



Office of the Inspector of the
Independent Commission Against Corruption

**REPORT OF AN AUDIT OF APPLICATIONS FOR AND
EXECUTION OF SEARCH WARRANTS BY THE
INDEPENDENT COMMISSION AGAINST
CORRUPTION FOR 2018-19**

**by the Inspector of the Independent Commission
Against Corruption**

October 2020



Office of the Inspector of the
Independent Commission Against Corruption

27 October 2020

Our ref: A2 2020 06

The Hon. John Ajaka MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon. Jonathan O’Dea MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Mr President & Mr Speaker

In accordance with sections 57B(5) and 77A of the *Independent Commission Against Corruption Act 1988* (“the Act”), I, as the as the Inspector of the Independent Commission Against Corruption, hereby furnish to each of you for presentation to the Parliament a report of an audit of the Independent Commission Against Corruption’s application for and execution of search warrants for the period 1 July 2018 – 30 July 2019 which I carried out under sections 57B(1)(a) and (d) of the Act.

Pursuant to section 78(1A) of the *ICAC Act*, I recommend that the Report be made public forthwith.

Yours sincerely,

A handwritten signature in blue ink that reads 'B.R. McClintock'.

Bruce R McClintock SC
Inspector, Independent Commission against Corruption

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REPORT OF AN AUDIT OF APPLICATIONS FOR AND EXECUTION OF SEARCH WARRANTS BY THE INDEPENDENT COMMISSION AGAINST CORRUPTION

1. BACKGROUND

1.1 THE INSPECTOR'S AUDIT FUNCTION

This is a report pursuant to sections 57B(5) and 77A of the *Independent Commission Against Corruption Act 1988* (“the Act”) concerning an audit of the Independent Commissions Against Corruption’s (ICAC or Commission) application and execution of search warrants for the period 1 July 2018 – 30 July 2019 which I carried out under sections 57B(1)(a) and (d) of the Act. Those provisions specify that my functions as Inspector are to “audit the operations of the Commission for the purpose of monitoring compliance with the law of the State” and “to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities”.

The purpose of this Report is to inform Parliament of the results of an audit into the ICAC’s issuance of search warrants for the 2018-19 financial year recently conducted by my Office. This audit examined the Commission’s compliance with the relevant legislation and the Commission’s own policies and procedures.

1.2 THE PURPOSE OF THE AUDIT

The purpose of the audit is to assess and determine whether, in applying for and executing search warrants, the Commission is doing so in accordance with the ICAC Act and the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPR Act) and in accordance with its own policies, procedures and operating manuals. The specific provisions of that legislation will be set out later in this report as will the relevant Commission policies and procedures.

The execution of a search warrant is a significant invasion of a person’s privacy and liberties. Its impact should not be underestimated. It is also one of the most effective tools that the Commission has in conducting investigations. Given this obvious tension between the impact on an individual’s right to privacy and the Commission’s responsibility to fulfil its statutory mandate of investigating serious corrupt conduct, it is an area for which I have been eager to audit for some time.

In my opening statement to the Parliamentary Committee of the ICAC on 15 May 2020, I informed the Committee that my purpose for conducting the audit was “to ensure that the Commission complies with the law as to search warrants. That is how the Commission obtains information—by executing search warrants. It is naturally an invasion of people’s liberties, obviously, and it is important they comply with the law”. During that same hearing, the Committee indicated their interest in this audit. The following exchanges took place:

The Hon. ROD ROBERTS: My second question arises out of your verbal statement at the beginning that you are going to undertake an audit of the search warrant process at ICAC.

Mr McCLINTOCK: Yes.

The Hon. ROD ROBERTS: What has led you to that? Why pick search warrants as distinct from, say, telephone intercepts or whatever? What has driven you to look at that?

Mr McCLINTOCK: One reason in relation to telephone intercepts is that my powers are very doubtful because it is a Commonwealth issue. There have been ongoing problems with getting the Commission and me access to telephone intercept material and I probably do not have power to actually audit it. If I did have power, I would. Search warrants I chose because there were—not by my immediate predecessors but by the second Inspector, retired Judge Harvey Cooper—a series of audits in relation to search warrants. I chose it because it had been done before, because it is a significant area, because it does involve infringement of the rights people would otherwise have and it is important to make sure that it is done right. I suppose I was perhaps influenced to some extent by—I appeared as one of the witnesses in the parliamentary inquiry into the search warrants back in the late nineties, early 2000s in relation to the police.

...As a matter of interest, the Commission under the legislation itself has power to issue a search warrant. The Commissioners can issue a warrant. Fortunately, in the 30-year history of the Commission, of ICAC, they have never issued such a warrant. They always go to the appropriate judicial officer to have the warrant issued. That is something I will mention in the report. But those are the reasons why I chose warrants. It is important.

The Hon. ROD ROBERTS: So there was no actual incident or event that was the catalyst for you to look at it.

Mr McCLINTOCK: No.

The Hon. ROD ROBERTS: It is just a general overall audit?

Mr McCLINTOCK: Exactly. That is what I should be doing with the audit issues. I should not wait for a specific incident, because the aim of auditing is to prevent the incidents happening (pg 20 of the transcript¹). ²

During that same hearing Mr Ron Hoenig MP raised with me his concerns in relation to search warrants:

Mr RON HOENIG: I want to ask you about two other matters. One is your audit in respect of search warrants. Members of this Committee, or certainly former

¹ <https://www.parliament.nsw.gov.au/ladocs/transcripts/2356/Transcript%20-%20Review%20of%20the%202018-2019%20Annual%20Reports%20of%20the%20ICAC%20and%20the%20Inspector%20of%20the%20ICAC%20-%202015%20May%202020.pdf>

² I deal with other issues arising out of Mr Robert's questions in a separate report

members of this Committee, have some unresolved concerns about matters relating to search warrants. Can I send those to you independently for you to look at?

Mr McCLINTOCK: Of course.

On 26 May 2020 Mr Hoenig wrote to me (see attached) and detailed his concerns about the manner in which the Commission applies for and executes search warrants. While I do not intend to deal specifically with the matters he raises in relation to the specific search warrants he refers to, I have considered his overall concerns as part of this audit.

1.3 Complaints about the Commission

I have received two formal complaints in relation to the execution of a search warrant that were executed during the audit period under examination in this report. The first complaint was referred to my Office on 18 January 2019 from the Commission itself. The complaint was in general terms about a search warrant that the Commission had executed and the complainant did not provide any contact details or any particulars in relation to the complaint. I determined that no further action will be taken until such time as further information is provided by the complainant.

The second complaint was made on 26 June 2019 and concerned the manner in which a Commission Officer dealt with the complainant's claim of legal professional privilege (LPP) over a laptop following the execution of a search warrant by ICAC at the premises at which the complainant resides. Following an extensive review of that complaint and the Commission's handling of the LPP claim, I determined that the Commission Officer's conduct in dealing with the matter did not amount to an abuse of power, impropriety, misconduct or maladministration as those terms are used in the ICAC Act. I determined not to take any further action in relation to the complaint.

2. THE SUBJECT OF THE AUDIT

As part of its investigations of serious and systemic corrupt conduct the Commission can issue search warrants pursuant to s40 of the ICAC Act. A search warrant authorises certain Commission officers to search persons and premises for documents or things connected with any matter being investigated under the ICAC Act and to seize such documents or things and deliver them to the Commission³.

To commence this audit, by letter dated 5 March 2020 I wrote to the Chief Commissioner as follows:

Dear Chief Commissioner

Pursuant to section 57B(1)(a) and (d) of the Independent Commission Against Corruption Act 1988 (the Act), I propose to audit and assess the effectiveness and appropriateness of the procedures of the Commission in relation to the application for and execution of search warrants between 1 July 2018 and 30 June 2019. If the volume of material for the period requested is too great, please inform me and I will reconsider the scope of the audit.

