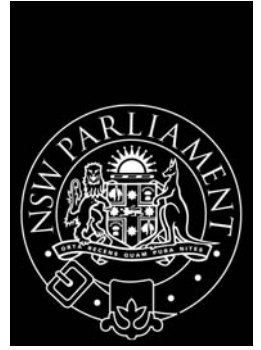


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

QUARTERLY EXAMINATION OF THE INSPECTOR OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION, OCTOBER-DECEMBER 2005

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TERMS OF REFERENCE

The Committee on the Independent Commission Against Corruption is required under section 64(1)(c) of the Independent Commission Against Corruption Act 1988 to examine each annual and other report of the Inspector of the Independent Commission Against Corruption and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.

CHAIRMAN'S FOREWORD

The Independent Commission Against Corruption Act 1988 was amended in April 2005, following an independent judicial review recommended by the ICAC Committee (the Joint Parliamentary Committee on the Independent Commission Against Corruption). This resulted in the establishment of the Office of the Inspector of the Independent Commission Against Corruption.

The need for an Inspector arose because of the limited scope of the ICAC Committee's jurisdiction. While the Committee is responsible for monitoring and reviewing the exercise of the Independent Commission Against Commission's functions, it is prohibited from examining particular decisions made by the Commission. The limited scope of the Committee's jurisdiction is generally seen as appropriate, given that committee members fall within the investigative jurisdiction of the Commission.

The result, however, was that there had been no person or body with responsibility for investigating complaints that the Independent Commission Against Corruption or its officers may have misused their powers. Complaints to the ICAC Committee concerning the Commission could not be investigated by the Committee. Due to this limitation, the practice of the Committee had been to request that the Commission review its own decisions or actions. The only remaining recourse was for the complainant to take individual action in the Courts.

The establishment of the Inspector of the Independent Commission Against Corruption means that there is now a body with responsibility for investigating complaints that the Independent Commission Against Corruption or its officers may have misused their powers. The powers of the Inspector are modelled on those of the Inspector of the Police Integrity Commission.

One of the responsibilities of the ICAC Committee, under the amended Act, is to monitor and review the exercise of the Inspector of the Independent Commission Against Corruption's functions and to report to both Houses of Parliament, with such comments as it thinks fit, on any matter to which, in the opinion of the Committee, the attention of Parliament should be directed.

The ICAC Committee played a significant role in examining the appointment of the current and foundation Inspector of the Independent Commission Against Corruption, Mr Graham Kelly and has now established an agreed quarterly review process with him. In addition, the Committee will conduct an examination of each annual report of the Inspector and report to Parliament on matters arising, in accordance with the Independent Commission Against Corruption Act 1988 Section 64(1)(c). This activity will be integrated into the quarterly review process.

In its formal examination of the Inspector and his staff for the period October to December 2005, the ICAC Committee was provided with useful background information about the establishment of the office, its current workload, operational strategies and activities relating to the public dissemination and promotion of its functions. The relationship between the

Inspector and the Independent Commission Against Corruption was also explored on a preliminary basis.

As this is the first such quarterly report of the Committee's examination of the Inspector of the Independent Commission Against Corruption, I am pleased to report that the Committee has established a good working relationship with the Inspector and his office. This augurs well for the future and should ensure that the combined efforts of the Inspector and the ICAC Committee will provide greater accountability mechanisms for the Independent Commission Against Corruption, as provided in the Independent Commission Against Corruption Act 1988.

The Hon. Kim Yeadon MP
Chairman, ICAC Committee

Chapter One - Introductory remarks

This report comprises a record of the examination of the Inspector of the Independent Commission Against Corruption at a public hearing of the ICAC Committee (the Committee on the Independent Commission Against Corruption) held at Parliament House, Sydney, on Monday 12 December 2005. The report includes both an edited record of the testimony of the Inspector and written documentation tabled at the meeting.

The relationship between the ICAC Committee and the Inspector of the Independent Commission Against Corruption

The statutory relationship between the ICAC Committee and the Inspector of the Independent Commission Against Corruption is established by the Independent Commission Against Corruption Act 1988.

It is a function of the ICAC Committee to monitor and to review the exercise by the Inspector of the Inspector's functions—Independent Commission Against Corruption Act 1988 Section 64 (1)(a), and to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Inspector to which, in the opinion of the Committee, the attention of Parliament should be directed—Independent Commission Against Corruption Act 1988 Section 64 (1)(b).

The ICAC Committee has established a quarterly review process with the Inspector of the Independent Commission Against Corruption.

The ICAC Committee will also conduct an examination of each annual report of the Inspector of the Independent Commission Against Corruption and report to Parliament on matters arising, in accordance with the Independent Commission Against Corruption Act 1988 Section 64(1)(c). This will be integrated with the quarterly review process.

Quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2005

The first quarterly examination of the Inspector of the Independent Commission Against Corruption, covering the period July-September 2005, was conducted by the ICAC Committee on Wednesday 12 October 2005. Mr Graham Kelly, Inspector of the Independent Commission Against Corruption, and Ms Susan Hayes, acting Executive Officer, appeared before the Committee.

