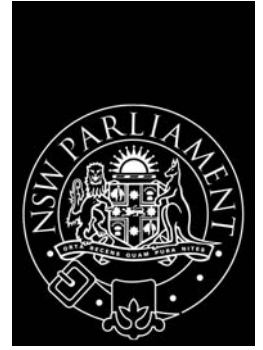


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

QUARTERLY EXAMINATION OF THE INSPECTOR OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION, JANUARY-MARCH 2006

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MEMBERSHIP & STAFF

Chairman	The Hon. Kim Yeadon MP, Member for Granville
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	Mr John Mills MP, Member for Wallsend (Chairman of Committees)
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	Mr John Turner MP, Member for Myall Lakes
	The Hon. Jenny Gardiner MLC
	The Hon. Peter Primrose MLC (Vice Chairman)
Reverend the Hon Fred Nile MLC	
Staff	Mr Ian Faulks, Committee Manager
	Mr Bjarne Nordin, Senior Committee Officer
	Ms Annette Phelps, Committee Officer
	Ms Millie Yeoh, Assistant Committee Officer
Contact Details	ICAC Committee Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 2161
Facsimile	02 9230 3309
E-mail	icac@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au

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

By way of background to this report, it may be useful to draw some distinctions between the roles and responsibilities of the ICAC Committee (formally, the Committee on the Independent Commission Against Corruption) and the Office of the Inspector of the Independent Commission Against Corruption. While there is a degree of complementarity in the overseeing functions of both the Committee and the Inspector in relation to the Independent Commission Against Corruption, the Committee's reporting process highlights the different roles and responsibilities of both entities respectively.

It is the ICAC Committee's responsibility to monitor and review the exercise of the functions of the Inspector of the Independent Commission Against Corruption, to examine each report of the Inspector and to draw the attention of Parliament to matters the Committee consider important, connected with the exercise of the Inspector's functions. The Inspector, on the other hand, has responsibility for the Independent Commission Against Corruption's compliance auditing, complaints investigations, and examining Commission conduct and procedures, with particular reference to legality and propriety. The combined efforts of the Committee and the Inspector serve to safeguard the public interest and provide greater accountability for the Commission's activities.

This second report of the ICAC Committee's examination of the Inspector of the Independent Commission Against Corruption documents the continuing progress made by the Inspector and his staff in establishing the administrative structures and policy framework for the discharge of the Inspector's functions under the Independent Commission Against Corruption Act 1988.

The Inspector of the Independent Commission Against Corruption reported that appropriate office systems and databases are now fully operational and that an explanatory pamphlet providing information to complainants and the public about the work of the Office has been distributed. In response to questions from ICAC Committee members, the Inspector undertook to ensure that this brochure is more widely disseminated to local councils, public libraries and ethnic organisations, so that the broader community can better understand the role and functions of the Inspector and his Office.

The issue of greater public awareness of the work of the Inspector of the Independent Commission Against Corruption is also relevant in the context of current levels of complaints received by his Office. The Inspector reported that the trend is for most complaints to originate from men from a Caucasian background. While the ICAC Committee acknowledges that cultural factors would play a part in initiating complaints, it would also seem to indicate the need for greater public awareness raising within the groups currently underrepresented in the complaints statistics.

In reporting on the processing of complaints, the Inspector of the Independent Commission Against Corruption advised that an interview policy has now been established, involving the executive officer and the office manager. However, due to resource constraints, such interviews will only be conducted where complainants are impaired in their ability to provide written complaints. The Inspector further indicated that a number of criteria are being developed as a basis to accept or reject complaints.

As the complaints process is a key element of the activities of the Inspector of the Independent Commission Against Corruption, the ICAC Committee will be keen to monitor progress on the conduct of complaints in order to ensure that those wishing to make complaints do not feel that they have been disadvantaged or denied procedural fairness.

A significant issue raised during the examination relates to the absence of a power in the Independent Commission Against Corruption Act 1988 for the Inspector to remit decisions back to the Commission for reconsideration. According to Inspector Kelly, the only remedy for a complainant to reverse a Commission decision is a judicial review to the Supreme Court, which would be both time consuming and costly. The consequence of this situation is that a report making an adverse comment about the Commission's handling of a complaint or investigation does not provide an avenue for the adverse outcome to be redressed for the complainant. It is the view of the Inspector that it will serve the public interest to have legislative reform in this area. A proposed remedy could involve a change to Section 57C of the Independent Commission Against Corruption Act 1988 to enable the Inspector to resubmit decisions back to the Commission for reconsideration where, in his view, there is the basis for such action.

The ICAC Committee, during previous examinations of officials of the Independent Commission Against Corruption, has made similar observations concerning the lack of a merits or judicial review of Commission findings. This is particularly with reference to providing an opportunity for the Commission to re-examine evidence and findings of facts during investigations leading up to the referral of a matter to the Director of Public Prosecutions, in light of subsequent acquittal in court proceedings. It may also have the effect of exonerating and clearing a person's reputation found not guilty of corrupt conduct.