The proposed audit and assessment will examine:

- 1. the Commission's compliance with the formal and procedural requirements under:
 - a. Part 4, Division 4 of the ICAC Act,*
 - b. Part 5, Division 4 of the Law Enforcement (Powers and Responsibilities) Act 2002,*
 - c. Law Enforcement (Powers and Responsibilities) Regulation 2016**
- 2. the reasons behind the Commission's decisions to apply for search warrants;*
- 3. the manner in which the Commission applied for and executed search warrants, specifically, whether it complied with its own policies and procedures; and*
- 4. any other matters set out in section 57B of the Act.*

For the purposes of this exercise, I would in the first instance like to review the Commission's files and records relating to:

- a) all applications for search warrants applied for and executed by the Commission during the period from 1 July 2018 to 30 June 2019, including those that were granted or refused by authorised officers; and*

³ S41 ICAC Act

- b) *all applications for search warrants proposed by the Commission's Investigation Division during the period from 1 July 2018 to 30 June 2019 but which were rejected by the Commission's Legal Division and/or executive management.*

Could you also please provide me with the relevant policies and procedures that guide Commission staff in applying for and executing search warrants.

If it is not immediately apparent from the material I have requested, in providing the information to my Office I would appreciate if you could please indicate which Commission operation the search warrants relate to.

If you are concerned that disclosure of any records to me for the purposes of this exercise may prejudice or compromise any ongoing investigation by the Commission, I am of course happy to recast the scope of this request so that those records are excluded. Upon reviewing the materials identified above, I may request further information from the Commission and/or its officers for the purpose of completing this exercise.

I welcome any comments you may have on the proposed scope of this audit and assessment.

I received the following response on 19 March 2020 from the Solicitor to the Commission, Mr Roy Waldon:

During that period the Commission applied for and was granted 37 search warrants. One of the search warrants for Operation (Anonymised) was obtained for premises mistakenly identified as [named address]. The correct address was [named address]. The error was discovered before execution of the warrant and an application was made and granted for a warrant with the correct address. Of the other warrants, six were not executed for operational reasons.

With respect to each of the warrants, I am enclosing a hard copy and electronic copy of the following documents:

- Operations Plan (only one plan is completed for each operation rather than individual plans for each warrant within the operation)*
- Search Warrant Risk Management Plan (as a general rule such plans are not completed where the warrant relates only to a motor vehicle)*
- Authorisation Checklist*
- Application for search warrant*
- Search warrant*
- Occupier's notice*
- Certificate of Records Not Available for Inspection (where application for such a certificate was made)*

- *Search warrant independent observer field form (where available)*
- *Report to authorised officer about execution of warrant*

The authorised officer issuing a search warrant retains the signed application. On some, but not all, occasions Commission investigators obtain from the authorised officer a copy of the signed application and that copy is then included with the Commission's other records in relation to the warrant. Where signed copies have been obtained they are included in the material provided to you. Where signed copies were not obtained I have included an unsigned copy of the application as made to the authorised officer.

Generally, Commission officers do not retain a copy of the signed Certificate of Records Not Available for Inspection. These are placed on the relevant Court file. Where signed certificates were not obtained I have included unsigned copies.

Operations Manual Policy and Procedure IPO9 applies, inter alia, to search warrants. A copy of the current policy is also enclosed. That part of the policy dealing with search warrants remains unchanged from the 2018-19 period.

During the relevant period no search warrants proposed by the Commission's Investigation Division were rejected by the Commission's Legal Division and/or executive management. Draft applications are returned to relevant applicants by the reviewing lawyer or myself from time to time for additional work or to clarify information contained in the application. Once settled, such applications are then re-submitted for approval.

All applications for search warrants were made to authorised officers. None were made to a Commissioner. No applications were refused by an authorised officer.

Soon after that material was provided, an email was received from the Commission advising my Office that “in the Commission’s 2018-19 annual report (Table 19 at page 34) the number of search warrants for 2018-19 is given as 32. Enquiries are being made to ascertain how this discrepancy in numbers came about”. A further clarifying email was sent to my Office which advised that:

(T)he 2018-19 Annual Report, identified 32 search warrants were executed.

A review of the Property Services, Investigation Services Section, revealed that there was a human error in relation to accounting for the search warrants.

As per the physical audit conducted by (a Commission Officer) 37 warrants were issued in 2018-19. However, there were errors in relation to the following:-

- Search warrants issued in the 4 quarters were 5 in the 1st first and 7 in the 2nd quarters and 24 in the 4th quarter, which totals 36. An incorrect manual calculation of these figures was recorded as 32, which is reflected in the annual report.*
- Secondly, a warrant was issued for (named address). This was incorrect and a second warrant was sought and issued for (named address). It appears this warrant was only counted as one, when it should be recorded as 2.*

A note has been made to report the discrepancy in the 2019-2020 Annual Report.

Furthermore, I sought confirmation from the Commission concerning one of its internal procedures which states that:

“It is Commission policy that warrants are sought only from authorised officers, and not a Commissioner”. Could you please confirm that the power granted by section 40(2) of the ICAC Act for a Commissioner to issue a search warrant has never been exercised by the Commission?

That policy position was confirmed in a response from Mr Waldon who advised me that “the power under s40(2) of the ICAC Act for a Commissioner to issue a search warrant has never been exercised”, which was what I understood was the Commission’s position.

3. RELEVANT LEGISLATION

3.1. THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 (THE ICAC ACT)

In NSW, the relevant statutory provisions which govern the ICAC's application for and execution of search warrants are contained in Division 4 of Part 4 of the ICAC Act, Division 4 of Part 5 of the LEPR Act and the *Law Enforcement (Powers and Responsibilities) Regulation 2005* (the "Regulation"). As I already indicated, the ICAC has adopted a policy that search warrants be sought from eligible issuing officers as defined under the LEPR Act and not from the ICAC Commissioner who, under s40(2) of the ICAC Act, is authorised to issue search warrants. That is the reason why, as stated above, the power has never been exercised.

Within Division 4 of Part 4 of the ICAC Act, section 40(4) provides that to apply for a search warrant under section 40(4), an ICAC officer must have:

"... reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises."

Section 41 authorises the person(s) named in the warrant to enter the premises and to search them for documents or other things connected with any matter that is being investigated under the ICAC Act and to seize any such documents or other things found in or on the premises and deliver them to the Commission.

Section 48(1) of the ICAC Act provides that Division 4 of Part 5 of the LEPR Act (other than sections 69-73A) applies to a search warrant issued under the ICAC Act.

If, in the course of such a search, the person executing the warrant finds a document or thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth, a State or a Territory; and if such person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, then he/she may seize it (section 47(1)).

Section 42 imposes a duty on a person executing a search warrant to "produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier."

Section 43(1) permits the use of “such force as is reasonably necessary” for the purpose of entering premises under a search warrant. A person authorised to enter the premises may also, “if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search” (section 43(2)).

Section 45 prohibits the execution of a search warrant by night (between 9pm and 6am) unless the authorised justice specifically authorises execution of the warrant between those hours.

Section 46 provides that a search warrant expires no later than one month after its issue or if it is withdrawn by the person who issued the warrant, or when it is executed, whichever first occurs.

Section 47(2) provides that the ICAC may retain any items seized under a search warrant “for so long as its retention by the ICAC is reasonably necessary for the purposes of an investigation to which it is relevant”; and if the retention of the item is not, or ceases to be, reasonably necessary for such purposes, the Commission must cause it to be delivered to the person who appears to be entitled possession of the item; or the Attorney General or the DPP, with a recommendation as to what action should be taken in relation to the item.

3.2. THE LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002 (THE LEPR ACT)

Division 4 of Part 5 of the LEPR Act sets out the provisions relating generally to warrants, including warrants obtained by the ICAC (section 59(b) and Schedule 2).

Section 60 provides that:

- an application for a warrant (other than a telephone warrant) must be in writing in the form prescribed by the regulations and must be made by the applicant in person.
- the information given by the applicant in or in connection with the application must be verified before the eligible issuing officer on oath or affirmation or by affidavit.

Under section 62(1) an application for a search warrant must include:

- the name of the applicant and details of the authority of the applicant to make the application for the warrant;
- particulars of the grounds on which the application is based, including (without limitation) the nature of the searchable offence or other offence involved;

- the address or other description of the subject premises;
- if the warrant is required to search for a particular thing — a full description of that thing and, if known, its location;
- if the warrant is required to search for a kind of thing—a description of the kind of thing,
- if a previous application for the same warrant was refused—details of the refusal and any additional information required by section 64;
- any other information required by the regulations.

