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EDO(SA) Submission on ICAC Discussion Paper: Review of Legislative Schemes - Complaints and Reports about Public Administration (February 2015)

27 March 2015

Background

The Environmental Defenders Office (SA) Inc. ("EDO(SA)") is a community legal centre with over twenty years of experience specialising in public interest environmental and planning law. EDO(SA) provides legal advice and representation, undertakes law reform and policy work and provides community legal education.

The vast majority of EDO(SA) clients seek advice about processes undertaken and/or decisions made by a statutory body (e.g. *the Environment Protection Authority; the Native Vegetation Council*), a government department (e.g. *Department of Planning, Transport and Infrastructure; the Department of Environment, Water and Natural Resources; Department of State Development*) and/or a local council. EDO(SA) very rarely advises in relation to matters involving the police.

Therefore, this submission focuses upon the legislative schemes in relation to public administration reports and complaints. This submission does not address the police complaints legislative schemes.

EDO(SA) does not wish to present at a public hearing on the review.

Context

The NSW ICAC, in its February 2012 Report, "*Anti-corruption Safeguards and the NSW Planning System*", emphasises the importance of accountability and transparency in the planning and assessment decision making processes.¹

¹ "The existence of a wide discretion to approve projects, which are contrary to local plans and do not necessarily conform to state strategic plans, creates a corruption risk and community perception of lack of appropriate boundaries." (at page 5)

"Meaningful community participation and consultation in planning decisions helps ensure that relevant issues are considered during the assessment and determination of plans and proposals. It also allows the community to have some influence over the outcome of decisions. Community participation and consultation requirements also act as a counter balance to corrupt influences. The erosion of these requirements in the

Concerns regarding accountability and integrity in government decision-making processes are not restricted to NSW.

In 2013, the SA Government established ICAC to:

- identify and investigate corruption in public administration;
- assist in identifying and dealing with misconduct and maladministration in public administration; and
- prevent or minimise corruption, misconduct and maladministration in public administration through education and evaluation of practices, policies and procedures.

In SA, in regard to the FOI regime, the Ombudsman SA, in his *“Audit of state government departments’ implementation of the Freedom of Information Act 1991 (SA)”* Report (May 2014) made the following observation:

“In summary, the evidence provided to the audit strongly suggests that ministerial or political influence is brought to bear on agencies’ FOI officers, and that FOI officers have been pressured to change their determinations in particular instances. I have no reason to disbelieve this evidence.” (at paragraph 337)

Should the Office for Public Integrity (OPI) be the central body for the receipt and assessment of complaints and reports about public administration?

In the context of potential corruption, misconduct or maladministration, the experience of EDO(SA) clients in reporting their concerns regarding processes undertaken and/or decisions made confirms the need for a simpler, more effective and speedier legislative scheme to be established.

The current system involving both the OPI and the Ombudsman is confusing for the layperson and an inefficient use of community resources.

EDO(SA) recommendations:

1. In relation to potential corruption, misconduct or maladministration allegations - there should be a single statutory body with wide powers (and, as importantly, adequate resources) to:
 - Receive allegations;
 - Assess allegations;
 - Investigate allegations; and
 - Make decision review recommendations and prosecution recommendations.
2. The statutory body should be empowered to undertake investigations on its own motion, without the need for a complaint.

planning system reduces scrutiny of planning decisions and makes it easier to facilitate a corrupt decision.” (at page 19)

3. In order to maintain and enhance community confidence in the integrity of the public administration in SA, it is vital that the statutory body be required to provide ongoing feedback to complainants on the progress and outcome of its assessments and investigations.

What role should the ICAC play in relation to the oversight of inquiry agencies?

In order to maintain and enhance community confidence in the integrity of the public administration in SA, a balance needs to be struck between adequate oversight of inquiry agencies and the effective and efficient use of resources.

EDO(SA) recommendation:

ICAC to have a discretion to oversee the activities of and investigate the operations of inquiry agencies, with a requirement that ICAC review and report upon the activities and operations every three years.

What systematic changes can be adopted to reduce duplication and improve efficiencies in the receipt, assessment and resolution of complaints and reports about public administration?

EDO(SA) has insufficient detailed knowledge of the current systems to comment.

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