No formal report was made of the first quarterly review. The ICAC Committee discussed statutory functions of the Inspector of the Independent Commission Against Corruption, and reviewed progress on the establishment of his office.

The Office of the Inspector of the Independent Commission Against Corruption commenced operation on 1 July 2005. The Office operates under the administration of the Premier's Department. The Office of the Inspector of the Independent Commission Against Corruption is supported by a secretariat with an establishment of two staff: an Executive Officer and an Executive Assistant/Office Manager. The Executive Officer position was filled initially by Ms Hayes, on deployment from the Premier's Department. The secretariat positions were advertised in late September 2005.

It was agreed that the next quarterly meeting between the ICAC Committee and the Inspector of the Independent Commission Against Corruption would be scheduled for December 2005.

The Independent Commission Against Corruption Act 1988

The functions and powers of the Inspector of the Independent Commission Against Corruption are defined in Part 5A of the Independent Commission Against Corruption Act 1988, Sections 57A-57F, as follows:

Part 5A Inspector of the Independent Commission Against Corruption

57A Inspector of the Independent Commission Against Corruption

(1) Appointment

The Governor may appoint an Inspector of the Independent Commission Against Corruption.

(2) Schedule of provisions relating to Inspector
Schedule 1A has effect.

57B Principal functions of Inspector

(1) The principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- (c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

- (a) contrary to law, or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) based wholly or partly on improper motives.

57C Powers of Inspector

The Inspector:

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and
- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and
- (f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and
- (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

57D Inquiries

- (1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.
- (2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 excepted) applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.
- (3) A witness summoned by or appearing before the Inspector is to be paid such amount as the Inspector determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

57E Staff of Inspector

- (1) Such staff as may be necessary to assist the Inspector may be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Inspector may also employ staff. Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of any such staff.
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.
- (4) The Inspector may arrange for the use of the services of:
 - (a) any staff or facilities of the Commission, a Department or a local or public authority, or
 - (b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (4A) The Department Head of a Department in which staff of the Inspector are employed may delegate to the Inspector or a member of staff of the Inspector any of the Department Head's functions under the *Public Sector Employment and Management Act 2002* with respect to those staff (other than this power of delegation).
- (5) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

(6) In this section:

Department has the same meaning as in the *Public Sector Employment and Management Act 2002*.

Department Head has the same meaning as in the *Public Sector Employment and Management Act 2002*.

57F Incidental powers

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.

Failure to achieve quorum

At the commencement of the public hearing on Monday 12 December 2005, the Committee Manager reported that a quorum was not present.

As the meeting had been properly called, the Chairman ruled that, for the convenience of the witnesses present, and with their concurrence, the hearing would proceed.

The following exchange occurred:

Mr YEADON (CHAIRMAN): Thank you for your attendance. As you probably heard, the Committee Manager has announced that we do not have a quorum. We do not have a quorum due to an unexpected absence of a Member. We intend to proceed with the hearing this morning and will incorporate the evidence on a formal basis when we have a quorum present. Do you agree with this arrangement?

Mr KELLY: Yes.

The ICAC Committee then proceeded with the public hearing.

CHAPTER TWO – Quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005

This chapter contains an edited transcript of the quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005, which was conducted by the ICAC Committee on Monday 12 December 2005.

The witnesses examined were:

- Mr Graham John Kelly, Inspector of the Independent Commission Against Corruption; and
- Ms Seema Srivastava, Executive Officer, Office of the Inspector of the Independent Commission Against Corruption

Mr YEADON (CHAIRMAN): As you indicated at a previous meeting, you wish to stay in regular contact with the ICAC Committee and the Committee endorses that wholeheartedly. Do you wish to present any documentation or make an opening submission to the Committee?

Mr KELLY: I have an aide memoir, a copy of which I can leave with the secretariat, but I would like to speak to it.

....

Mr YEADON (CHAIRMAN): Would you now like to proceed with your opening statement?

Mr KELLY: I make a couple of preliminary observations. I welcome again the opportunity to appear before the Committee. I think for an office that is largely legally unaccountable, it is most important, from the public's point of view but also from my point of view, that we do continue on with this regular contact, whether formally, in a formal sitting like this, or informally like last time. I certainly very much welcome it. It helps me in the way we go about our functions in terms of defining what we are doing and where we are up to, so I very much appreciate your time this morning.

The second important thing is that I would like to introduce Ms Seema Srivastava to you, who has recently taken up the position of executive officer. Already that has already been a tremendous help. Ms Susan Hayes, who stood in for me as interim executive officer, I should put on record, did a sterling job particularly in putting in place the physical infrastructure but to have someone permanently on board makes a very big difference. I think we will now move into quite a different phase in the role of the office. We still have to recruit an office manager.