An eligible issuing officer, when determining whether there are reasonable grounds to issue a warrant, is to consider (but is not limited to considering) the following matters under section 62(3):

- (a) the reliability of the information on which the application is based, including the nature of the source of the information;
- (b) if the warrant is required to search for a thing in relation to an alleged offence — whether there is sufficient connection between the thing sought and the offence.

The applicant must provide (either orally or in writing) such further information as the eligible issuing officer requires concerning the grounds on which the warrant is being sought (section 62(5)).

The applicant for a warrant is not obliged to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person (section 62(6)).

Section 63 makes it an offence, punishable by a fine of 100 penalty units and/or 2 years' imprisonment, for a person to give to an eligible issuing officer, in connection with an application for a search warrant, information that the person knows to be false or misleading in a material particular. Section 63(1A) makes it an offence, punishable by a fine of 100 penalty units and/or 2 years' imprisonment for a person to give information to an eligible issuing officer that the person knows to be false or misleading in or in connection with a report or an occupier's notice given in relation to a search warrant.

Section 64 provides that once an application for a search warrant has been refused by an eligible issuing officer, no further application for the same warrant may be made to that or any other eligible issuing officer unless the further application provides additional information that justifies the making of the further application. However, in the case of a warrant other than a covert search warrant, a further application may be made to a Magistrate following a refusal to issue the warrant by an eligible issuing

officer who is not a Magistrate whether or not additional information is provided in the further application. Only one such further application may be made in any particular case.

Section 66(1) provides that a search warrant must be in the form prescribed by the regulations.

Section 67 deals with the occupier's notice which is required under section 67(2) to be in the prescribed form and to specify:

- the name of the person who applied for the warrant;
- the date and the time when the warrant was issued;
- the address or other description of the premises to be searched; and
- contain a summary of the nature of the warrant and the powers it confers⁴.

Section 67(4) requires that, on entry into or onto the premises or as soon as practicable thereafter, the occupier's notice be served on a person who appears to be an occupier of the premises and appears to be of or above the age of 18 years. If such person is not then present, service may be effected upon such person within 48 hours after executing the warrant. If an occupier's notice cannot practicably be served, the eligible issuing officer who issued the warrant may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the occupier's notice to the attention of the occupier⁵.

Section 68 provides that unless satisfied on reasonable grounds that immediate entry is required to ensure the safety of any person or the effective execution of a search warrant, a person executing the warrant must, before entering the premises:

- announce that the warrant authorises his or her entry into the premises.
- give any person then in or on the premises an opportunity to allow entry.

A person executing a warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier (section 69).

Section 70(1) provides that a person authorised to enter premises pursuant to a warrant may use such force as is reasonably necessary for the purpose of entering the premises. Section 70(1A) (provides that executing officer authorised to enter premises

⁴ S67(2) LEPR Act

⁵ S67(5) LEPR Act

pursuant to a warrant may, if it is reasonably necessary to do so for the purpose of entering those premises, do any of the following:

- (a) disable any alarm, camera or surveillance device at the premises,
- (b) pacify any guard dog at the premises.

A person authorised to search premises pursuant to a warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of that search⁶.

An executing officer authorised to search premises pursuant to a warrant may do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, anything connected with an offence that the executing officer believes on reasonable grounds to be at those premises, including by blocking any drains at or used in connection with the premises⁷.

Section 70(4) provides that a person authorised to search premises pursuant to a warrant may do anything that it is reasonably necessary to do to render safe any dangerous article found in or on the premises.

Section 71 permits a person to execute a warrant with the aid of such assistants as the person considers necessary.

A warrant (other than a covert search warrant) may be executed by day (during the period between 6 am and 9 pm on any day), but must not be executed by night (during the period between 9 pm on any day and 6 am on the following day) unless the eligible issuing officer, by the warrant, authorises its execution by night (section 72(1)). An eligible issuing officer is not to authorise the execution of a warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:

- (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing that is likely to be on the premises only at night or other relevant circumstances will only exist at night,
- (b) there is likely to be less risk to the safety of any person if it is executed by night,
- (c) an occupier is likely to be on the premises only at night to allow entry without the use of force⁸.

Section 73(1) provides that a warrant ceases to have effect, unless it is sooner withdrawn or extended, as follows:

⁶ S70(2) LEPR Act

⁷ S70(3) LEPR Act

⁸ S72(2) LEPR Act

- (a) in the case of any warrant (other than a telephone warrant or crime scene warrant)—when it has been executed, or at the time specified in it for its expiry, whichever first occurs,
- (b) in the case of a telephone warrant (other than a telephone crime scene warrant)—when it has been executed, or at the expiry of 24 hours after the time of its issue, whichever first occurs,
- (c) in the case of a crime scene warrant (other than a telephone crime scene warrant)—at the time specified in it for its expiry,
- (d) in the case of a telephone crime scene warrant—at the expiry of 24 hours after the time of its issue.

An eligible issuing officer who issues a warrant (other than a telephone warrant) must specify in the warrant the time when the warrant is to expire⁹.

The time so specified for a warrant is to be 72 hours after the issue of the warrant or, if the issue of the warrant for a period exceeding 72 hours is permitted by section 73, at any time within a further period not exceeding 72 hours¹⁰. However, the issue of a warrant for a period exceeding 72 hours is permitted by this section if in the case of a warrant issued under Division 2 of Part 11—the eligible issuing officer is satisfied that the purpose for which the warrant was issued cannot be satisfied within 72 hours, or in any other case—the eligible issuing officer is satisfied that the warrant cannot be executed within 72 hours¹¹.

Section 73A(1) provides that a warrant (other than a covert search warrant, a criminal organisation search warrant or a telephone warrant) that expires 72 hours after its issue may be extended by the eligible issuing officer who issued the warrant:

- (a) in the case of a warrant issued under Division 2 of Part 11—if the eligible issuing officer is satisfied that the purpose for which the warrant was issued cannot be satisfied within 72 hours, and
- (b) in any other case—if the eligible issuing officer is satisfied that the warrant cannot be executed within 72 hours.

Section 74 requires a report to be submitted to the eligible issuing officer who issued the warrant within 10 days after the execution or expiry (whichever is earlier) of the warrant. The report must:

- state whether or not the warrant was executed;
- if the warrant was executed – set out briefly the result of the execution of the warrant (including a brief description of anything seized);

⁹ S73(2) LEPR Act

¹⁰ S73(3) LEPR Act

¹¹ S73(4) LEPR Act

- if the warrant was not executed – set out briefly the reasons why the warrant was not executed; and
- whether or not an occupier’s notice has been served.

If the eligible issuing officer who issued a warrant has died, has ceased to be an eligible issuing officer or is absent, the report must be provided to any other eligible issuing officer (section 75).

Section 75A(1) empowers a person executing or assisting in the execution of a warrant to:

- (a) bring to the premises the subject of the warrant any electronic and other equipment reasonably necessary for the examination of a thing found at the premises, and
- (b) operate any such equipment (or equipment already at those premises) to examine a thing found at the premises in order to determine whether it is or contains a thing that may be seized under the warrant, and
- (c) move a thing found at the premises to another place (for up to 7 working days) for examination in order to determine whether it is or contains a thing that may be seized under the warrant if the occupier of the premises consents or if:
 - i. it is significantly more practicable to do so having regard to the timeliness and cost of examining the thing at another place and the availability of expert assistance, and
 - ii. there are reasonable grounds to suspect it is or contains a thing that may be seized under the warrant.
- (d) If a thing is moved to another place for examination under this section, an eligible issuing officer may authorise the removal of the thing for an additional period (not exceeding 7 working days at any one time) if satisfied that the additional period is required to determine whether it is or contains a thing that may be seized under the warrant.

Section 75B provides for access to and downloading of data from computers (including access to computers outside premises the subject of a warrant).

Section 76 provides that a warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.

3.3. THE LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) REGULATION 2016

Clause 9(1) requires a person who seizes a thing while executing a search warrant in any premises to provide the occupier with a receipt acknowledging seizure of the thing if the occupier is then present and it is reasonably practicable to do so. A copy of the receipt must be attached to the section 74 report to the eligible issuing officer.