The ICAC Committee will give further consideration to this proposal, in light of the testimony of the Inspector of the Independent Commission Against Corruption.

The ICAC Committee notes that the Inspector of the Independent Commission Against Corruption developing a business plan containing performance indicators for 2006/07, including oversight information about arrangements for managing briefs and prosecutions by the Commission and the Director of Public Prosecutions. In addition, the Inspector's Office is preparing a list of audit projects with a target of completing one such project by 30 June 2006. The Inspector has indicated that he will report on all these activities at the next quarterly examination before the Committee.

Finally, the Inspector of the Independent Commission Against Corruption reported that he has developed a good working relationship with the Commissioner and that remote electronic access to Commission files and documents was about to be provided, thereby enhancing the Inspector's ability to gather information more efficiently. The executive officer of the Inspectorate has also been meeting with Commission staff to familiarise them with the work being carried out by the Inspector.

The ICAC Committee looks forward to receiving further details about the work of the Inspector of the Independent Commission Against Corruption at the next quarterly examination, as policies and procedures are further refined and developed.

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 Wednesday 29 March 2006. 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.

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.

Previous quarterly examinations of the Inspector of the Independent Commission Against Corruption, July-September 2005 and October-December 2005

The ICAC Committee has conducted two quarterly examinations of the Inspector of the Independent Commission Against Corruption, covering the periods July-September 2005 and October-December 2005. On both previous occasions, Mr Graham Kelly, Inspector of the Independent Commission Against Corruption, and his Executive Officer appeared before the Committee. No formal report was made of the first quarterly review. The ICAC Committee reported on the second quarterly review in a report tabled on 5 April 2006.

CHAPTER TWO – Quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006

This chapter contains an edited transcript of the quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006, which was conducted by the ICAC Committee on Wednesday 29 March 2006.

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.

HON. Kim YEADON MP (CHAIRMAN): The ICAC Committee would like to welcome to our meeting the Inspector of the Independent Commission Against Corruption, Mr Graham Kelly, and the executive officer of the inspectorate, Ms Seema Srivastava.

The ICAC Committee and Inspector Kelly have instituted the practice of conducting regular quarterly examinations to discuss issues of mutual interest to Committee members. The meeting today is the third such meeting held since the appointment of Mr Kelly and follows the previous meeting conducted on 12 December 2005 where matters relating to the administration of the Office of the Inspector of the Independent Commission Against Corruption and its relationship with the Commission were explored on a preliminary basis.

The examination today will continue to pursue matters relating to the efficient and effective exercise of Commission powers as well as outstanding issues raised in earlier examinations of the Inspector conducted last year. In addition, it will provide an opportunity for the Inspector to provide the Committee with an update on recent developments and to highlight matters of concern to him.

I am advised, Mr Kelly, that you have been issued with a copy of the ICAC Committee's terms of reference and also a copy of the Legislative Assembly's Standing Orders 332, 333 and 334, which relate to the examination of witnesses. Is that correct?

Mr KELLY: Yes, Chairman.

HON. Kim YEADON MP (CHAIRMAN): I draw your attention to the fact that the evidence you shall give is privileged and you are protected from any legal or administrative action that might otherwise have been able to be taken with regard to your evidence. Do you wish to table any documents relating to the matters under examination in this hearing at this time?

Mr KELLY: No, Chairman, but in accordance with the practice that we have adopted, I have an aide-memoire of what I am proposing to say, which I will leave with the Committee.

HON. Kim YEADON MP (CHAIRMAN): Would you now like to make an opening statement before we move on to questions?

Mr KELLY: Thank you. Chairman, I should also introduce the third member of the team, Ms Jeannine Lake, who we have on secondment from the Attorney's General Department to fill the office manager position. I will, in the course of my presentation, address the staffing complement of the office, but Ms Lake has been brought on board and has helped mightily in the setting up of the office.

HON. Kim YEADON MP (CHAIRMAN): Do you feel it appropriate that she be sworn for evidence or is it not necessary?

Mr KELLY: It is not necessary unless the Committee would wish to ask Ms Lake questions, but with the Committee's indulgence I thought it would be useful for the Committee to meet Ms Lake and frankly we want this office to work as part of a team and therefore it is important for all members of the team to see how the system works.

Also, Chairman, with the Committee's indulgence, towards the end of the deliberation today I would seek the opportunity to make some observations to the Committee in camera, but that would be, if the Committee so agrees, later on in the proceedings.

If I then could start with my opening address, the first item is staffing. We now have our full staffing complement. The executive officer, Ms Srivastava, has been on board, as you know, since December 2005. Ms Lake has been on board as the office manager since January 2006. We also have currently a temporary from an agency undertaking basic clerical duties to assist in the catch-up of the establishment of the office. The current temporary will finish with us towards the end of April 2006 and we would propose to engage another temporary for a short period of time.

