecutions (NT) (DPP) and Northern Territory Police, Fire and Emergency Services (NTPFES).

## **Scope and Purpose**

1. The MOU outlines the overall framework, roles and agreed responsibilities within which the Parties agree to work together to facilitate the laying of charges and prosecutions arising from OICAC investigations.

## **Not Legally Binding**

2. The purpose of the MOU is to act as a guide to cooperation between the Parties. It is not intended to create legally enforceable rights and obligations.

## **Schedules**

3. In support of this MOU, the Parties may develop Schedules that provide the processes to be followed in relation to specific matters. This may occur at any time.
4. Schedules will relate to mutually agreed issues and set out the most effective process to manage each issue.
5. When agreed and endorsed in accordance with this MOU, a Schedule will form part of the MOU.
6. Once a Schedule has been made, it may be varied by written agreement signed by the Parties.
7. In accordance with this MOU, a Schedule or variation to a Schedule:
  - a. is taken to be agreed if it is signed by the Parties; and
  - b. commences, unless expressly stated otherwise in the Schedule, on the date of signing by all Parties; or
  - c. where Parties do not sign the Schedule on that same day, on the date the last Party signs.
8. A Schedule may be terminated at any time by written agreement signed by the Parties and takes effect from the date the last Party signs the termination, in accordance with this MOU.

### Inconsistency

9. In the event of a conflict between any of the terms of the MOU and any Schedule made under this MOU, the Schedule will prevail to the extent of any inconsistency.

### Review

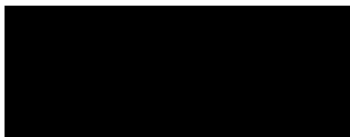
10. The Parties will review this MOU 12 months from the date of commencement, or earlier if necessary due to changes in process, legislation or government policy

### Termination

11. This MOU may be revoked in writing by any Party to the MOU.

### Commencement of MOU

12. The Parties agree that this MOU
- a. is taken to be agreed if it is signed by the Parties; and
  - b. commences, on the date of signing by all Parties; or
  - c. where Parties do not sign the MOU on the same day, on the date the last Party signs.

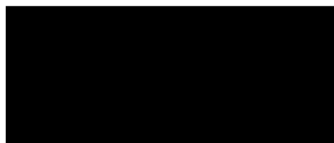


Matthew Grant

Deputy Chief Executive Officer

Office of the Independent Commissioner  
Against Corruption (NT)

Date: 24/6/21



Wojciech Karczewski QC

Director of Public Prosecutions

Date: 25.06.2021



Murray Smallpage *SMALLPAGE*

Deputy Commissioner People, Crime and  
Capability

Northern Territory Police, Fire and  
Emergency Services

Date: 8/7/21

## **SCHEDULE 1**

In any prosecution under this MOU, the OICAC is not a party to proceedings and does not influence the prosecutorial process. Whilst information may be shared between the OICAC, DPP and NTPFES for the purposes of instituting prosecutions, at no time will the OICAC express an opinion or make comment as to the prospects of success of any prosecution.

### **Definitions**

In this MOU *Admissible material* includes:

- (a) Signed witness statutory declarations including a jurat;
- (b) Transcripts of recorded witness statements including a jurat;
- (c) Business records, such as banking records; and
- (d) Exhibits annexed to the relevant statements from the party producing them (not annexed to a general statement by an OICAC investigator).
- (e) Exhibits annexed to transcripts of witness statements.

### **Public Interest Immunity (PII) & Disclosure**

1. Any direct or indirect reference in this MOU or Schedule/s to the OICAC's obligation of disclosure of materials to the DPP or NTPFES is subject to consideration by the OICAC as to whether any materials are subject to exclusion on legislative or public interest immunity grounds.
2. In those circumstances, materials will not be disclosed to the DPP or NTPFES and this will be acknowledged in the cover letter accompanying the brief of evidence.

### **Furnishing of Evidence to DPP**

3. The OICAC will provide a brief of evidence to the DPP for each matter referred, containing admissible material, together with a covering letter outlining what charges have been identified by the OICAC as being open on the evidence and a DRAFT statement of facts.
4. If evidence provided has been obtained under compulsion that fact will be made clear on the face of the brief.

5. If inadmissible material is provided to the DPP, it will be considered by the DPP, however any advice on reasonable prospects of success will take into account that the evidence is not in an admissible form.
6. Where the DPP identify deficiencies or gaps in the brief of evidence provided by the OICAC, requests (requisitions) may be made for further information.
7. Ordinarily, the OICAC will **not** provide transcripts of evidence compelled in investigation examinations, from persons under investigation or persons otherwise protected under the *Independent Commissioner Against Corruption Act*. If however, if it is determined by the OICAC that transcripts **are** to be disclosed as part of the brief of evidence, OICAC should furnish the entire transcript rather than excerpts of the transcript.
8. The cover letter will outline the evidence obtained during the OICAC investigation and any relevant legal and/or evidentiary issues that have been identified by the OICAC.
9. The cover letter should identify:
  - (a) each of the proof elements of the identified charges;
  - (b) any known or expected difficulties of proof of any of the elements;
  - (c) which witnesses have indicated they are willing to give evidence, and particulars of the manner in which willingness was conveyed to the OICAC;
  - (d) which witnesses have indicated they are not willing to give evidence, and particulars of the manner in which willingness was conveyed to the OICAC;
  - (e) if on a sensible appraisal of the material, a witness is said to be criminally involved in the alleged conduct, that should be noted in the cover letter, together with details of whether OICAC is intending to pursue charges against that person, or if indemnity is to be sought.
  - (f) explain the significance of the documents included in the brief (preferably in the form of a footnoted summary of material facts
  - (g) if there is any particular urgency, and, in the case of matters in which summary charges are considered appropriate, the last date on which proceedings can be commenced;
  - (h) the name, telephone number and email address of the point of contact within the OICAC.
10. Evidence will be provided from any person listed as a witness within the brief. If there are reasons why a person is listed as a witness, yet evidence has not been provided from them, the cover letter will address this by identifying classes of persons only. Any reference to the name of the witness will be anonymised to protect the identity of that witness.