We advertised initially within the public service, then outside the public service and interviewed a number of people but came to the conclusion that none of those applicants was what we were after. We went back to the Premier's Department and had our budget adjusted so that we could have the position upgraded on a temporary basis for six months and we have

issued what is called expressions of interest and have quite a good field. We expect that we should be able to make a fixed monthly appointment very shortly at a higher level that will complete the establishment of the office and then we can look again—more particularly Ms Srivastava can look again at the exact requirements of that office manager position. I think our preliminary view on that is that we probably will not need someone full time there, but the next six months will show that up in clearer detail.

That is where we are in terms of setting up the office with people. In terms of the physical set-up of the office, we have just about completed that now and it is perfectly functional, after a few hiccups, I should say, but we now have our communications the way we would like them; we have our security the way we would like it and we have the purely physical resources like desks, filing cabinets and what have you. I think I can say that we can pretty confidently move forward on that score.

That will impact on the availability of Ms Srivastava's time and also on the availability of my time because when I look back at the last six months, a lot of my time has been related to the establishment of the office recruitment of the two people, so I expect in the next six months to have much more time to employ on the core functions of the office. I mention briefly to the Committee that we were preparing an information brochure to be available, including through individual Members of Parliament's offices. We are a pretty much to the point of finalising that and I would expect that we should be able to get that out in the first few weeks of the New Year and we would intend to make copies available to members for their offices. We have not yet completely figured out how to have that published and we are thinking whether to ask the Independent Commission Against Corruption whether we can use their resources to publish it.

Co-operation with the Independent Commission Against Corruption at the highest level continues to be very good and very positive. One of the things I am keen to do is not to duplicate resources that they have and where it is not inappropriate to try to use their resources as well.

Another issue that I mentioned last time that I know the Committee was interested in was the Commission's budget compared with this Office's budget. Although I have not been formally informed of this, my understanding is that a decision has been made for our budget no longer to be taken out of the Commission's budget and to be separately funded, so I think I can say to you that, as far as I am aware, that issue has been resolved.

Mr YEADON (CHAIRMAN): That will be retrospectively?

Mr KELLY: Yes. I should also mention that we have a meeting later this week with the relevant person in the Independent Commission Against Corruption to go through their budget in some detail. It seemed to me, and I know that this has been a matter of concern for the Committee in the past, that we need a pretty detailed understanding of that budget to see whether it is properly funded either way, and that is something we are keen to do and we are starting that process in detail this week.

Jumping back a little in terms of our own processes, we have a pro forma complaints form that is being developed and, again, we would hope to put that out to people, so that when they ring up or come to a Member of Parliament, or whatever, there is a form that can be used. I should emphasise that our experience to date is that most people are pretty capable of putting their

complaints in writing in a fairly fulsome way, and in some cases a very fulsome way, although we have one current complaint where, I think it is fair to say, the person has great difficulty in putting the complaint in writing. We propose in the next couple of weeks to have a face-to-face meeting with that person to try to crystallise what the issues are.

We are also in the process of developing a written policy on how we will go about interviews with people, primarily an internal policy, but there are some issues there and I should say that Ms Srivastava has taken the primary role in developing a draft of that policy. When that is finalised I intend to present it to the Committee.

In terms of getting back to the relationship with the Independent Commission Against Corruption, I am continuing to meet on a regular basis with the Commissioner. Ms Srivastava has been introduced to the relevant people in the Commission itself and she is in the course of establishing appropriate relationships with those. She has met with most of the key people to date. We regard that as a very important step because obviously we are dependent upon good flows of information.

We can use our compulsory powers but that is not a desirable way of going about resolution of most of the issues. It is much better if it is a free flow of information. But also I am not yet satisfied in my own mind that we understand exactly how their processes operate and I think it is incumbent on me, on behalf of the Committee in essence, to understand those processes in pretty fair detail. I should say, from what we have seen so far, that there are two or three issues that stand out in my mind from the background of my management experience, rather than my legal experience. That is, in a couple of areas there is a fairly high turnover. That staff turnover is always necessarily inconsistent with good training, yet good training usually a pretty fundamental thing to good, efficient outcomes.

So I am keen to understand why there is a relatively high staff turnover and what, if anything can be done about that. I think if we can get on top of that issue, first off, I am sure the commissioner will be very responsive to it but, secondly, I think it could well cure a number of the issues that people see with the Independent Commission Against Corruption. I am keen to get on top of the issue, but that does involve burrowing into the organisation.

Finally, I would like to bring you up to date with where we are with complaints, which are surprisingly few. We have received a total of 15 complaints to date, and 9 have been completed. The breakdown of the 9 that have been completed is roughly as follows. Three were not actionable; in other words, there was no real request for a complaint, it was just a generalised thing. One complaint was assessed as not involving inappropriate action by the Independent Commission Against Corruption. Three complaints were assessed as not being within our jurisdiction. One complaint was anonymous, and we did receive some feedback from the Commission that pretty much identified that complaint, and in light of that we came to the conclusion that it was not inappropriate.