The office infrastructure itself, I am now pleased to inform the Committee, is practically fully set up. We have all of our furniture, we have the equipment that we need and, most importantly, we have in place pretty sound and secure administrative systems, including a file management system. We have spent a good deal of time and attention on ensuring that we put in place from the beginning a satisfactory file management system. We anticipate that over time it is necessary to check back on what we have done, how we do it, and keep a reasonable statistical tracking of our activities. We are also, in the same vein, currently setting up a database management system to manage complaints that have come in.

The next big topic that I would like to mention is the office profile and accessibility. Since we last met we have issued our brochure: *How to Make a Complaint*. We have mailed that out to all New South Wales Members of Parliament and a bunch of relevant agencies, including some Federal agencies, in February. This brochure is also routinely sent out to people who make inquiries of us about how to go about complaints. The website will be up and running in the next couple of weeks. We do have a basic web-related contact, but the full-blown site will be up and running in the next couple of weeks and the office staff have been instrumental in the design of that. They have had external support as well, but that has been quite an achievement with the small staff available. I take no credit for that myself, that is all due to the staff. That site will be linked to and provide links to the Independent Commission Against Corruption website and other relevant websites, as you would expect.

Chairman, I then turn to the workload itself. When I reported to you in mid-December 2005 we had received 15 complaints, nine of which had been completed and six active. As of today we have had a total of 30 complaints: 11 have been closed and 19 are active. I might take the opportunity of mentioning a brief breakdown of those complaints. Three were not

within the Inspector's jurisdiction; four have not been substantiated; two have been referred back to the Independent Commission Against Corruption for resolution in the first instance and two of them were not actionable. I think on the last occasion I reported that three were not actionable; however, since then one complainant has come back in a way that is actionable. In recent times there has been quite a significant kick-up in the number of complaints and we have been receiving between one and three complaints on average a week. This increase in complaints could be due to people with longstanding issues becoming aware of the role of the Inspector and we will monitor that as time goes on. In particular, we will monitor this volume of complaints as impacting on our resources.

I might make some comments on the trends that we have observed in relation to complaints: The overwhelming majority are from men and only a couple have been from women. An overwhelming majority have been from people of a Caucasian background and, interestingly, this mirrors the Independent Commission Against Corruption's own statistics. I have no obvious explanation for either of those phenomena, but there they are.

The majority of the complaints relate to maladministration rather than illegality on the part of the Independent Commission Against Corruption. We have developed a working definition of maladministration for our own purposes and that is based broadly on the definition of maladministration that the Ombudsman has traditionally used. It is nevertheless a very wide definition of maladministration, but we have tried to put some fabric around the way in which we would approach that issue. I think that is very important because it would be all too easy for the Inspector to fall into the trap of effectively putting anything under that head and I think that could have the effect of significantly distracting the Commission's own workload and performance.

Interestingly, the majority of complaints to date relate to conduct prior to 1 July 2005 with only a few complaints concerning conduct by the Independent Commission Against Corruption or its officers in the past 12 months. I personally take a pretty high level of comfort from that. When we are looking at the priority to give to complaints then obviously we give lower priority to older complaints than to more recent ones, basically in terms of the rational allocation of resources.

I should also mention another significant activity that we have undertaken and that is to develop a number of policies to drive us forward. I personally have the philosophy that organisations are much better right from the beginning to have a policy framework within which to work, even if you have to change the policy, so that you are not just floundering around ad hoc. Hence I advised the Committee in December 2005 that we were developing an interview policy. This has now been developed. The main criterion underpinning the policy is that interviews will only be conducted where the complainant is impaired in their ability to provide a written complaint. A number of people have rung up and wanted to complain orally or, in particular, wanted to meet with me in a very open-ended way. We took the view that, first off, there is a real allocation of resources issue in doing that, but secondly, and much more importantly, given the serious nature of this function, that the end result could be a finding of maladministration or illegality against an integrity commission, then it is appropriate that as far as possible the basis of it be articulated in writing and not left to a relatively amorphous oral discussion. However, if the person has some kind of disability that impairs their capacity to communicate in writing then the policy involves the proposition that Ms Srivastava will interview them in company with Ms Lake and a record is kept. For example, the other day a person rang up wishing to complain and said that he has great difficulty seeing and that it would take him a long while to reduce this complaint to

writing. On that basis we have agreed that Ms Srivastava will interview him orally. As I mentioned, all interviews are recorded and a copy of the recording is given to the complainant.

I mentioned that we are in the process of formulating a policy on accepting and rejecting complaints. We have developed a number of criteria that I would hope to articulate formally in due course to ensure that we use our limited resources most effectively.

The Committee I know from the beginning has been interested in our planning process. To that end we have finalised a business plan for the remainder of 2005-06 and we are well down the track on a draft for 2006-2007 and I hope to be in a position to make that business plan available to the Committee on the occasion of our next meeting.