11. If, following an assessment of the evidence it is the view of the DPP that there are more appropriate charges to those identified by the OICAC, the DPP will provide advice as to why those alternative charge/s are preferred and an opinion as to the prospects of a successful prosecution of those alternative charge/s .

### **Summary Offences**

12. In matters where any charge identified by the OICAC is time-limited, the OICAC brief will be provided as early as practicable, and no later than three months before the time will expire. Within eight weeks of receiving the material the DPP will advise if criminal charges are available or provide a progress report.
13. Any determination as to whether the DPP has the capacity to accept a 'late' brief and provide an URGENT opinion will be determined as agreed between the OICAC and DPP on a case by case basis.
14. The DPP will consider a brief and provide an opinion or where agreed, an URGENT opinion. The DPP will undertake to provide an opinion within 8 weeks from receipt of the brief however in circumstances of a 'late' brief, whilst all reasonable effort will be made, the DPP does not undertake that an URGENT opinion will be available within the necessary time-limit for laying of charges in such circumstances.

### **Indictable Offences**

15. For indictable offences, the OICAC brief will be provided as early as is practicable. Upon receipt of the brief, the DPP and OICAC In-House Legal will discuss the anticipated timeframe required to provide an opinion. This will be determined on a case by case basis, but will not exceed 6 months.

### **Disclosure**

16. Subject to issues of PII the ICAC undertakes to make full disclosure to the DPP, and recognises this duty of disclosure is ongoing.
17. This includes disclosure of all material which:
- (a) which is relevant or possible relevant to an issue in the case and being either inculpatory or exculpatory material;
  - (b) raises or possibly raises a new issue whose existence is not apparent from the evidence already served;

(c) holds out a real as opposed to a fanciful prospect of providing a lead to evidence which goes to either (a) or (b) above.

18. For abundant clarity, the duty of disclosure includes any representations (made in writing or orally) by the person of interest, any representations (made in writing or orally) by any proposed witness, or any person who on a sensible appraisal could be considered a relevant witness.
19. For purposes of any duty of disclosure by the OICAC representations may include those made (orally or in writing) by a person of interest, suspect, witness, protected person, protected communication, human source.
20. If the OICAC forms the view that material which would ordinarily fall to be disclosed cannot be disclosed for any reason, then the OICAC is obliged to notify the DPP of that fact, and the basis upon which the material cannot be disclosed.
21. Where the OICAC determines that classes of materials are not to be disclosed, the OICAC will include in the brief, a Schedule categorising the classes of materials being withheld.
22. Issues of disclosure are to be considered by the OICAC on a case by case basis.

### **Institution of Prosecution**

23. An exception to the following process may arise when the OICAC and NTPFES have conducted a joint investigation. In those circumstances, NTPFES will follow internal processes for the institution of any prosecution that may arise as a result.
24. If the DPP forms the view that proceedings for an offence may be commenced, it will provide written advice of that fact to the attention of OICAC In-House Legal Counsel. The advice is to include the appropriate wording for the charge.
25. Upon receipt of appropriate wording for the charge and a decision by the OICAC to proceed, OICAC In-House Counsel will refer the matter to the nominated contact within the Judicial Operations Section (JOS) of NTPFES, with a copy of the opinion of the DPP and proposed statement of facts.
26. Once satisfied of the merit of prosecution a member of JOS will prepare a Complaint or Information. The Judicial Operations Section (JOS) will and arrange for the laying of same and preparation and service of the Summons or Notice to Appear on the defendant.

27. The NTPFES will advise the DPP and OICAC in writing once a complaint or information has been laid.
28. The NTPFES will advise the DPP and OICAC in writing of the first mention date of the matter.
29. Where the matter is in Darwin, the DPP will appear on the first mention, and all subsequent Court dates.
30. Should the first mention of a matter occur in a regional court, NTPFES may appear at the first mention and finalise if appropriate. If a matter is to be contested, any subsequent court appearances will be handled by the DPP.
31. The DPP will specify in writing to the OICAC what documents are to be included in the brief of evidence.
32. The OICAC will provide a copy of the brief to the DPP in electronic form.

### **Decision Not to Proceed**

33. If the DPP forms the view that proceedings for an offence should not be commenced, it will provide written advice of that fact to the attention of the Deputy CEO of the OICAC or Counsel Assisting, together with short reasons for that decision.

### **Summary Hearings, Preliminary Examinations and Trial**

34. The DPP lawyer will keep OICAC In-House Legal informed of the progress of each prosecution, including mention and hearing dates and outcomes.
35. NTPFES will arrange for the attendance of witnesses as required for any relevant court appearances.
36. Any determination as to the final resolution of charges or amendment to statements of fact lies with the DPP.

### **Costs**

37. Any costs associated with the preparation, service and execution of summonses will be met by NTPFES.

38. Costs for the attendance of witnesses at court proceedings will be met by the DPP, save for the attendance of NTPFES or OICAC officers.

39. The OICAC will pay any court awarded legal costs for unsuccessful prosecutions.



Matthew Grant

Deputy Chief Executive Officer

Office of the Independent Commissioner  
Against Corruption (NT)

Date: 24/6/21



Wojciech Karczewski QC

Director of Public Prosecutions

Date: 25.06.2021



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