One of those 15 complaints was referred directly by the Independent Commission Against Corruption. As I think I mentioned to you on an earlier occasion, I took the view that people should come directly to me rather than be referred by the Commission; otherwise that was a temptation for the Commission not to try to fix things themselves. Of the six active complaints, four are currently being processed through further requests for information and clarification from the Commission or the complainant. As I mentioned before, one complaint

is likely to require an interview with the person to try to figure out exactly what the issues are, and one complaint was received last week and so far we have not had a chance to process that appropriately.

That is a thumbnail sketch of where we are after six months. In trying to look forward to the next six months, obviously the communication literature, including the brochure and so on, is a top priority for completion early in the year. The next priority as far as I am concerned, with Ms Srivastava now on board, is to get into the Independent Commission Against Corruption's processes much better, and from that to develop a number of policies. Thank you for giving me that opportunity. I am obviously happy to take questions.

Mr YEADON (CHAIRMAN): Thank you for that comprehensive outline of where you are up to at the present time. When you refer to the outline of policy over the next few months, that will be the strategic approach you will take to your investigation of matters relating to the Independent Commission Against Corruption, is that correct?

Mr KELLY: Yes, among other things. As far as I am concerned, in the next three months we should develop at least the outline of a business plan for the balance of this year, and then the draft of a business plan for the next year. I should mention that my kind of business plan is not a strategic plan; it is saying, "We will do this by this date" kind of thing. I am keen to do that; otherwise, I think we could easily drift, particularly with my position being very part time.

Mr YEADON (CHAIRMAN): I must say, overall it sounds as though things are going relatively smoothly. You have at least your key staff member position in place, which is very good. I am delighted about the budget. You seem to be fairly confident that that has been rectified for the coming year. I am sure the Independent Commission Against Corruption is delighted about that outcome as well.

Reverend the Hon. FRED NILE (ICAC Committee): Do you have a guarantee it will be the same?

Mr KELLY: I certainly hope so. I think technically we overspent the capital budget a little. But the office is still pretty bare, let me tell you. Some things that we would like, we will defer until next year. But honestly and truly, they are furniture kind of things.

Mr YEADON (CHAIRMAN): You said that 15 complaints had been received to date. I must say, I had expected there to be a deluge of complaints, so I am quite surprised at the 15 complaints received, which is not a huge number of complaints. I would be interested to hear about the timelines with regard to those 15 complaints. Do many of them go back a number of years, relating to people who have not been able, in their view, to achieve a satisfactory outcome in relation to their issue with the Independent Commission Against Corruption, or are they predominantly complaints relating to more recent times, over the last six or 12 months? Of the 15 complaints, do they invariably go back a number of years?

Mr KELLY: With the exception of two—one of which has been completed and the other of which is the latest one received—they all go back some time. The two I referred to relate to a very recent inquiry. So, yes, they are mostly looking back. Overwhelmingly, they are

complaints about the Independent Commission Against Corruption not having taken up complaints to them.

Mr YEADON (CHAIRMAN): Rather than the complaints being the subject of inappropriate activity by the Independent Commission Against Corruption?

Mr KELLY: Yes. I found that slightly surprising, and I found the small number slightly surprising. I have a view about the smallness of the number. I suppose we could have publicised more, though there has not been any evidence of an inability to access our office, in terms of email, fax and so on. It was well advertised when it was established, and its establishment was very well advertised on the Premier's Department web site as well.

So I do not think it is a question of lack of knowledge about the office. I think what it might be is that the Act is pretty clear about legitimate bases for complaint, so you have to bring the complaint within one of the headings. I suspect that with regard to a lot of people who have generally expressed dissatisfaction with the Independent Commission Against Corruption, when they apply their mind to what they have to formulate, they have come to the conclusion that there is not a basis for the complaint. So I think maybe the very legislation itself has, in a sense, put a framework around complaints.

Mr YEADON (CHAIRMAN): One of the issues I was concerned about is that there was such a backlog of complaint that you would have had a good deal of trouble digesting it in the initial stages of your taking up the position, particularly part time. So it is rather encouraging that you will not have a problem with that.

Reverend the Hon. FRED NILE (ICAC Committee): Do you intend to do any more advertising? My concern is that, at the grassroots level, people may not fully understand the role of your office and may not be inclined to access the Premier's web site. There may need to be some media releases and perhaps material in suburban newspapers, to reach the average person who may have a complaint.

Mr KELLY: If I may say so, we are happy to take up that idea, perhaps in connection with the publication of the "How to Complain" brochure. Thank you for that suggestion.

Reverend the Hon. FRED NILE (ICAC Committee): The brochure could go in the public libraries, councils, and so on.

Mr KELLY: Yes.

Mr MILLS (ICAC Committee): Is there a link to your office on the Independent Commission Against Corruption web site?

Mr KELLY: Yes.

Mr MILLS (ICAC Committee): I guess the consumer area of the Law Society would be another vehicle.

