

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("the Memorandum") is made the <sup>2<sup>nd</sup></sup>..... day of June..... 2023 between the Independent Commission Against Corruption ("the ICAC") and the Law Enforcement Conduct Commission ("the LECC").

### 1. PURPOSE

- 1.1 To set out the arrangements to be entered into between the ICAC and the LECC pursuant to s171 of the *Law Enforcement Conduct Commission Act 2016* ("the LECC Act").
- 1.2 To set out considerations to be taken into account in determining whether to conduct joint investigations, education and prevention programs, arrangements for referral of matters, the exchange of information and general liaison arrangements.

### 2. ICAC NOTIFICATION OF OFFICER MISCONDUCT, OFFICER MALADMINISTRATION OR AGENCY MALADMINISTRATION (s171(1)(a) LECC Act)

- 2.1 Pursuant to s168 of the LECC Act, but subject to paragraphs 2.2 and 2.3 below, the ICAC will refer to the LECC complaints received by the ICAC involving alleged misconduct or maladministration by NSW Police Force officers, NSW Crime Commission officers or administrative employees of those agencies or agency maladministration by the NSW Police Force or the Crime Commission, whether or not involving conduct of other public officials.
- 2.2 The ICAC will not refer to the LECC complaints which have come to the attention of the ICAC through a report made to the ICAC by the NSW Commissioner of Police or the Commissioner for the NSW Crime Commission under s11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). In all such cases the ICAC will assume that such matters have been directly reported to the LECC by the Commissioner of Police or the Commissioner of the NSW Crime Commission.
- 2.3 The ICAC will not refer to the LECC complaints which have been emailed to the ICAC where the email indicates that a copy has been sent to the LECC.
- 2.4 The ICAC will refer complaints to the LECC as soon as possible, either by way of written notification or oral communication to be subsequently confirmed in writing.

### 3. LECC NOTIFICATION OF CORRUPT CONDUCT (s171(1)(b) LECC Act)

- 3.1 The LECC will notify the ICAC of all matters which come to the attention of the LECC and which the LECC suspects may involve corrupt conduct as defined in the ICAC Act and which conduct is not excluded from the jurisdiction of the ICAC by the provisions of the LECC Act.

3.2 The LECC will not refer to the ICAC complaints which have been emailed to the LECC where the email indicates that a copy has been sent to the ICAC.

3.3 The LECC will refer complaints to the ICAC as soon as possible, either by way of written notification or oral communication to be subsequently confirmed in writing.

**4. LECC INVESTIGATIONS INVOLVING PUBLIC OFFICIALS (s171(1)(c) LECC Act)**

4.1 Pursuant to s170(2) of the LECC Act, the LECC may investigate and otherwise deal with a matter involving the conduct of public officials or agency maladministration, provided this is done in the context of matters that also involves NSW police officers, NSW Crime Commission officers or administrative employees or the NSW Police Force or NSW Crime Commission.

4.2 In each case where the LECC proposes to investigate such a matter, it shall inform the ICAC of that intention.

4.3 The LECC and the ICAC shall consult about each such proposal with a view to determining, among other things:

- i. whether the LECC should proceed to investigate the matter and, if so, the parameters of that investigation;
- ii. whether the ICAC should proceed to investigate the matter instead of the LECC; or
- iii. whether the LECC and the ICAC should jointly investigate the matter and, if so, the role of each agency in that investigation.

**5. ICAC INVESTIGATIONS INVOLVING NSW POLICE OFFICERS, NSW CRIME COMMISSION OFFICERS OR ADMINISTRATIVE EMPLOYEES (s171(1)(d) LECC Act)**

5.1 Pursuant to s169(2) of the LECC Act, the ICAC may investigate and otherwise deal with a matter under the ICAC Act involving the conduct of NSW police officers, NSW Crime Commission officers or administrative employees or agency maladministration by the NSW Police Force or the NSW Crime Commission, provided it is done in the context of matters that also involve public officials who are not NSW police officers, NSW Crime Commission officers or administrative employees or agencies other than the NSW Police Force or the NSW Crime Commission.

5.2 In each case where the ICAC proposes to investigate such a matter, it shall inform the LECC of that intention.

5.3 The ICAC and the LECC shall consult about each such proposal with a view to determining, among other things:

- i. whether the ICAC should proceed to investigate the matter and, if so, the parameters of that investigation;

- ii. whether the LECC should investigate the matter instead of the ICAC; or
- iii. whether the ICAC and LECC should jointly investigate the matter and, if so, the role of each agency in that joint investigation.

## 6. JOINT INVESTIGATIONS

- 6.1 Section 161(1) of the LECC Act provides that the LECC may, in exercising its investigative functions, work in co-operation with investigative agencies such as the ICAC.
- 6.2 Section 16 of the ICAC Act provides that in exercising its functions the ICAC may work in co-operation with such other bodies as the ICAC thinks appropriate.
- 6.3 In determining whether to conduct a joint investigation, the parties will have regard to:
  - i. the statutory functions and responsibilities of each agency;
  - ii. the strategic significance of the matter to each agency;
  - iii. the resources and time which each agency has available to pursue the matter and achieve a conclusion;
  - iv. the relationship between the matter and other matters being pursued by each agency;
  - v. whether initially the matter might be most appropriately pursued by either agency, with results being shared, as far as legally practicable and the decision on ultimate coverage being deferred;
  - vi. methods ensuring the most effective result; and
  - vii. the need to avoid inefficiency, duplication and overlap.