In terms of the 2005-2006 business plans, the deliverables in terms of establishing the infrastructure and the systems of the office have all, I am pleased to say, been met. There have been a few slippages in terms of the timeframe, but for the most part that has been reflective of the extra workload that has come from some of the complaints and also the obvious need to rely on external parties who regrettably do not always perform on time, but the important thing is that, despite some slippage, I can tell you that the deliverables in that work plan in terms of setting up the infrastructure in the systems have been achieved. While timeframes have been, in this setup period, a key measure of our performance so far, further performance indicators for us are being developed which we will monitor and report to the Committee on. These will be in place in time for the implementation of our 2006-07 business plan and I will outline those at the next meeting with the Committee if I might, Chairman.

There are a couple of constitutional issues in a sense. One of the issues that I have identified as being something of a flaw in the legislation is that we do not have power to refer an issue back to the Independent Commission Against Corruption for reconsideration. We can make a finding of illegality or a finding of maladministration but that does not change the basic Commission position. A complainant is then left in the position where their only remedy in terms of changing the decision is to approach the courts. This is both time consuming and very expensive and, in any event, might not be undertaken by the complainant for many reasons. It has occurred to us that the legislation could be improved if the Inspector had the capacity explicitly to refer a matter back to the Commission for reconsideration in the light of the Commission's conclusions. I know that from my relationships with the Commissioner that the Commission would obviously be most concerned to take our conclusions into account but nevertheless in terms of a formal result I would suggest that consideration in due course be given to that change to the Independent Commission Against Corruption Act 1988. I should say that I have not taken that matter up with the Government, but would propose to do so in due course.

Moving on, I note that in the December 2005 report of this Committee there was a number of recommendations in relation to the Inspector and we have all of those under consideration one way or another. I want to refer to one in particular and that was the recommendation that the Inspector oversee the relationship between the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions in managing briefs and prosecutions. The reporting time for this was within six months. That recommendation and the other recommendations have been incorporated into our business plan but, in connection with that recommendation, I should inform the Committee that I met with the Director of Public Prosecutions who, as things happen, has been a long-term colleague of mine for

many, many years. I met with him yesterday and had a discussion with him about the matter and I have always discussed it with the Commissioner. I guess that the Committee is aware, but in any event it is the case, that a Memorandum of Understanding was entered into between the Director of Public Prosecutions and the Commission in October of last year. I am told by both the Director of Public Prosecutions and the Commissioner that that Memorandum of Understanding and the arrangements in it are working satisfactorily and, in particular, the time frameworks within that Memorandum of Understanding are being achieved.

I should say that the impression about the difficulties of the past that I gained from them both, and I am not speaking out of school in reporting this as they know that this is the impression that I gained, is that it was a bit like a game of snakes and ladders without any ladders. By that I mean this: the operations area of the Independent Commission Against Corruption would prepare the brief of evidence for the Commission's own purposes, which are fundamentally different in many ways than a prosecution, because their role is to expose corruption and if need be make findings of corrupt conduct, and then refer matters to the Director of Public Prosecutions. The Director of Public Prosecutions's role is to prosecute a case based on admissible evidence. The Commission can act on hearsay. It can act on evidence compelled from a witness who has claimed privilege in relation to it, whereas that cannot be acted on in the courts, so the primary focus of the operations area has in the past been predominantly to service those functions of the Commission.

The Independent Commission Against Corruption then has proceeded with its work and come to a conclusion that the matter should be referred to the Director of Public Prosecutions, so the brief is sent down, allocated to a solicitor in the Director of Public Prosecutions who would go through it and may well come to the conclusion that a whole bunch of the evidence is not in an admissible form, and then send it back to the Commission for further interview of witnesses or for the obtaining further evidence, or what have you, but by then of course the focus of that strategic operation's area has moved on to the next Commission case, and this has already been dealt with, so you get some time lags there. Eventually it has in the past gone back to the Director of Public Prosecutions again, generally speaking back to the same solicitor, but the solicitor in the meantime has moved on from that file and in a sense has to go back, not quite start again, but really reopen the file. So, as I say, it is like snakes and ladders without any ladders. The Director of Public Prosecutions has got to there, suddenly goes down to there, and has to work back up again.

The Memorandum of Understanding has sought to address that, plus the fact that the strategic operations area, particularly under Clive Small's leadership, is now much more focussed on getting the evidence that will be used in the Independent Commission Against Corruption itself in a form that can subsequently be used by the Director of Public Prosecutions, so I am reasonably confident at the moment that you will see a material improvement in the relationship and in the timeliness of results from that process. Nevertheless, I will report in detail within the timeframe that the Committee indicated earlier.

My next topic is audit projects. A list of possible audit projects has been identified. I will give you some examples. A possibility is to look at the issuing of legal processes such as search warrants and follow through that process. The outcome that we would be seeking to establish is to ensure compliance with relevant laws. Another possible topic is auditing the procedural fairness of the processes to ensure that appropriate natural justice requirements are met and that appropriate notice is given to people and what have you.