Mr KELLY: We intend to send the brochures to those kinds of places.

MR YEADON (CHAIRMAN): You indicated that staff turnover within the Independent Commission Against Corruption is an issue. Is that generally across all positions, or is it concentrated in particular areas of employment or units within the Commission?

Mr KELLY: My understanding is that that is particularly the case in the assessments branch, which is the branch that processes initial complaints. The assessments branch receives the complaint, looks at whether it is something that the Independent Commission Against Corruption should take up, and prepares the submission to the Operations Review Committee. That is, in a sense, the gateway to the Commission, and that is where the staff turnover is pretty high.

I do not have the precise statistics on any of the areas, but from my discussions to date the turnover there is materially higher than anywhere else. For example, I do not think the turnover in the legal branch appears to be terribly high, and I think the investigations branch is pretty much okay.

Reverend the Hon. FRED NILE (ICAC Committee): You said that about three complaints were not applicable to your office. Do you then refer the complaints to some other office, for example, the Ombudsman's Office?

Mr KELLY: We have not so far, but they were effectively not actionable. I do not mean to sound disparaging, but I guess they are the sort of complaints that local members are not unfamiliar with.

Reverend the Hon. FRED NILE (ICAC Committee): In your office who actually conducts interviews? You talk about the assessment in the Independent Commission Against Corruption. Do you do the interview?

Mr KELLY: We have not, to date, conducted an interview, but we propose to do so in the next couple of weeks. Ms Srivastava and I have had a lengthy discussion about this and we have come to the conclusion that I should not, generally speaking, conduct the interview myself because at the end of the day I am the person who has to come to the conclusion on it. So the idea is that Ms Srivastava will conduct the interview, and generally speaking we would want someone else to be present and we would probably tape-record the interview.

I am concerned about two things. One, I think there are sufficient indications in relation to some complaints that we ought to be very careful about physical security. That is not to say that I think anyone is afraid or anything like that, but in this day and age one should be concerned about security. I should say that where there is a reasonable apprehension of physical security issues then I would see that as one of the cases where I, personally, should be involved.

The second consideration is that we do not want any scope for the person conducting the interview to be verbaled. And I think there are enough indications in what we have seen so far that some of the complainants have the capacity to spin this straight back on whoever is conducting the investigation, and we want to be above reproach. That is the general drift of the policy that we intend to adopt.

Ms KENEALLY (ICAC Committee): You mentioned that one of the complaints was referred from the Independent Commission Against Corruption itself.

Mr KELLY: Yes.

Ms KENEALLY (ICAC Committee): I think your words were that you disposed of that. First, I want to explore what "disposed of that" means.

Mr KELLY: We sent it back to the Independent Commission Against Corruption.

Ms KENEALLY (ICAC Committee): You just send it straight back?

Mr KELLY: We said, "You sort this out." It was right at the beginning and I think there was a feeling, "Gee, we've got a complaint about ourselves so we will send it to the Inspector." It struck me that that was a very bad idea because primarily organisations that get complaints should try to sort them out themselves as this one did get sorted out. There was one other thing that I should have mentioned at the beginning in connection with co-operation with the Independent Commission Against Corruption. There is an issue at the moment within the Commission where the Commissioner, at his own initiative, approached me about the way in which they intend to go about dealing with the issue and has written to me saying, "This is what we intend to do." We have noted that and I have appreciated that forthrightness from the Commission itself. I do not intend to get directly involved in that unless something goes wrong, but what it does indicate is that the Commission is responsive to the fact that there is, in a sense, an external check on their own processes.

Ms KENEALLY (ICAC Committee): It sounds as if you have come to an agreement with the Independent Commission Against Corruption that complaints that they receive about themselves should be dealt with by themselves, but there is a first course and it is not an automatic referral to yourselves?

Mr KELLY: That is exactly right.

Mr YEADON (CHAIRMAN): It is early days and probably you have not pursued this in any way or had a chance to observe it in any way, but you mentioned that the assessment unit turnover, and they prepare material for the Operations Review Committee. Have you had any opportunity to observe or come to any views on the Operations Review Committee since you have been in place?

Mr KELLY: The simple answer to your precise question is no. But I think I should mention that I have looked at a selection of submissions that go to the Operations Review Committee in connection with some of the complaints that have come in, including one that we have disposed where I am perfectly satisfied that the Independent Commission Against Corruption's conclusions were right. I suppose, to put it fairly, I think there is scope for improvement in the quality of submissions to the Operations Review Committee. I have decided that I have not seen one where I think the conclusion of recommendation has been wrong. An old, late friend of mine who was an officer in the British Army used to talk about poor staff work. It is that kind of thing. It is a question of the precision with which issues are identified and the clarity with which they are expressed. I think there is scope for improvement there.

Mr YEADON (CHAIRMAN): It is going to go back full circle to the staff turnover and people who are not trained up enough?