Clause 14(1) enables an eligible issuing officer to issue a certificate to “seal” the Local Court’s records (or parts thereof) relating to an application for a search warrant if he or she is satisfied that disclosure of any such record:

- could disclose a person’s identity which in turn is likely to jeopardise that or any other person’s safety; or
- may seriously compromise the investigation of any matter.

The document or part of the document to which the certificate relates is not to be made available for inspection under clause 13(6) or (7)¹². The certificate is to be kept with the document to which it relates¹³.

An eligible issuing officer (whether or not the one that issued the certificate) may revoke the certificate if satisfied (after consideration of submissions from any interested party) that disclosure of the matter to which it relates is no longer likely to jeopardise any person’s safety or seriously compromise the investigation of any matter¹⁴.

¹² LEPR Reg cl 14(2)

¹³ LEPR Reg cl 14(3)

¹⁴ LEPR Reg cl 14(4)

4. ICAC PROCEDURES

4.1. OPERATIONS MANUAL IPO9, USE OF ICAC INVESTIGATION POWERS (EXCEPT UNDER S35)

The procedure for applying for and executing a search warrant is provided in the Commissions Operations Manual IPO9, *Use of ICAC Investigation Powers (Except Under s35)* (“the procedures” or “IPO9”). The purpose of the document is to outline the requirements for the use of certain powers under the ICAC Act, including section 40 – issuing search warrants. The procedure was first issued on 8 February 2017 and was due to be reviewed on 4 June 2019. When my Office inquired as to the status of that review, the Commission acknowledged that the review was overdue and that it was due to commence soon. Given that the legislative framework concerning search warrants has not substantially changed since the policy was approved, the Commission advised my Office that it is unlikely there will be many changes to the current procedure.

The procedure commences by outlining the Commission’s legislative powers for obtaining and executing search warrants. I have already explained the legislative framework earlier in this report it is unnecessary to repeat that explanation.

The procedure explained below is applied by Commission officers in conjunction with a number of other policies and procedures related to search warrants, including IP12-*Property Management* procedure. However, IPO9 most comprehensively outlines the Commission procedure for the application of and execution of search warrants. The Commission’s procedure is explained in general terms so as to not compromise any Commission operations.

General Procedure for seeking the issuing of a search warrant

1. Approval to commence an application to seek a search warrant must first be given to by the Executive Director Investigation Division (ID).
2. When approval is obtained, the applicant is to prepare and submit a search warrant authorisation checklist via the relevant chief investigator to the Executive Director ID for consideration. A separate authorisation checklist is required for each warrant sought.
3. If the approval to commence a search warrant application is granted, the applicant will prepare an application package containing the following:
 - a. Draft search warrant application
 - b. Draft search warrant
 - c. Draft occupier’s notice

- d. Draft clause 14 certificate¹⁵
4. Each premises to be searched requires a separate search warrant and a separate search warrant application must be made for each one.
 5. The search warrant application must address the following:
 - the name of the applicant and basis of their authority to make the application
 - the nature of the matter that is being investigated and allegations involved
 - the grounds for which the warrant is sought
 - the address and description of the premises to be searched
 - a description of the documents or things (or kind of things) to be searched for and if known, the location of those documents or things on the premises
 - the connection between the documents and things sought under the warrant and the matter under investigation
 - if a clause 14 certificate to prevent the inspection of the search warrant and application records, then the grounds upon which the certificate is sought
 - if a previous application for a search warrant was made and was refused, the details of that application and its refusal and additional information that now justifies making a further application
 - if it is proposed to execute the warrant between 9:00pm and 6:00am, the reason why this is necessary
 6. It is Commission policy that searches can only be conducted on occupied premises unless there are exceptional circumstances.
 7. When the search warrant application package has been prepared,

¹⁵ Clause 14 of LEPR Regulation provides:

(1) An eligible issuing officer may at any time issue a certificate to the effect that the officer is satisfied that—
(a) a document or part of a document referred to in clause 13 contains matter—
(i) that could disclose a person's identity, and
(ii) that, if disclosed, is likely to jeopardise that or any other person's safety, or
(b) a document or part of a document referred to in clause 13 contains matter that, if disclosed, may seriously compromise the investigation of any matter.

the applicant is to:

- a. endorse the authorisation check list and
 - b. submit the application package and authorisation checklist to the relevant chief investigator who will also check the content of the documents for accuracy and completeness and endorse the authorisation checklist as appropriate.
8. The applicant should then refer the application package and authorisation checklist to the relevant case lawyer who will ensure that the documents meet the requirements of the ICAC Act and the LEPR Act and that any other relevant requirements of the policy and procedure have been adequately addressed.
 9. Once the application package documents are in final form, the case lawyer endorses the authorisation checklist and refers the application package to the Executive Director Legal for approval.
 10. The Executive Director Legal will then:
 - in the case of a search warrant proposed to be executed on a parliamentary office where parliamentary privileged material is likely to be found, refer the application package to the Chief Commissioner for approval or
 - in any other case, endorse the authorisation checklist.
 11. In situations where the Executive Director Legal does not approve the application package because changes are required to it, the application is returned to the case lawyer for changes and consultation with the applicant and chief investigator. In situations where the Executive Director Legal does not approve of the making of the application, he/she discusses the matter with the Executive Director Investigations. When the matter cannot be resolved it is referred to the Chief Commissioner.
 12. Once the application package and authorisation checklist has been given all necessary approvals and endorsements, the application package and authorisation checklist is to be referred back to the applicant who will:
 - deliver the authorisation checklist to Property and Products for registration and obtain an authority source number (ASN) for the warrant application
 - at the appropriate time, arrange an appointment with an authorised issuing officer and

- attend upon the authorised officer to for the purpose of the making the application.

Except in the case where an application is made by telephone, a search warrant application must be made in person by the applicant and the application must be verified on oath or affirmation before the authorised officer. Given that no search warrants the subject of this audit were made over the phone, it is not necessary to elaborate any further on the procedure for such applications.

When a search warrant has been issued:

When a search warrant has been issued, the applicant must, as soon as practicable after the warrant has been issued lodge the following with the Commission's Property and Products for retention in accordance with the Commission's policy and procedure IP12- *Property Management*:

- a copy of the search warrant application
- a copy of the search warrant
- a copy of the occupier's notice
- a copy of the clause 14 certificate

Planning and risk assessment for the execution of a search warrant

As part of the planning for the execution of a search warrant completion of a search warrant operations plan and risk management plan, must be endorsed as approved by the relevant chief investigator and the Executive Director ID prior to the search warrant being executed.

The search warrant operations plan includes (amongst other things) information such as relevant facts about the matter under investigation, objective of the search warrant activity and the approach to be taken in carrying out the planned search. The Commission Officers involved in the execution of the search warrant also participate in a briefing which covers all aspects of both that plan and the risk management plan.

The search warrant risk management plan is prepared in accordance with the relevant Commission risk management policy. Amongst other things, the risk management plan is used to determine the risks associated with the search including the premises to be searched and the subject of the search. The Commission procedure sets out escalation procedures if a risk is assessed as likely to materialise.

