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Levine report denied Latham natural justice

I was the inspector of the Independent Commission Against Corruption from 2008 to 2013 before Megan Latham's appointment as commissioner.

When I read David Levine's report on Operation Hale, I was concerned to see he had made serious findings against Commissioner Latham without first affording her the opportunity to be heard in opposition to those findings.

At page 4 of his report he says: "First, I have interviewed nobody from the ICAC. All information relating to what it did is based upon material that the ICAC has provided to me."

A reading of the report shows that its trenchant criticisms of the commissioner are based upon the inspector's interpretations of various parts of that material - interpretations which were not revealed to the commissioner prior to its publication so as to afford her the opportunity to answer them.

The High Court of Australia has affirmed this type of conduct amounts to a denial of natural justice which can result in those findings being set aside.

In 2010, following differences between the NSW Police Integrity Commissioner and its inspector, the Committee on the Office of the Ombudsman and the Police Integrity Commissioner conducted an inquiry into the handling of complaints against the PIC during which it looked at the arrangements between comparable bodies throughout Australia. Its report reveals that, universally, the inspector informed the relevant commission of any adverse findings he intended to make and gave that commission the opportunity to respond prior to publication of a report. The committee accepted the opportunity to respond should be given.

The failure of the inspector of the ICAC to afford the ICAC the opportunity to respond to accusations before publication is not a mere matter of legal technicality. It results in a gross injustice to the ICAC and the commissioner. It results in bad decision-making because not all relevant considerations have been applied to the decision-making task. It results in diminished public confidence in official decision-making.

Unfortunately, the inspector's report on Operation Hale is flawed. The only proper course now is for it to be withdrawn and a new report obtained from a person independent of the current commissioner and inspector.

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