Another area that we have identified as a possible process to audit is decisions of the Independent Commission Against Corruption not to investigate. As I think I have mentioned to the Committee before, the preponderance of our complaints have been complaints that the Commission did not take up. We, with a couple of possible exceptions, I think I can say to the Committee, have not identified major errors in doing that but the process itself obviously generates a lot of angst, particularly from complainants, and therefore it is one that is fairly obvious to audit and to report to the Committee on. That, however, I detect will be a fairly large exercise and I suspect that we cannot do that in this financial year.

I should also say that we have sought the Independent Commission Against Corruption's input into what should be audited and the way in which we should go about auditing it. The framework or the mindset that I have adopted in that is frankly based on my corporate experience where nowadays the relationship between a board and the auditor is no longer about ensuring that the number of pennies in the drawer correspond with what is in the books. It is a much more process integrity kind of approach and normally the audit committee of the board would agree with the external auditor, the audit plan for the year, and the auditor would then work through that audit plan in conjunction with the corporate executives and report back to the audit committee and that is the broad framework that I seek to achieve with the Commission. I think that will be more productive from their point of view, frankly more enjoyable from my point of view and, I think, produce better quality results for this Committee than a more narrow and less interactive process.

Other issues: As you know under section 57B(d) the Inspector is required to assess the effectiveness and appropriateness of the procedures of the Independent Commission Against Corruption relating to the legality and propriety of its activities. Frankly we do not intend to commence work on this component of our functions until next financial year just in terms of prioritising our resources, but our current work in dealing with complaints and in looking at the projects that we will undertake in the audit process, I think, will provide a basis for moving forward on that in the next financial year.

I then get to the recurrently difficult issue of the budget and the resourcing of the office. We have effectively been funded this financial year out of the Premier's department allocation and I have no complaints at all about the resources that have been provided to us and we do not anticipate that there will be major issues for next year subject, I think, to one thing and that is that in the event that we had to conduct a formal inquiry or we have to engage counsel on a major matter, then we will have to seek extra funding for that, but I should say that there has been no indication from the government or the Premier's department or anyone else that that funding in appropriate form would not be forthcoming. I mentioned to you in connection with the introduction of Ms Lake that we have reviewed the resources required by the office. You may remember that the proposition originally was an executive officer and an office manager. Frankly, the three of us have come to the conclusion that that will not work and that we do need a little more resources than that.

In particular, I think if you look at the level of performance that is required from the people on either side of me here, the gradings are wrong and we are seeking to do something about that, but I think also the truth of the matter is that we need a person who spans being a receptionist and can help with a bunch of the other administration, the filing and appointments and what have you. We have been using the temporary very successfully. Regrettably she is a temporary and regrettably she is here on a working visa and will move on, but that is life. However, I should foreshadow to the Committee that I will be seeking

approval for a third person in the office to make it functional. It is a very lonely office, among other things, and we do not have too much backups. If one is on leave or one is sick or some such thing as that, there really is not much in the way of backup and I do not think that is satisfactory.

I want to come on to the relationship with the Commissioner. Some of you know that there was recently a seminar, organised by Mr Faulks and others, of integrity agencies at which the Commissioner spoke and I spoke and each of us were able to say that the relationships were extraordinarily good. I am pleased to say that the relationship between the Commissioner and me, from my point of view, could not possibly be better. It is one of openness, it is one of frankness, and it is one of collegiality. That is not to say that we hold each other's hand or anything like that. There is a recognition that the interests are different but it is a cooperative and productive relationship and, most importantly, it is one of openness and frankness.

I should also say that as part of a process of getting to know how the Independent Commission Against Corruption works, the executive officer, Ms Srivastava, and Ms Lake have been meeting with the different divisions of the Commission over the last few weeks, providing Commission staff with an overview of the work that we are doing, introducing ourselves to them, and generally getting to understand the organisation better from inside of organisation. Requests for material from the Commission have been met with relatively fast turn around. Some of our requests have been, I think it is fair to say, a bit burdensome on them. They have other things on their table obviously but they have provided everything that we have requested within a reasonable period of time. Most importantly, with a bit of luck, tomorrow we will establish electronic access to their material and basically the only exceptions will be personnel files that are not kept in electronic form within the Commission itself and for which there are obvious privacy issues and what have you.

Of course if it is relevant to a particular inquiry or complaint, then we can get access to those files but in terms of day to day access we do not want that and we do not need it and equally we will not attempt electronically to access the internal e-mail system of the Independent Commission Against Corruption but, again, if we need that for an inquiry that is available to us. With a little bit of luck, if I had been here tomorrow night instead of tonight I could say that that has been successfully achieved. However, many years' experience with technology suggests that it is premature for me to tell you that tonight.

HON. Kim YEADON MP (CHAIRMAN): I think that might be right.

Mr KELLY: I alluded to the fact that I made a presentation in late February at the parliamentary conference, which outlined the establishment of the office; it outlined the legislation and it outlined our current priorities, and copies of that for those of you who do not otherwise have them are available.