Mr KELLY: And I might add one other thing, I think when I look at why some of the complaints have come to us it is partly because of the way in which they have been told no by the Independent Commission Against Corruption. I am sure some of the complainants would never accept a no, no matter how it was expressed, but if the reasoning were a bit tighter and a bit clearer then, on reflection, they may feel that they were more fairly treated than they currently feel.

Mr YEADON (CHAIRMAN): Some of the people who have come to me with issues, I thought that if they had a more adequate explanation of why the Independent Commission Against Corruption did not proceed or the like then they would have been happy. That is an interesting observation.

Mr KELLY: I want to emphasise that I would not like to see this elevated to be a big issue because I think it can be resolved. I think a way to resolve it is to find out why there is such a turnover in assessment and try to put in place some training. I am pretty sure that will then work.

Mr YEADON (CHAIRMAN): You have indicated your wish to report to this Committee, and we certainly very much accept that you do that on a regular basis. Obviously, you will provide feedback to the Independent Commission Against Corruption in relation to resolution of complaints. I assume you will then table material in annual reports. Are they the three ways you are looking at reporting on complaints? Are there any more avenues that you have in mind?

Mr KELLY: If we get to the point where there is a formal inquiry or some such thing then there has to be a special report on that, but in the ordinary course of events in general it would be these periodic reports to the Committee, the annual report and pretty regular feedback under an agreed protocol with the Independent Commission Against Corruption. We send our letter disposing or whatever of a complaint to the Commission and, equally, when we get a complaint in we tell the Commission that we have a complaint in and we seek material from then in relation to it. Simple things like, for example, the chronology of how they dealt with the complaint.

I am keen not to produce an additional layer of a burden for the Independent Commission Against Corruption. We do not want this office to divert them from the main game, so to speak. Nevertheless, a brief chronology is pretty much vital to understanding how they got to where they did and generally we will seek the Operations Review Committee report if it is a complaint about not taking up an issue. If it is a complaint about a report that the starting point is, obviously, to analyse the report.

Mr YEADON (CHAIRMAN): Does the Operations Review Committee have minutes of meetings and so forth?

Mr KELLY: Yes.

Mr YEADON (CHAIRMAN): You can go back through them and see what positions were adopted by a particular agency or representative and the like?

Mr KELLY: That is my understanding, but we have not had an occasion to seek the minutes as opposed to the documentation that went to the Operations Review Committee.

Reverend the Hon. FRED NILE (ICAC Committee): There was a recommendation from this Committee that you report recommendations to the Parliament concerning the Operations Review Committee. I imagine it would take some time before you have some concrete recommendations?

Mr KELLY: Yes. Being completely open about it, I have to understand that process much better than I do at the moment, and I think it will take a little time to understand that process. As I say, I think the priority is really to understand the assessment branch and how it gets to make recommendations to the Operations Review Committee. Once we understand that then it is much easier to form a view about the Operations Review Committee.

Reverend the Hon. FRED NILE (ICAC Committee): In the process I suppose it is better for you to discuss the recommendations with this Committee before you put them formally to the Parliament so that they have some report across party lines?

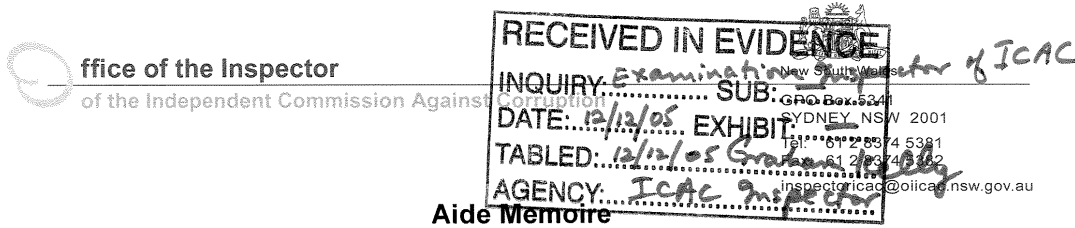
Mr KELLY: Yes.

Mr YEADON (CHAIRMAN): Have you received a particular complaint in relation to the National Parks and Wildlife Service and Mr John Kite?

Mr KELLY: No.

Mr YEADON (CHAIRMAN): Thank you very much for coming along so close to Christmas, and thank you for your continued indication that you will remain in close contact with the Committee. It is very much appreciated by the Committee. I congratulate you on how things are going so far and where you are up to at the present time. It sounds as though things are going reasonably well, notwithstanding a few minor matters. It is very encouraging from our perspective. We look forward to speaking with you again not too far into the New Year to see where things are up to.

Appendix 1 - Aide Memoire



Aide Memoire

Inspector Graham Kelly Meeting with the Parliamentary Committee on ICAC

9.30 a.m. Monday 12 December 2005
Rm 814-815, Parliament House
Macquarie Street, SYDNEY

1. STAFFING:

- 2 positions
- Permanent Executive Officer, Ms. Seema Srivastava, commenced duty on 28 November 2005
- Difficulties in recruiting suitable Office manager. Last round of recruitment unsuccessful.
- Currently recruiting again for the position. Hope to have someone on board prior to Christmas. This is a six month position being offered at a higher grade (5/6) to get the Office up and running. The permanent position at the original grade (3/4) will be advertised in six months.