Executing a search warrant

The Commission's procedures are very prescriptive in explaining what Commission officers can and cannot do during the execution of a search warrant. The procedures are summarised as follows:

- A search warrant must be executed during the hours authorised by the warrant
- A warrant is executed when the search authorised by the warrant is completed and those authorised under the warrant to conduct the search have left the premises.
- Where the warrant holder is satisfied that the documents and things ("the property") described in the warrant have been located and seized or they are not on the premises, the warrant holder must terminate the search and must not remain on the premises, without the occupier's consent.
- As soon as practical after execution of a search warrant, or the expiry of the warrant, whichever first occurs, the search warrant holder must:
 - if executed, endorse a copy of the search warrant with details of the execution as per the form of endorsement set out on the final page of the warrant form
 - return the original warrant, endorsed copy of the warrant (if applicable) and search warrant holder's checklist (if applicable) to the Commission's Property and Product Services in compliance with policy and procedure IP12 Property Management.
- A search of unoccupied premises must not be conducted or continued only in exceptional circumstances which requires approval by the Executive Director of Investigations.
- A search warrant holder must announce that the person is authorised by the warrant to enter the premises and give any person then in or on the premises an opportunity to allow entry into or onto the premises. If the warrant holder believes that use of force to enter the premises is reasonably necessary, then unless, due to urgency, it is not practicable to do so, the warrant holder must obtain the approval of the Executive Director ID, if possible, via the chief investigator. Where force has been used to enter the premises or break open a receptacle in or on the premises, the warrant holder must ensure that the basis for, and reasonable necessity for the use of that force is documented or recorded.
- Video recording of the entry is to occur without exception, whether or not force is used.
- Upon access being gained to the premises the warrant holder is to:
 - identify each of the search team members as members of the Commission, or otherwise the basis for their presence during the search

- read and explain the search warrant to the occupier and produce the warrant to the occupier for inspection if requested (the warrant holder must retain possession of the warrant)
 - serve the occupier's notice to the occupier
 - advise the occupant of the use of video and audio recording equipment in the terms set out below and seek the occupant's consent to the audio recording, and
 - invite the co-operation of the occupier in the conduct of the search.
- In seizing property during the search it is the responsibility of the warrant holder to ensure strict compliance with the Commission's Property Management policy and procedures (IP12 Property Management), in dealing with and handling the property.
 - Within 10 days of the execution of the warrant or the expiry of the warrant, whichever occurs first, the applicant for a warrant must furnish a report to the authorised officer who issued the warrant. The report must attach the original warrant and if a document or thing was seized under the warrant, a copy of the property receipt/s issued to the occupier for the documents and things seized under the warrant. The applicant must ensure compliance with the procedures for registering a copy of the report to the authorised officer under Operations Manual policy and procedure IP12 Property Management.
 - As soon as practicable following the execution of a search warrant, the chief investigator must convene a post warrant operations assessment debriefing. All Commission staff roles identified in the search warrant operations plan attend the de-briefing. The purpose of the de-briefing is to assess the efficiency and effectiveness of what was done and also, how it was done.
 - Following the debriefing the chief investigator is to prepare a report and refer the report to the Executive Director ID for consideration and determination of any recommended action.

5. PRELIMINARY ISSUE RELATING TO THE EFFECTIVENESS OF THE AUDIT

5.1. CONTENTS OF THE APPLICATIONS

An obvious question is whether the contents of the application for search warrants are true to the best of the applicant's knowledge and belief. That is because that is a fundamental requirement which must be satisfied as one of the steps towards issuance of such a warrant.

It is, however, impracticable for me or my staff to cross-examine every deponent upon every affidavit that we have examined in the course of this audit. Those persons, after all, have important operational duties which I would not wish to interrupt.

However, an examination of the material available from the Commission shows that a belief was held by reason of information obtained from individuals, lawfully obtained telephone intercepts or surveillance (with or without the aid of surveillance devices) or from the results of previous search warrants. An examination of each application shows an internal consistency of information support the conclusions derived at and raises a high degree of probability that the contents of those affidavits were true and correct.

I am fortified in this conclusion by the obviously careful consideration given to the issuance of the warrants by the officer authorised to issue search warrants under section 40(1) of the *Independent Commission Against Corruption Act 1988*. In many cases, that officer has endorsed a handwritten note on Part 2 of the Application for a search warrant (other than Part 5 search warrant)/record of application which is the part that records the authorised officer's consideration of issuance of the warrant. An example of one such notation is as follows:

- *nature of application and its compliance with the provisions of LEPR*
- *Good evidence in relation to the items sought in accordance with the investigative provisions of the ICAC Act.*
- *On consideration of the content of the search warrant application I am satisfied the suspicion of the applicant is a reasonable suspicion and there are sufficient grounds for the grant of the search warrant application.*

6. THE AUDIT

6.1. AUDIT METHODOLOGY

The remainder of this audit report is divided into two parts. First part covers the ICAC's compliance with the law and involves an examination of the documentation used in support of an application for a search warrant, the documents issued by the court, the procedure of the actual searches and the furnishing of a report to the eligible issuing officer.

The second part looks to see whether the conduct of the ICAC and its officers in following the letter of the law amounts to effective, appropriate and proper use of its accepted legal powers. The purpose of this audit is not only to determine compliance by the ICAC with the formal requirements for the issue and execution of search warrants, but also to determine whether the applications for, and execution of, those warrants constituted an abuse of power, impropriety or other forms of misconduct including unreasonableness, injustice, oppression or improper discrimination.

Furthermore, the audit attempted to assess the effectiveness and appropriateness of the procedures of the ICAC as they relate to the legality or propriety of its activities. This involved examining documentation relating to each of the search warrants, to determine the reasons for the issue, as well as the manner in which those warrants were executed.

It is not the function of the Inspector to examine the detail of the procedures followed by the ICAC. Rather, it is to look at whether those procedures amount to maladministration, as defined in section 57B(4) of the ICAC Act as being contrary to law or unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives and also, pursuant to section 57B(1)(d), to assess the effectiveness of the procedures of the ICAC relating to the legality or propriety of its activities. The documents reveal a total of 37 search warrants in 8 operations and one preliminary investigation. Of those 37 warrants seven were not executed, although in relation to one such, a fresh warrant in respect of the same premises was obtained and executed.

7. PART ONE – COMPLIANCE WITH THE LAW

It is unnecessary to set out the steps taken in each individual application for, and execution of, the search warrants. Either my principal legal advisor or myself have examined all the material in respect of each of the warrants and based on that examination I am satisfied as follows:

- each applicant had reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under the ICAC Act or that such a document or other thing may, within the next following 72 hours, re-brought into or onto the premises.
- The person executing the search warrant produce the warrant for inspection by an occupier of the premises when so requested.
- No unreasonable force was used for the purpose of entering premises under the search warrant.
- The warrants were executed within the hours of the day permitted by them and within the period of their validity.
- The item seized, the documents or other things were connected with a matter that was being investigated under the ICAC Act.
- The applications were all in the prescribed form and duly verified.
- The occupier's notices were all in the prescribed form and served in each case on a person who appeared to be an occupier of the premises and who was of or above the age of 18 years.

Except for the warrants which were not executed a report was submitted in each case to the eligible issuing officer within 10 days after the execution or expiry (which ever was earlier) of the warrant.

No attempt has been made to interview occupiers who are subject of a search warrant. Nor has there been an examination of what items seized (if any) have been returned.

Following an assessment of the search warrant materials, I wrote to the Chief Commissioner on 15 September 2020 seeking an explanation to minor administrative errors and discrepancies that my Office had identified in conducting the audit. That letter was in the following terms (the names of the Commission investigations and the premises on which the search warrants were executed have been de-identified):

Dear Chief Commissioner

As you are aware my Office has been undertaking an audit into the Commission's application for and execution of search warrants for the 2018-19 financial year. In examining the search warrants I have formed the view that the Commission is mostly compliant with the relevant legislation and its own internal policies and procedures. There are however some minor, administrative errors or discrepancies that my Office has discovered as part of the audit. The errors identified are referred

to below and are categorised according to their operation name and the premises that were the subject of the warrant:

Operation A

1. SW- A

- a. *Field Property Receipt - top section of the form has not been completed which includes things such as:*
 - *File no.*
 - *File name.*
 - *Responsible officer*
 - *Authority source no.*

2. SW - B

- a. *Field Property Receipt - top section of form has not been completed which includes things such as:*
 - *File no.*
 - *File name.*
 - *Responsible officer*
 - *Authority source no.*

b. *Property Movement Receipt – top section not been completed, the responsible officer has not been identified, however the document is signed*

c. *Field Property Transfer –top section has not been completed*

3. SW - C

- a. *Occupiers notice – not completed however it is indicated under the “application package check” in the Authorisation Checklist that it is required*

Operation B

1. SW - A

- a. *Opening page of the file states that the search warrant was not executed, however the remainder of the file indicates that the warrant was executed on X Month 2019*

Operation C

1. SW - A

- a. *Page 14 of 18 of the Risk assessment – highlighted in yellow states “Approval has been given by ED ID for Official ICAC vests will not be worn” – what was the reason for that decision?*
- b. *Part B – Risk Assessment Form – completed but not signed by the relevant officers*
- b. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- c. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