## 7. JOINT EDUCATION AND PREVENTION PROGRAMS

- 7.1 Section 161(2) of the LECC Act provides that the LECC may, in exercising its education and prevention functions, work in co-operation with such other persons and bodies as it thinks appropriate.
- 7.2 Section 16 of the ICAC Act provides that in exercising its functions the ICAC may work in co-operation with such other bodies as the ICAC thinks appropriate.
- 7.3 Section 172 of the LECC Act provides that nothing in that Act prevents the ICAC from exercising its educative and advisory roles even though they may involve the NSW Police Force or the NSW Crime Commission.
- 7.4 In determining whether to conduct a joint education or prevention program, the parties will have regard to:

- i. the statutory functions and responsibilities of each agency;
- ii. the strategic significance of the program to each agency;
- iii. the resources and time which each agency has available to undertake the program;
- iv. the relationship between the program and other programs being conducted by each agency;
- v. whether initially the program might be most appropriately pursued by either agency, with results being shared, as far as legally practicable and the decision on ultimate coverage being deferred;
- vi. methods ensuring the most effective result; and
- vii. the need to avoid inefficiency, duplication and overlap.

7.5 Where, pursuant to s 27(1)(a) of the LECC Act, the LECC intends making a recommendation concerning a program conducted by the ICAC for the NSW Police Force or the NSW Crime Commission, the LECC will, before making any such recommendation, consult with the ICAC about the proposed recommendation and provide the ICAC with an opportunity to comment.

## 8. REFERRAL OF MATTERS

8.1 Pursuant to s 53(5) of the ICAC Act and s 162 of the LECC Act, both parties agree that the concurrence of the other to any proposed referral will only be taken to have been given once the agreement in writing to the proposed referral from that agency has been received by the agency seeking to make the referral.

## 9. PROVISION OF INFORMATION AND PROPERTY

9.1 The ICAC and the LECC may obtain access to each other's intelligence or property holdings, subject to the following conditions:

9.1.1 As far as practicable, requests for the dissemination of information or property from one agency ("the originating agency") to the other agency ("the receiving agency") be in writing;

9.1.2 Requests for the dissemination of information or property demonstrate a need to know;

9.1.3 Information disseminated by one agency to the other be held securely and confidentially;

9.1.4 Subject to sub-paragraph 9.1.7, the originating agency obtain the prior consent of the source of the information or property before disseminating the information or property;

- 9.1.5 Sub-paragraph 9.1.4 does not apply where the nature of the information or property, the identity of the source of the information or operational imperatives are such that it is not in the public interest to seek the prior consent of the source of the information or property;
- 9.1.6 Any dissemination operates subject to any applicable legislative secrecy provision;
- 9.1.7 Where either agency seeks property obtained by the other agency from another source and the property is no longer required by the agency, it will be returned to the source from which it was obtained and the requesting agency advised to seek the material directly from that source. If there is a reasonable concern that the material may be destroyed by the source, then subject to the general law, it will be provided direct to the requesting agency.
- 9.2 Each agency may further disseminate information obtained from the originating agency unless otherwise stipulated. Information contained within a hearing transcript or exhibit that has been made the subject of a non-publication order under the LECC Act, the ICAC Act or other Act, shall not be further published by the receiving agency to a third party without the non-publication order being varied to permit the further publication.
- 9.3 Each agency may, subject to availability, provide personnel or technical equipment or expertise to the other agency for the purposes of an investigation being conducted by the other agency, upon receipt of a request for same.
- 9.4 The LECC Act establishes the office of the Inspector of the LECC. The ICAC Act establishes the office of Inspector of the ICAC.
- 9.5 The parties note that nothing in this MOU limits, or is intended to limit, either Inspector from having full access to the records to which either Inspector is legally entitled.
- 10. ICAC RECEIPT OF COMPLAINTS RE LECC**
- 10.1 The ICAC acknowledges that, pursuant to s166(1) of the LECC Act, the conduct of the LECC or an officer of the LECC cannot be made the subject of a complaint, inquiry, investigation or other action under the ICAC Act, except in relation to matters referred to the ICAC by the LECC Inspector.
- 10.2 Where the ICAC receives any information relevant to the function of the LECC Inspector, the ICAC shall provide such information to the LECC Inspector.
- 11. LIAISON IN GENERAL**
- 11.1 Liaison between the ICAC and the LECC may occur at a number of levels and for various purposes. Subject to the provisions of the ICAC and LECC Acts, such liaison may include provision of information on complaints and intended

operational responses, advice on education and prevention issues, advice on administrative matters and provision of information on prospective employees.

11.2 The principal contact officers for each agency are:

ISSUE	ICAC	LECC
Policy matters and decisions whether to conduct joint investigations and education and prevention programs	Chief Commissioner	Chief Commissioner
General liaison and other issues not dealt with below	Solicitor to the Commission	CEO
Referral of complaints (paragraphs 2.1 & 3.1)	Manager, Assessments	Manager, Assessments and Audit
Investigative & Intelligence matters	Director, Investigations	Executive Director Operations
Corruption Prevention	Executive Director, Corruption Prevention	Manager Prevention & Education
Administration & Personnel	Chief Executive Officer	Chief Executive Officer

- 11.3 All requests for information and assistance should be made in writing, or if made orally, should be confirmed in writing as soon as possible. This includes requests for written material, documents, vetting of prospective employees and intelligence holdings. The requesting body will provide a receipt for such supplied material.
- 11.4 Liaison meetings between the LECC and the ICAC will be held as required.
- 11.5 The Chief Commissioners of the ICAC and LECC will keep each other briefed in areas of joint interest.

## 12. REVIEW

- 12.1 The Memorandum may be reviewed at the request of either party.