

20 May 2024

The Hon Kyam Maher MLC  
Attorney-General

By email: [AttorneyGeneral@sa.gov.au](mailto:AttorneyGeneral@sa.gov.au)

Dear Attorney

On 2 May 2024, the Hon. Connie Bonaros put questions to you in the Legislative Council about the disposition of criminal charges against Dr James Spark, a public officer who was investigated by the Commission.

Dr Spark was convicted of a number of counts of deception, which is no longer a corruption offence as result of the 2021 amendments to the *Independent Commission Against Corruption Act 2013* (SA).

Ms Bonaras' questions related to whether you considered Dr Spark was entitled to recover his legal costs and whether you had sought my advice or I had indicated my views either specifically or more generally about the entitlement for reimbursement of legal costs<sup>[1]</sup>.

I note that when questions relating to entitlements more generally were put to you by the media in July 2022, you indicated that you would seek advice to clarify the situation<sup>[2]</sup>. I would be pleased to know if you have received that advice and whether that settled your understanding of the entitlement.

As to my views on such an entitlement, in November 2021, I provided to you and the Parliament a report examining the effects of the of the amendments to the Act. Pages five and six of that report detail my understanding of the entitlement for reimbursement of legal costs<sup>[3]</sup>.

To summarise, my view is that if a person who has been investigated by the Commission is prosecuted for an offence outside the definition of 'corruption in public administration' in the Act, they will be entitled to the reimbursement of their legal costs from public funds, even if they are convicted of an offence. As I have said to you, and in other public forums since, I query how the public interest is served where a public officer convicted of a criminal offence is to be reimbursed for legal costs from public funds.

---

<sup>1</sup> South Australia. *Parliamentary Debates*. Legislative Council. 2 May 2024. <https://hansardsearch.parliament.sa.gov.au/daily/uh/2024-05-02/22>

<sup>2</sup> Martin, P. (2022, July 20). *VIDEO: Convicted officials able to charge SA taxpayers for legal fees*. ABC News. 02:31. <https://www.abc.net.au/news/2022-07-29/convicted-officials-able-to-charge-taxpayers-for/13994006>

<sup>3</sup> Vanstone, A. (2021). *An examination of the changes effected by the recent amendments to the ICAC Act*. ICAC. Pp. 5-6. <https://www.icac.sa.gov.au/documents/An-examination-of-changes-effected-by-the-amendments-.pdf>

**OFFICIAL**

I have also made known my views on this entitlement in other public forums including in discussion with Mr David Bevan on ABC radio<sup>[4][5]</sup> and in a letter to the Crime and Public Integrity Policy Committee, dated 15 December 2021<sup>[6]</sup>.

In respect of whether I had communicated to you my views directly, I remind you that I canvassed this topic when I addressed a group of Members including you on 30 June 2022. Later, on 10 August 2022, I discussed it with your then Chief of Staff. I followed up that meeting with a letter to you on 10 August 2022 to advise you of the content of that discussion.

I also draw your attention to the Annual Report of the then ICAC Inspector, Mr Philip Strickland SC, for the period 1 July 2022 to 30 June 2023. He described the effect of section 59A and Schedule 5 of the ICAC Act in these terms:

...that government employees who are prosecuted for offences such as theft or deception (offences which do not constitute corruption in public administration) as a result of Commission investigations are entitled to have the legal costs incurred during the investigation and prosecution reimbursed by the taxpayer. That is so even if government employees are convicted of an offence.

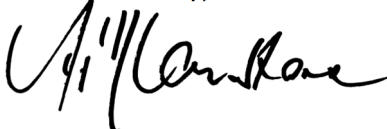
He further opined that:

Generally, it is against the public interest for a convicted offender to be reimbursed by the taxpayer for their legal costs for both the Commission's investigation and the prosecution in circumstances where that investigation and the subsequent prosecution led to conviction.<sup>[7]</sup>

Of course, I would be happy to speak with you about these matters and to answer any questions you might have.

Please note that in the interests of transparency and the public interest, I intend to publish this letter on the Commission's website.

Yours sincerely,



The Hon. Ann Vanstone KC  
**COMMISSIONER**

---

<sup>4</sup> Denny, S., & Bevan D. (2021, 23 September). *ICAC Commissioner Ann Vanstone QC: The full interview*. ABC Adelaide Breakfast (radio).

<https://www.abc.net.au/listen/programs/adelaide-breakfast/icac-commissioner/13554856>

<sup>5</sup> Clarke, A., & Bevan, D. (2021, 24 September). *ICAC Commissioner Ann Vanstone says powers to investigate corruption have been "decimated"*. ABC Adelaide Breakfast (radio). <https://www.abc.net.au/listen/programs/adelaide-breakfast/icac-bill-passes/13556808>

<sup>6</sup> Vanstone, A. (2021). *Correspondence to CPIPC – Response to the Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations – 15 December 2021*. ICAC. P. 3. <https://www.icac.sa.gov.au/documents/correspondence-to-cpipc-15-december-2021.pdf>

<sup>7</sup> Strickland, P. (2023). *Annual Report of the Inspector of the Independent Commission Against Corruption, the Office for Public Integrity, and Ombudsman SA: For the period 1 July 2022 to 30 June 2023*. Office of the Inspector. P.36.

[https://www.inspector.sa.gov.au/data/assets/pdf\\_file/0011/944741/Office-of-the-Inspector-Annual-Report-202223.pdf](https://www.inspector.sa.gov.au/data/assets/pdf_file/0011/944741/Office-of-the-Inspector-Annual-Report-202223.pdf)

**OFFICIAL**