2. SW - B

- a. *Part B – Risk Assessment Form – completed but not signed by the relevant officers*
- b. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- c. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*
- d. *Report to authorised officer indicates that search warrant was executed on X Month 2019, but the report was provided on 22 May 2019. Report to authorised officer must be within 10 days of execution of warrant.*

3. SW - C

- a. *Part B – Risk Assessment Form – page 6 of 17 – no entry concerning the risk of possible “firearms, savage dog, other dangerous animal or harmful substances or physical hazard is at premises” on the premises*
- b. *Part B – Risk Assessment Form completed but not signed by the relevant officers*
- c. *Part B – Risk Assessment Form - page 14 of 17 of risk assessment – highlighted in yellow states “Approval has been given by ED ID for Official ICAC vests will not be worn” – how is this decided? What are the reasons for such an approval to be given?*
- d. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- e. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

Operation D

1. SW - A

- a. *Authorisation checklist – authorisation package check – not completed*
- b. *Authorisation checklist – not signed by applicant*
- c. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- d. *Occupier’s Notice complete but not ticked in the “authorisation package check” in the Authorisation Checklist*
- e. *Certificate of Records – not available for inspection - is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.*

2. SW - B

- a. *Authorisation checklist – “application package check” incomplete*
- b. *Authorisation Checklist – unsigned by applicant and Chief Investigator*

- c. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
 - d. *Occupier’s Notice complete but not ticked in the “authorisation package check” in the Authorisation Checklist*
 - e. *Certificate of Records (Not Available for Inspection) – incomplete, however it is unclear if it was required as the “application package check” in the Authorisation checklist was incomplete.*
- 3. SW - C**
- a. *Authorisation checklist – “application package check” incomplete*
 - b. *Authorisation Checklist – unsigned by applicant and Chief Investigator*
 - c. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
 - d. *Occupier’s Notice complete but not ticked in the “authorisation package check” in the Authorisation Checklist*
 - e. *Certificate of Records (Not Available for Inspection) – incomplete, however it is unclear if it was required as the “application package check” in the Authorisation checklist was incomplete.*

Operation E

- 1. SW - A**
- a. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
 - b. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*
- 2. SW - B**
- a. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
 - b. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*
- 6. SW - C**
- a. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
 - b. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*
- 7. SW - D**
- a. *Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
 - b. *Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked*

the Clause 14 certificate – non inspection box indicating that the form is required

8. SW - E

- a. Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- b. Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

9. SW - F

- a. Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- b. Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

10. SW - G

- a. Part B – Risk Assessment Form – at page 15 it is unsigned by Executive Director ID*
- b. Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- c. Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

11. SW - H

- a. Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- b. Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

12. SW - I

- a. Application for Search Warrant (form 4) – was not signed however the search warrant was executed on X Month 2019*
- b. Certificate of records (not available for inspection) – is incomplete however, on the Authorisation Checklist the applicant has ticked the Clause 14 certificate – non inspection box indicating that the form is required*

I would appreciate your response to the discrepancies identified of which I intend to include in my final report of the audit. I intend to soon provide

you with a draft copy of the report for any response or comment you may wish to make in relation to the matters I have dealt with in the report¹⁶.

In relation to the issues I raised above, the Commission provided the following explanations:

Operation A

1. SW – A

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<p>1. <i>Field Property Receipt – top section of form not completed which includes things such as:</i></p> <ul style="list-style-type: none"> • <i>File no.</i> • <i>File name</i> • <i>Responsible officer</i> • <i>Authority source no.</i> 	<p><i>This information is on the original Field Property Receipt. Unfortunately the font used on the template was a light grey font. When the document was originally scanned/printed for the Inspector the process did not pick up the light grey font.</i></p> <p><i>The Field Property Receipt has been re-scanned using another scanner able to pick up the print colour. A copy is attached.</i></p>

Operation A

2. SW-B

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<p>1. <i>Field Property Receipt – top section of form not completed which includes things such as:</i></p> <ul style="list-style-type: none"> • <i>File no.</i> • <i>File name</i> • <i>Responsible officer</i> • <i>Authority source no.</i> 	<p><i>This information is on the original Field Property Receipt. Unfortunately the font used on the template was a light grey font. When the document was originally scanned/printed for the Inspector the process did not pick up the light grey font.</i></p> <p><i>The Field Property Receipt has been re-scanned using another scanner able to pick up the print colour. A copy is attached.</i></p>
<p>2. <i>Property Movement Receipt – top section not completed, the responsible officer has not been identified</i></p>	<p><i>This information is on the original Property Movement Receipt. Unfortunately the font used on the template was a light grey font. When</i></p>

¹⁶ Given that I did not make any adverse findings or comments against the Commission I did not provide them with a draft copy of the report

	<p>the document was originally scanned/printed for the Inspector the process did not pick up the light grey font.</p> <p>The Property Movement Receipt has been re-scanned using another scanner able to pick up the print colour. A copy is attached.</p>
3. Field Property Transfer – top section not completed	<p>This information is on the original Field Property Transfer. Unfortunately the font used on the template was a light grey font. When the document was originally scanned/printed for the Inspector the process did not pick up the light grey font.</p> <p>The Field Property Transfer has been re-scanned using another scanner able to pick up the print colour. A copy is attached.</p>

Operation A

3. SW – C

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Occupiers Notice	An occupier's notice was issued but the Commission did not retain a copy of the occupier's notice.

Operation B

1. SW – A

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Opening (page of file state warrant not executed but remainder of file indicates the warrant was executed on 18 October 2019).	The warrant was executed. The cover page provided to the Inspector incorrectly refers to the warrant not having been executed.

Operation C

1. SW - A

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Page 14 of the Risk Assessment – highlighted in yellow states “Approval has been given by EDID	Approval was sought from the EDID via email & verbal confirmation on the basis that this was a low risk warrant, not

<i>for official ICAC vests will not be worn” – what was the reason for that decision?</i>	<i>wearing vests would reduce the chance of unwanted media attention, and to protect the privacy of the occupiers.</i>
<i>2. Part B – Risk Assessment form – completed but not signed by the relevant officers.</i>	<i>The operational Orders were signed – Part 5 of the Orders deals specifically with the Risk Assessment form and address any issues identified. The Risk Assessment forms are submitted for approval along with the Operational Orders. The failure to sign the Risk Assessment was an oversight.</i>
<i>3. Application for Search Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>4. Certificate of Records (Not Available for Inspection) – is incomplete.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation C

2. SW – B

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<i>1. Part B – Risk Assessment form – completed but not signed by the relevant officers.</i>	<i>The operational Orders were signed – Part 5 of the Orders deals specifically with the Risk Assessment form and address any issues identified. The Risk Assessment forms are submitted for approval along with the Operational Orders. The failure to sign the Risk Assessment was an oversight.</i>
<i>2. Application for Search Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>3. Certificate of Records (Not Available for Inspection) – is incomplete.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies</i>

	<i>of the completed Certificate are not always provided by the authorised officer.</i>
<i>4. Report to Authorised Officer indicates warrant executed on 21 October 2019, but the report was provided on 22 May 2019. Report must be within 10 days of execution of the warrant.</i>	<i>The date the Report was provided is incorrect. The associated and attached Property Seizure form records the property was seized on 21 May 2019.</i>

Operation C

3. SW – C

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<i>1. Part B – Risk Assessment – (page 6 – no entry concerning the risk of possible “firearms, savage dog, other dangerous animal or harmful substances or physical hazard at premises.</i>	<i>The failure to complete was an oversight. The front page of the form addresses COPS History and Access to Firearms, both of which are recorded as negative results (nil adverse and no access to firearms).</i>
<i>2. Part B – Risk Assessment form – completed but not signed by the relevant officers.</i>	<i>The operational Orders were signed – Part 5 of the Orders deals specifically with the Risk Assessment form and address any issues identified. The Risk Assessment forms are submitted for approval along with the Operational Orders. The failure to sign the Risk Assessment was an oversight.</i>
<i>3. Part B – Risk Assessment – page 14 – notes “Approval has been given by EDID for official ICAC vests will not be worn”. a) how is this decided? b) What are the reasons for such approval to be given?</i>	<i>Approval was sought from the EDID via email & verbal confirmation on the basis that this was a low risk warrant, not wearing vests would reduce the chance of unwanted media attention, and to protect the privacy of the occupiers.</i>
<i>4. Application for Search Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>5. Certificate of Records (Not Available for Inspection) – is incomplete.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation D

1. SW – A

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Authorisation checklist – authorisation package check – not completed	Agreed – administrative oversight
2. Authorisation checklist – not signed by applicant.	Agreed – administrative oversight.
3. Application for Warrant – not signed.	The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.
4. Occupier’s Notice complete but not ticked in the “authorisation package check” in the Authorisation Checklist.	Agreed – administrative oversight.
5. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.	A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.