2. OFFICE PROFILE / ACCESSIBILITY

- Draft information brochure currently being finalised with aim of having it publicly available in early 2006.
- Draft pro forma for complaints developed.

- A policy on interviewing complainants and other witnesses is being developed.

3. RELATIONSHIP WITH ICAC:

- Regular (monthly) meetings with Commissioner occurring.
- Commissioner also bringing matters to my attention which they are currently considering which are relevant to my functions under the Act.
- Meeting next week with Executive Director, Corporate Services to review ICAC budget in detail.
- New Executive Officer has begun to develop relationships with key ICAC personnel. A key focus of her work (alongside the complaints management work) will be developing a sound understanding of ICAC processes and procedures.

4. COMPLAINTS

- 15 received to date
- 9 have been completed. The breakdown of these are as follows:
 - 3 not actionable (i.e. no request for action made);
 - 1 assessed as not involving inappropriate action by ICAC; and
 - 3 assessed as not in the jurisdiction of my Office;

- 1 was anonymous and following an assessment of ICAC's advice on how it dealt with the matter, the file was closed.
 - 1 was referred by ICAC rather than directly, and so was referred back to ICAC with the advice that the complainant should be advised to lodge a complaint with my Office directly if he wished to do so.
- • Out of the 6 active complaints
 - 4 currently being actioned through requests for further information/clarification from ICAC and/or the complainant.
 - 1 is likely to require an interview with the complainant as despite his best efforts, there have been difficulties in obtaining written clarification on key issues.
- ○ 1 was received last week and is currently being assessed.

Appendix 2 – Complaints Procedure Pamphlet



New South Wales



Office of the Inspector
of the Independent Commission
Against Corruption



New South Wales

Contact details:

Office of the Inspector of the
Independent Commission Against Corruption

GPO Box 5341
SYDNEY NSW 2001

Tel: (02) 8374 5381
Fax: (02) 8374 5382

Email: InspectorICAC@oicac.nsw.gov.au

Brochure 1: 1.5.1.06

The Inspector and his role

The Inspector of the Independent Commission Against Corruption is Mr Graham Kelly. He was appointed on 1 July 2005 pursuant to s. 57A of the *Independent Commission Against Corruption Act 1988* ("the Act").

The Inspector is independent of the ICAC, is appointed by the Governor and reports annually to Parliament.

The Act empowers the Inspector to investigate the ICAC's operations and conduct of its officers.

The Inspector's role is to:

- audit the operations of the ICAC;
- deal with complaints of misconduct made against the ICAC or its officers;
- deal with maladministration by the ICAC or its officers; and
- assess the ICAC's procedures concerning the legality of and propriety of its activities.

**Making complaints against
the Independent Commission
Against Corruption**

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Office of the Inspector
of the Independent Commission
Against Corruption

With what kinds of complaints does the Inspector deal?

The Inspector deals with complaints of:

- alleged abuses of power, impropriety and other forms of misconduct on the part of the Independent Commission Against Corruption (“the ICAC”) or officers of the ICAC; and
- alleged maladministration on the part of the ICAC (e.g. delay in the handling of complaints, unreasonable invasions of privacy).

Who may make a complaint to the Inspector?

Any person may make a complaint to the Inspector—provided it is about a matter with which the Inspector is able to deal.

What form should my complaint take?

Complaints should be in writing. You may choose to use a standard complaint form available from the Office of the Inspector. Complaints may be sent via post, fax or email.

Your correspondence or form should clearly outline the nature of the complaint against the ICAC or its officers. It should also provide a summary of any evidence which supports or explains the complaint.

If you seek confidentiality, you should tell us and provide your reasons. Although confidentiality cannot always be guaranteed (because we must balance confidentiality against the need for an effective investigation), we will take your wishes and reasons into account in dealing with your complaint.

What happens to my complaint?

When your complaint is received in writing, you will be sent an acknowledgement from the Office of the Inspector.

Your complaint will be initially assessed and a decision made by the Inspector on whether or not it warrants further investigation.

What happens if my complaint is investigated?

If the Inspector assesses your complaint as warranting an investigation then the Inspector will exercise such statutory powers as he considers necessary to investigate your complaint.

The initial steps of an investigation often involve the seeking of information and submissions from concerned parties. All parties are given reasonable opportunities to present relevant material and arguments on the issues involved. If he considers it appropriate, the Inspector may convene an inquiry with the powers of a Royal Commission.

Reports and further action

In an appropriate case, the Inspector may prepare a formal report, refer matters to appropriate public authorities or officials, or recommend disciplinary or criminal proceedings.