So, Chairman, that is a quick update on what we have been doing for the last three months. I want to place on record my tremendous indebtedness to the staff that have been working for me. As everyone knows, I am very part-time in this and the office simply could not have been successfully established without absolutely stellar performance by the staff.

HON. Kim YEADON MP (CHAIRMAN): Thank you very much for that report, again a very illusive and comprehensive outline of what you have been doing and where you are up to at the present time. I would indicate to you that the Committee has had a couple of complaints

in relation to access to you as the Inspector, but your explanation of the processes that you have put in place of how you go about receiving complaints and interviewing has satisfied any concerns I have had in that regard.

In relation to the memorandum of understanding that exists between the Independent Commission Against Corruption and the Director of Public Prosecutions, you have indicated that Clive Small in his activity will now be taking into account the ultimate end of having admissible evidence for the Director of Public Prosecutions to work with. Given clearly what you have said, that there has been a tension in the past between I suppose exposing corruption as opposed to finding or prosecuting a criminal conviction, with your great experience, including legal experience, looking at that memorandum of understanding, you feel that that will not inhibit the the Commission in any way in terms of the agenda of exposing corruption whilst trying to gain admissible evidence? Given that you know that, even though there is a memorandum of understanding, that tension must still exist between exposing corruption and gathering admissible evidence, you are confident with the memorandum's terms that the initial proposal will not be prejudiced by the fact that Mr Small will be looking more to get admissible evidence for subsequent trials?

Mr KELLY: I would like to say two or three things on that, and firstly I would like to reserve my judgment on the question that you have raised because I think it does raise a number of issues and I will come back to that, if I might. Secondly, I think in the past one of the problems that has occurred in strategic operations is that their investigators have not necessarily had the kind of experience that senior police have in terms of putting together briefs of evidence from the beginning. It is a different experience and a different approach and I think one of the things that Small brings to the position is enormous experience in doing exactly that.

The second thing that I would say, and I have said this before to this Committee and in other circumstances, I think one of the things that is an issue with the Independent Commission Against Corruption is training across a number of areas. It may not be unique to the Commission in the public sector, but in my private sector life nowadays quality organisations pour enormous resources into training their people, and training them not just internally by osmosis and example but training them in a pretty formal way. For example, if I go back to my old law firm, the total training input now compared with 20 years ago is just massive, and it does that to maintain its competitive edge. I do not see the same emphasis on training in the Commission and I think in a sense if you really wanted to make a qualitative difference in the organisation you would allocate resources to that. That is all easier said than done because they are strapped for resources, but I think with experienced people like Clive Small you do get a focus on that and he has certainly told us that.

The point that I really want to come back to in connection with my reserving judgment is a point that I have mentioned both to the Commissioner and also to the Director of Public Prosecutions. I think that when you look at what the Independent Commission Against Corruption does in a functional sense, leaving the actual terms of the statute a bit to one side but looking at it as if you were running a business, it does a number of things that are inconsistent with one another and those inconsistencies produce conflicting demands on resources that cannot easily be resolved and certainly cannot easily be resolved by the staff. So I am not too sure that, whatever you do to try to improve that flow of information in admissible form to the Director of Public Prosecutions, you will ever quite fix that conflict of functions. Whether that impression will ever reach a level where I would come before this Committee or to the Government and recommend that there be major changes in the way the

Commission is expected to operate, I am not sure yet, but I would not be surprised if at the end of my term of office my recommendation is that there be quite a significant review of that. I am not alluding to a legalistic review like the previous judicial reviews but rather an operational defining your core business kind of review.

HON. Kim YEADON MP (CHAIRMAN): Your response to that question has reminded me of something that you noted at your last report, which was the high staff turnover in some divisions of the Independent Commission Against Corruption, one of them being the initial complaint processing division within the Commission.

Mr KELLY: Yes.

HON. Kim YEADON MP (CHAIRMAN): Have you gained any further insight into that staff turnover? Is it related to the sort of matters that you have just spoken about?

Mr KELLY: I have not gained any further factual insight into that. I think that is the only fair thing I can say: No, I have not progressed that any further. That is obviously something that would come out in an audit of that activity.

HON. Kim YEADON MP (CHAIRMAN): You have indicated the need for an additional staff position. Would it be of assistance to you if this Committee wrote to the executive supporting the creation of that additional position?

Mr KELLY: I could hardly say it wouldn't, Chairman, but could I say this: Let me have a go at it first and if the Committee is happy I would then come back to the Committee and seek some assistance.

HON. Kim YEADON MP (CHAIRMAN): In relation to that, while you have pointed out the role of other staff positions, I wonder if you could report to us on your own role given that you have obviously been doing a lot of work and it is a very part-time position. How are you finding the timeframe that you have yourself within which to work? Is it adequate?