Operation D

2. SW – B

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Authorisation checklist – authorisation package check – incomplete	Agreed – Administrative oversight
2. Authorisation checklist – not signed by applicant of Chief Investigator.	Agreed – Administrative oversight
3. Application for Warrant – not signed.	The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.
4. Occupier’s Notice complete but not ticked in the “authorisation	Agreed – administrative oversight.

<i>package check” in the Authorisation Checklist.</i>	
5. <i>Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation D

3. SW – C

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. <i>Authorisation checklist – authorisation package check – incomplete</i>	<i>Agreed – Administrative oversight</i>
2. <i>Authorisation checklist – not signed by applicant of Chief Investigator.</i>	<i>Agreed – Administrative oversight</i>
3. <i>Application for Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
4. <i>Occupier’s Notice complete but not ticked in the “authorisation package check” in the Authorisation Checklist.</i>	<i>Agreed – administrative oversight.</i>
5. <i>Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation E

1. SW – A

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. <i>Application for Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed</i>

	<i>copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>2. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation E

2. SW – B

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<i>1. Application for Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>2. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation E

3. SW – C

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<i>1. Application for Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>2. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not</i>

<i>such a certificate was required for this warrant.</i>	<i>always provided by the authorised officer.</i>
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Operation E

4. SW – D

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<i>1. Application for Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>2. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation E

5. SW – E

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<i>1. Application for Warrant – not signed.</i>	<i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i>
<i>2. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i>	<i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i>

Operation E

6. SW – F

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
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1. Application for Warrant – not signed.	The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.
2. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.	A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.

Operation E

7. SW – G

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Part B – Risk Assessment form – at (page 15 it is unsigned by the Executive Director, ID.	Agreed. Administrative oversight.
2. Application for Warrant – not signed.	The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.
3. Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.	A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.

Operation E

8. SW – H

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
1. Application for Warrant – not signed.	The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.

<p>2. <i>Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i></p>	<p><i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i></p>
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Operation E

9. SW – I

<i>Issue identified by Inspector</i>	<i>ICAC Response</i>
<p>1. <i>Application for Warrant – not signed.</i></p>	<p><i>The Application submitted to the authorised officer was signed. The Commission does not have a signed copy. The Downing Centre does not always provide signed copies of applications.</i></p>
<p>2. <i>Certificate of Records (Not Available for Inspection) – is incomplete and because the “authorisation package check” in the Authorisation Checklist was not completed it is unclear whether such a certificate was required for this warrant.</i></p>	<p><i>A complete Certificate was provided to the authorised officer. The completed and signed Certificate was retained by the authorised officer (it is not actually used by the Commission). Signed copies of the completed Certificate are not always provided by the authorised officer.</i></p>

CONCLUSION TO PART ONE

Having, pursuant to section 57B(1)(a) of the ICAC Act, audited the operations of the Commission for the purpose of monitoring its compliance with the law of the State of New South Wales, I concluded that in relation to the search warrant audit, the ICAC has complied with the relevant law and the ICAC’s own procedures concerning applications for and execution of search warrants.

8. PART TWO – EFFECTIVE, APPROPRIATE AND PROPER USE OF LEGAL POWERS

In considering whether the conduct of the ICAC and its officers in following the letter of the law amounted to effective, appropriate and proper use of its accepted legal powers, use of search warrants on the part they played assisting the ICAC to perform its primary function of combating serious and systemic corruption was examined.

37 applications were made during the period under consideration. Of these 15 relate to one operation, 4 each in another two, 3 each in a further three, 2 each to two operations and, finally, there was one operation where only one warrant was sought and issued.

The operation last referred to was Operation Aero. I did receive a complaint in respect of that matter from the law firm Holding Redlich acting on behalf of the Australian Labor Party, NSW Branch on 21 May 2019. I dealt with that complaint on 17 July 2019. In my report to Parliament (which is available on the website of the Office of the Inspector¹⁷) I said in respect of this aspect of the complaint the following:

15. *The question I must therefore address is whether on the basis of the materials available to me any Commissioner or office of the Commission has engaged in abuse of power, misconduct, or other forms of impropriety or maladministration (as defined).*
16. *In my opinion such misconduct has not been established. First, I can see no basis for the allegation that the ICAC should not have proceeded by way of search warrant whether because the ALP NSW and Country Labor had “complied” with the investigation previously, nor because the ALP NSW and Country Labor had co-operated with the Electoral Commission investigators or because there was an alternative available, that is the issuance of a notice under section 22 of the ICAC Act.*
17. *In this connection, while executing a search warrant involves a major incursion into the rights and freedoms of members of our community, there are situations when exercise of that power is justified. This seems to me to be one of those situations where, unless there was cogent evidence of impropriety, the ICAC’s judgement that it was necessary and/or desirable to use that mechanism for operational reasons should be respected. There must always be a possibility - I am not suggesting this actually happened here - that service of a section 22 notice might not be complied with, even though honest but*

¹⁷ <https://www.oicac.nsw.gov.au/assets/oicac/reports/special-reports/Report-concerning-a-complaint-by-the-Australian-Labor-Party-NSW-Branch-and-Country-Labor-about-the-conduct-of-the-ICAC-in-investigating-political-donations-received-by-these-parties.pdf>

mistaken interpretation of the terms of the notice. It seems to me reasonable for the ICAC to decide itself to act to obtain the documents covered by the warrant, rather than leaving decisions as to compliance in the hands of those served with a section 22 notice.

- 18. Secondly, there does not appear to me to be any basis for the assertion by Holding Redlich that the warrant may have been issued “for purposes other than the proper exercise of the ICAC’s investigative powers”. I assume the suggestion is that the warrant was obtained and executed publicly in an attempt to embarrass ALP NSW and Country Labor shortly before a state election was due to be held. But there is no evidence that is the case. I am satisfied that as the ICAC says in the 21 May 2019 letter quoted above, the need to exercise the search warrant and the timing of its execution were based on operational considerations.*

Nothing in the materials I have considered in the course of this audit has caused me to change the views I expressed in the passage quoted above.

CONCLUSION TO PART TWO

To enable the ICAC to carry out the functions cast upon it under Division 1 of Part 4 of the ICAC Act, the ICAC Act makes available a number of tools which, if only used, would violate the privacy rights of Australian citizens and residents, as in effect I pointed out in my report to Parliament in relation to Operation Aero.

In conducting the second part of this audit, I have, pursuant to section 57B(2) of the ICAC Act, examined if there were grounds for reporting the existence of evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or officers of the Commission under section 57B(1)(b). I have also looked to see if there were grounds for reporting the existence of evidence of maladministration including unreasonable invasions of privacy, action or inaction of a serious nature that is contrary to law, conduct that is unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly of improper motives under section 57B(1)(c).

In addition I have attempted to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities (section 57B(1)(d)).

