

22 June 2016

Our ref: G2 2016 02

The Hon. Nick Goiran, BCom, LLB, MLC  
Chairman  
Joint Standing Committee on  
the Corruption and Crime Commission (WA)

Dear Sir,

**Re: Invitation to make a submission to the Joint Standing Committee's Inquiry**

I refer to your letter of the 25<sup>th</sup> of May.

At the outset, I must make it clear that what follows is not to be taken in any way as a reflection against any person or entity in either Western Australia or New South Wales. The observations I make are no more than that. They represent views that I have come to form not only after 18 years in judicial office but in the 4-1/2 years of my service as Inspector of the Police Integrity Commission and Inspector of the Independent Commission Against Corruption.

How it came about that my name was drawn to the relevant Minister's attention is unknown to me. But thereupon I assume it went through the normal processes of Executive Government until the point was reached that my appointment was referred to the Joint Committee (I am here referring only to the ICAC) pursuant to s.64A of the ICAC Act, 1988. That section provides:

“Power to veto proposed appointment of commissioner or Inspector

- (1) The Minister is to refer a proposal to appoint a person as Commissioner or Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.”

It is not surprising that I know of no instance of the veto being exercised.

The system for the appointment of the Inspector at present in place in New South Wales operates in a way that one would expect it when it is fundamentally in the hands of the Executive Government. As is public knowledge there was a period in which the Office was vacant for four months: I have commented upon this in Annual Reports and otherwise publicly. That was unfortunate as the incoming Inspector of the ICAC (namely myself) was confronted with what in reality was a form of the unconstitutional conduct of the Office by persons who had not been appointed by the Executive Government. Why that gap of four months was permitted to run, I do not know. That is about all I can say on the issue of “timeliness”.

I note what you identify as the “current model” used in W.A. I suppose, as a traditionalist, I am of the view that the holder of the Office of Chief Justice should perform a judicial role only. There may be an exception, depending upon the Constitution of each State, that permits the holder of the Office of Chief Justice to act as Lieutenant Governor from time to time. That a Chief Justice may be consulted in relation to judicial appointments does not trouble me. That a Chief Justice is involved in what is effectively an act of the Executive Government does. One difficulty that could arise is in the event that being a person who has received the approval of the Panel chaired by the Chief Justice as a nominee and is appointed with bipartisan support, that person could become involved in litigation in the Court of which a person intimately involved in the appointment to the Office of that person, namely the Chief Justice, is its Head.

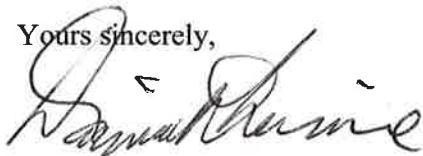
A Panel which does not include a serving judicial officer might be an acceptable alternative according to my “traditionalist” views.

In all such matters the independence of anyone involved in the appointment process must be patent and not capable of giving rise to any hint, however irrationally based, that could not bear the glaring scrutiny of complete transparency.

This is about the best I can do in the circumstances.

I trust it is of some assistance.

Yours sincerely,



The Hon. David Levine AO RFD QC  
Inspector: ICAC