Mr KELLY: It is, but let me try to be descriptive rather than giving a quantitative answer. My remuneration arrangements are a very small retainer and then a per diem amount, which is a sort of square box approach to it where it is fine if you go in from 9 until 5 on any particular day. That is not the way I work and it is almost impossible for me to work on that basis. I think the truth of the matter is that one or other or both of the people sitting next to me have contact with me several times every day. On some days it probably gets a bit tight, but for the most part, from my point of view, that has worked very well and I should say that has been assisted by the quality of the material that they produce, but in fairness to everyone maybe I should ask Ms Srivastava to comment on that.

HON. Kim YEADON MP (CHAIRMAN): Ms Srivastava, do you have any comments on that? Is the boss around enough?

Ms SRIVASTAVA: The Inspector is extremely astute in knowing what is going on in the office and I think that is because we have set up a working arrangement where we do have regular telephone contact several times a day if required. He is very good at keeping us briefed as well. I think what really assisted certainly myself, and I think I have now been able to pass that on to Ms Lake, is from the very beginning he has been extremely clear about his strategic priorities, that the complaints work should not overwhelm our resources, that we

should address things in a timely way but also focus in terms of having a business plan that sets out our priorities and lets us work systematically and methodically through issues, and the other thing that was made very clear is to make sure that we have a very constructive and cooperative working relationship with the Independent Commission Against Corruption. Certainly when I met with the Commission staff I said to them, "While I'm not particularly religious, it is like working with a god: He's kind of omnipotent and everywhere", so I think it has been very effective, but that is because of the Inspector's particular skills.

HON. Kim YEADON MP (CHAIRMAN): What I draw from that, Inspector, is an indication of a high level of personal commitment yourself to the position. From my personal perspective, and I am sure it is shared by my colleagues, I want to see your office and position be successful, so could I encourage you, if you find over time that, while community service is a great thing, it does have its limits, you may wish to raise that with us so that we can raise that with the executive on your behalf?

Mr KELLY: The broad approach that I have taken to it is exactly the same approach that I have taken to corporate chairmanship, which is very different from ordinary corporate directorship, where you have to be on tap at very short notice and you cannot pre-ordain the amount of time that you put in. You put in what you need to put in when you need to put in. It is just that I have very great difficulty in reducing this to a number of days per month in a system where I can say, look, there's the time written down precisely.

HON. Kim YEADON MP (CHAIRMAN): I accept what you say, but I suppose through experience you will come to find how much you do need to put in and, because there are limits to everything, if that is beyond reasonable limits then I would encourage you to raise that with the Committee.

Mr KELLY: I might very quickly share with the Committee one little thing that we did. I thought about this and I thought in terms of how many of these positions could I take on. I said I clearly could not take on five; I am pretty sure I could not take on four, but I could probably take on three. Then I thought when you divide five days by three you get around about a day and a half. I went then back and looked at my invoices and on average it had worked out a day and a half. So that probably is about right.

Reverend the Hon. FRED NILE MLC (ICAC Committee): You mentioned the problem of not being able to refer back to the Independent Commission Against Corruption. Is that because there is no power within the Act?

Mr KELLY: Yes, that is right.

Reverend the Hon. FRED NILE MLC ICAC Committee): Or is it specifically prohibited?

Mr KELLY: No, it is not prohibited; there is no power.

Reverend the Hon. FRED NILE MLC (ICAC Committee): Is there anything to stop you doing it then?

Mr KELLY: Not on an informal basis and I am sure the Independent Commission Against Corruption would be very supportive of doing it on an informal basis, but if you have a particular finding or conclusion then there is no way of saying to the Commission: Please have a look at it again under this provision and reconsider the matter. Say you had a finding

of corrupt conduct and there was complaint about that and I then looked at it and said, well, the Commission got it all wrong, the finding of corrupt conduct nevertheless stands unless it is turned over by the court, whereas I think it would be useful simply to refer it back and say, well, you'd better have a look at it again taking this into account. The court system does that regularly effectively and that is the basis of it.

Reverend the Hon. FRED NILE MLC (ICAC Committee): So you could refer it back, but there is no way you could make the Independent Commission Against Corruption do anything?

Mr KELLY: That is exactly right.

Ms KENEALLY MP (ICAC Committee): Members of this Committee have often expressed concern that sometimes people take complaints to the Independent Commission Against Corruption for rather spurious reasons, perhaps to unfairly shame people before they have actually had a finding of corrupt conduct against them. The case you have put forward where the Commission has found corrupt conduct and someone wishes to appeal against that, that seems fair enough, but it would seem there is a possibility that if a finding of no corrupt conduct was found somebody could further that spurious complaint by taking it on to the Inspector, further the public mud-slinging that arises out of making a complaint to the Commission, and I was just wondering if you had given any consideration to that? It would actually allow spurious complaints another avenue through which to live on.