Examination of the application for and execution of a search warrant in each of the cases considered reveals the following:

- Search warrant applied for and used as one of the tools authorised by the ICAC Act to enable the ICAC to carry out its functions

- Each search warrant was applied for only in circumstances where a belief was reasonably formed in light of the information available from other sources that the application was soundly based.
- In all cases it was appropriate to apply for and execute the search warrant in light of the information then available.
- There was no evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or officers of the Commission.
- There was no evidence of maladministration, including unreasonable invasions of privacy, or of any action or inaction of a serious nature that was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

B. R. Mc Clintock

Mr Bruce McClintock SC

Inspector

Independent Commission Against Corruption

27 October 2020



26 May 2020

Mr Bruce McClintock SC
Inspector of the Independent Commission Against Corruption
PO Box 5341
SYDNEY NSW 2001

By email: oiicac_executive@oiicac.nsw.gov.au

Dear Mr McClintock,

I refer to the advice given to the Committee on the Independent Commission Against Corruption (ICAC) on 15 May 2020, that you are undertaking an audit of how the ICAC deals with search warrants. I also refer to the advice given to the Committee, that if the Committee has any suggestion as to things that it thinks you should audit, you would take those suggestions on board. You invited any member to simply write a letter to you, and you would be happy to consider anything that should be audited. I also refer to our subsequent conversation of 15 May 2020 and I would like take you up on your invitation.

In our conversation subsequent to the Committee's meeting I indicated to you that some members of the Committee, and former members of the Committee, have unresolved concerns relating to search warrants. These concerns are generally legacy issues, but they have been troubling us, and so when an issue is raised in the media in relation to the execution of search warrants, the first response amongst ourselves privately is to regard the issues with suspicion.

I certainly accept what you say; that the Commission is operating under a completely different regime with different Commissioners, and that things have changed since 2017 when the current regime and current Commissioners came in. I think it's important that these unresolved concerns be resolved as best as possible. Those concerns may or may not have substance. They can be resolved either publicly, confidentially, or in whichever way you choose. I am certainly mindful of ensuring that the public standing of the Commission is not impacted, as it was as a result of its conduct in investigations such as Operator Spicer.

I agree that the execution of search warrants is a substantial invasion of people's liberties, and their issue and execution should not just comply with the law, but that the discretion involved in applying for a search warrant, and its execution, is properly exercised.

Historically in NSW, search warrants are not like telephone intercepts, which are issued by a judge. Search warrants are issued by Registrars of the Court, who may or may not be legally qualified. Search warrants are issued based upon affidavits, where the facts and suspicion are contained in that affidavit. In the criminal justice system, search warrants are generally issued when law enforcement

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officers are investigating serious criminal offences. One would hope that even a Registrar of a Court would not issue a warrant for a minor offence.

In relation to investigations by the ICAC, the Commission, although investigating corrupt conduct, what amounts to corrupt conduct covers a great range of activities, ranging from serious criminal indictable offences to breaches of a code of conduct. No one sees, other than the Registrar of the Court, what is contained in the affidavit which caused the issue of the search warrant. As part of your audit, it might be appropriate, although it is a matter for you, not just to look at what is contained in the application for the search warrant but to look at the results and conclusion of the investigation, and with the benefit of hindsight, consider whether what's contained in the application for the search warrant necessitated the serious invasion of the person's liberty.

One of the issues that troubles us was brought to our attention in the matter of which you'd be familiar with, relating to the investigation of Margaret Cunneen SC. During the course of the Committee's examination of that matter, the Commission provided to the Committee most of the material relating to its investigation, including a telephone intercept. The Commission's investigators compelled Ms Cunneen to hand over her mobile phone based upon a notice to produce, which she did. Subsequent to the Commission taking possession of the mobile phone, it then applied and was granted a search warrant for the very phone which was already in their possession. The Committee was given some advice that the Commission took possession by virtue of the notice and did so unlawfully, and that the subsequent issue of the search warrant made the Commission's possession of the phone lawful.

The issue that the concerned the then Committee was how would the Registrar of the Court grant a search warrant to the Commission to search for an item that it already had in its possession. I can't recall now seeing the application to issue the search warrant, but the Registrar that issued the search warrant at the Downing Centre Local Court had previously been at Newtown Local Court.

The Commission had been previously going to Newtown Local Court, to that Registrar, to obtain search warrants. The Registrar was then transferred to the Downing Centre, and this contentious search warrant was issued by the same Registrar. Whoever this Registrar was, and it may have just been coincidence, but when there was some publicity a year and a half ago about other search warrants in controversial circumstances, the first private response of members of the Committee and former members of the Committee was "I bet you the search warrant was issued by that particular Registrar".

I would just like those unresolved concerns, resolved, if there are legacy issues. For our own peace of mind we would like to be reassured that Commission staff have not been "Registrar shopping" and if they had in the past, it no longer occurs now.

The other matter that was apparent in relation to the Cunneen matter was that the Commission, assuming it had jurisdiction to investigate a matter that the High Court subsequently held that it did not have, was investigating a particular act of Ms Cunneen. It had a legitimate forensic purpose to examine all matters relating to the specific corrupt conduct it was investigated.

When it took possession of Ms Cunneen's mobile phone, it recreated all her deleted text messages, going back a number of years, and it began examining those text messages that involved private communications with people that had no relevance to what the Commission was investigating. When the Commissioner was asked, it was apparent they were relying upon the DPP Code of Conduct, and that Ms Cunneen's communication with journalists was in breach of that Code of Conduct. That was being pursued even after the decision of the High Court.

The issue that concerns me is that if the Commission has a legitimate forensic purpose to obtain a search warrant for the purpose of investigating specific conduct, or a series of conduct that is corrupt, they shouldn't be exercising their powers to examine other material to see whether there is some other unrelated wrongdoing. In the Cunneen matter, they even checked her e-Tag to see whether or not it was a DPP e-Tag that she used for private purposes. There needs to be, in my view, a limit on how the material obtained by a search warrant can be used.

By that I don't mean that in the course of an investigation into one area of corrupt conduct, that if the Commission comes across other criminal conduct that nothing should occur. What they should not be permitted to do is to trawl through everything that they obtained which is unrelated to their investigation, to see whether they can get that person on something else.

The other issue that is of concern is at times the execution of search warrants is done with the media in attendance. Bearing in mind that there are considerable confidentiality provisions, witnesses are giving evidence in compulsory examinations with criminal sanctions for disclosing to anyone that they've even given evidence, and then the Commission goes and executes a search warrant and the media are waiting when they arrive. I thought it was probably a legacy issue but it occurred again about a year and a half ago in a matter that was already subject to a report by you to the Parliament.

A number of years ago, the former Commissioner was giving evidence before the Committee, and she was asked questions by Government members in relation to the execution of a search warrant of the then Member for Terrigal's office. Apparently, that search warrant was executed with the full knowledge of the media in advance.

The Commissioner gave evidence that they had investigated that issue, and no one from the Commission had alerted the media, and that the media became aware having been told by other people, bearing in mind the very public location of the Member's electorate office. I recall one Government member of the Committee responded "How come the media were waiting for the execution of the search warrant at Richard Torbay's house when he lived an hour out of town?"

I recall asking the then Commissioner whether or not the Commission does what some law enforcement officers do; that is, material is given to the media with a view of prompting some product on telephone intercepts. The Commissioner said that that is not ICAC's practice. I would certainly like to be assured that the Commission, its staff, and anyone associated with them, are not alerting or briefing the media when search warrants are being executed.

The other issue that has been brought to my attention, and I have no independent way of verifying this and it is again a legacy issue, is that in an investigation involving some persons that are currently facing trial, a solicitor was subject to the execution of a search warrant. The solicitor says that ICAC officials were accompanied by armed Police from the Tactical Response Group. The solicitor had been a partner in a city law firm, but owned a farm and had a gun license. He was told by the Police when the search warrant was being executed, that because he had a gun license, that is why the Police had been asked to accompany ICAC's officials.

I don't know whether this is true or not, but I do wish to observe that all of us as Members of Parliament are desperate for Police resources within our own electorates, and certainly would not be happy that Police resources are being used for a purpose not required. I would hope that if Police are being utilised, that there is a legitimate forensic purpose for that, the reason not being to cause further stress to a person subject to the very intrusive conduct that a search warrant entails.

All those matters that I have raised are legacy issues, however they are matters that concerns us and that are specifically related to the audit which you are undertaking. As I indicated earlier, if there is substance to any of those concerns they do not need to be made public, only an assurance be given that whatever occurred in the past no longer occurs, and what processes are in place accordingly.

If there is no substance to the issues or concerns that we have, I would be happy to accept that from you in any form you deem appropriate.

Thank you for inviting me to submit to you my unresolved concerns.

Yours faithfully,

Ron Hoenig MP
Member for Heffron