Appendix 3 - Extracts from the minutes of the ICAC Committee regarding the quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005

This appendix contains relevant extracts from the minutes of ICAC Committee meetings of:

- Thursday 1 December 2005; and
- Monday 12 December 2005

regarding the quarterly examination of the Inspector of the Independent Commission Against Corruption for the period October-December 2005.

PROCEEDINGS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

11:15 A.M., THURSDAY 1 DECEMBER 2005
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Ms Gardiner
Rev. Nile

Legislative Assembly

Mr Yeadon
Mr Mills
Mr Pearce
Mr Turner
Ms Keneally

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jim Jefferis, Senior Committee Officer, Ms Phelps, Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Primrose, Mr Tink, Mr Roberts and Mr Price.

2. Previous minutes

On the motion of Mr Mills, seconded Ms Keneally, the minutes of Wednesday 12 October 2005 was accepted as a true and accurate record.

....

6. Inspector of the Independent Commission Against Corruption

Meeting with Inspector

The Chairman noted that he would like to have a meeting with the Inspector of the Independent Commission Against Corruption in mid-December 2005 to formally review the progress in the establishment and operation of the office. Members would be consulted as to a suitable date. A report of this meeting will be prepared and tabled.

....

8. General business

There being no further business, the Committee adjourned at 11:40 a.m.

Chairman

Committee Manager

**PROCEEDINGS OF THE
COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**9:30 A.M., MONDAY 12 DECEMBER 2005
AT PARLIAMENT HOUSE, SYDNEY**

MEMBERS PRESENT

Legislative Council
Rev. Nile

Legislative Assembly
Mr Yeadon
Mr Mills
Ms Keneally
Mr Tink

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jim Jefferis, Senior Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Ms Gardiner, Mr Primrose, Mr Pearce, Mr Turner, Mr Price, and Mr Roberts.

2. Quorum

The Committee Manager reported that a quorum was not present, and advised that this was a result of an unexpected absence of a Member who had indicated he would attend.

As the meeting had been properly called, the Chairman ruled that, for the convenience of the witnesses present, and with their concurrence, the hearing would proceed.

3. Inspector of the Independent Commission Against Corruption

The public were admitted.

**Graham John Kelly
Seema Srivastava**

were called and advised that a quorum was not present.

The witnesses agreed to proceed with the hearing.

The witnesses were sworn.

The Committee examined the witnesses.

Evidence concluded, the witnesses withdrew.

The Committee adjourned at 10:10 a.m.

Chairman

Committee Manager

PROCEEDINGS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

5:00 P.M., WEDNESDAY 29 MARCH 2006
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Ms Gardiner
Rev. Nile
Mr Primrose

Legislative Assembly

Mr Yeadon
Mr Mills
Mr Pearce
Mr Turner
Ms Keneally
Mr Roberts
Mr Price
Mr Kerr

Also in attendance: Mr Faulks, Manager of the Committee, Mr Bjarne Nordin, Senior Committee Officer, Ms Phelps, Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

1. Previous minutes

On the motion of Mr Mills, seconded Rev. Nile, the minutes of Thursday 1 December 2005 and Monday 12 December 2005 were accepted as a true and accurate record.

2. Adoption of evidence taken Monday 12 December 2005

The Chairman reported that at the commencement of the public hearing on Monday 12 December 2005, the Committee Manager had announced that a quorum was not present. As the meeting had been properly called, the Chairman ruled that, for the convenience of the witnesses present, and with their concurrence, the hearing would proceed.

The following exchange occurred:

Mr YEADON (CHAIRMAN): Thank you for your attendance. As you probably heard, the Committee Manager has announced that we do not have a quorum. We do not have a quorum due to an unexpected absence of a Member. We intend to proceed with the

hearing this morning and will incorporate the evidence on a formal basis when we have a quorum present. Do you agree with this arrangement?

Mr KELLY: Yes.

The ICAC Committee then proceeded with the public hearing.

On the motion of Rev. Nile, seconded Mr Turner:

That the transcript of evidence taken on Monday 12 December 2005 be accepted as a record of the Committee.

Passed unanimously.

....

5. Consideration of Chairman's report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005"

The Chairman presented his draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005".

The report, have been distributed previously, was accepted as being read.

The Committee proceeded to deliberate on the draft report:

Chapter 1: read and agreed to

Chapter 2: read and agreed to

Appendix 1: read and agreed to

Appendix 2: read and agreed to

Appendix 3: read and agreed to

On the motion of Rev. Nile, seconded Mr Turner:

That the draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005", be read and agreed to.

Passed unanimously.

On the motion of Rev. Nile, seconded Mr Turner:

That the draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005" be accepted as a report of the ICAC Committee, and that it be signed by the Chairman and presented to the House.

Passed unanimously.

On the motion of Rev. Nile, seconded Mr Turner:

That the Chairman and Committee Manager be permitted to correct any stylistic, typographical and grammatical errors in the report.

Passed unanimously.

....

11. General business

...

There being no further business, the Committee adjourned at 7:00 p.m..

Chairman

Committee Manager