Mr KELLY: Look, Ms Keneally, I think this is one of the great risks with the Office of Inspector and right from the beginning I have been concerned that the creation of this office should not be used to disrupt the proper function of the Independent Commission Against Corruption. Indeed, when I was first approached by the Premier I raised this as a risk and said that one of the things that I would be very concerned to ensure was that whilst you have to ensure that the Commission operates properly, that this is not used simply as a mechanism for undermining the Commission. I think that at the end of the day whether that happens or not is going to depend a heck of a lot on my judgment. That is not a very satisfactory answer, but it will depend a heck of a lot on my judgment. It would be easy to fall into the mistake of making unnecessary findings against the Commission. When I met with the divisional heads of the Commission, very shortly after my appointment, I said to them that it would be a very serious finding by me to find that the Commission had engaged in illegal conduct. I mean, you just have to state it to see that this is a pretty serious matter and that is one of the reasons that I am so insistent, except for people with disabilities or some sort, that they must put their complaint in writing, say what the complaint is, and allude to the evidence, rather than relying on assertions and allegations. You have to look at the end game and there is that risk. I cannot do other than to promise to you to use my best judgment to guard against that. If I make mistakes, well, I have to bear the responsibility.

HON. KIM YEADON MP (CHAIRMAN): People come and go, so if we can get the proper statutory provisions around the whole framework that is a better proposition for everybody, the Office of the Inspector, the Independent Commission Against Corruption and indeed this Committee and the general community.

Mr KERR MP (ICAC Committee): Just arising from your opening statement, I think you said you are going to adopt the definition of maladministration that the Ombudsman uses. What is that definition?

Mr KELLY: It is quite extensive. Rather than reading it out, could I provide you with a copy?

Mr KERR MP (ICAC Committee): Yes.

Mr KELLY: It is only a working document at the moment and we would intend to put it in a more easily understood form and publish that on our web site in due course. Basically it is the things that you would expect, a breach of natural justice, a breach of procedural fairness, inadequate or no notice given to people who are going to be affected, incorrect interpretations of the law, improper exercise of delegated power and so on, but rather than cite chapter and verse now, if we could provide you with the current draft.

Mr KERR MP (ICAC Committee): Certainly. In relation to the priority you give to complaints, I think you said that you give priority to more recent ones rather than earlier ones. I would have thought seriousness would have been one criterion in relation to complaints that would generate priority.

Mr KELLY: It very much is, absolutely, but in terms of the older ones we probably require a higher degree of seriousness than a more recent one. It depends a bit what the complaint is based on. Obviously if it is a decision not to pursue a complaint and the complaint is not about serious or systemic corruption, then we tend to give lower priority to it.

Mr KERR MP (ICAC Committee): I think this relates to what Reverend Nile raised and that is the remedy available to you when the Independent Commission Against Corruption gets it completely wrong, and I think you said you would be making recommendations to the Government in due course. Do you have a timeframe?

Mr KELLY: I have not thought about a particular timeframe but I think I am in position to make a recommendation now.

Mr KERR MP (ICAC Committee): It is an urgent problem though, is it not?

Mr KELLY: Yes.

HON. Kim YEADON MP (CHAIRMAN): This Committee might deliberate on that matter at the conclusion of this hearing and decide whether or not it wants to forward correspondence to the Executive indicating that that is an area that needs attention.

Mr KERR MP (ICAC Committee): No doubt at various times you would be seeking legal advice in terms of complaints?

Mr KELLY: Yes.

Mr KERR MP (ICAC Committee): Would you be instructing outside counsel, or where would you obtain legal advice from?

Mr KELLY: I was talking about instructing outside counsel. As things turn out, both Ms Srivastava and I have current practising certificates. There has been a little bit of discussion with Premier's Department about whether we should use the Crown Solicitor. I take the view that we should not use the Crown Solicitor. At the end of the day the Independent Commission Against Corruption jurisdiction is primarily in relation to the public sector and I

think that the independence of this office requires us not to be reliant on the Executive Government in that way and my approach would be to instruct counsel independently on our own.

Mr KERR MP (ICAC Committee): There may be, in relation to complaints, a need to investigate factual matters and whatever. Would you see the need to have professional investigators?

Mr KELLY: Not generally, Mr Kerr, not generally, because most of the material will either be available to the complainant or available from the access to the Independent Commission Against Corruption files. We are quite unlike the Commission itself, which has jurisdiction over, in a sense, the rest of the world. We have only jurisdiction over the Commission and the complaints are against the Commission. We can get most of the material we need to form a view from the Commission's own files. That is one of the reasons I have been anxious to achieve direct electronic access so we are not reliant on identifying documents out of the air, so to speak, and then writing to them and saying please give us any documents on this. Hopefully, as of Friday morning, we will be able to go in and see the document itself.

Mr KERR MP (ICAC Committee): If it was necessary to institute an investigation to determine the facts, where would you get the investigators from?

Mr KELLY: We have not got to that point and I think it is a very good question and I do not have a current answer to it. I can only address that when faced with the issue. I think there will be an issue about whether we can have access to the police force to help us. We cannot under any scenario employ our own investigators because we just do not have the volume of work that would justify that, so we are simply going to have to rely on other investigative agencies if need be, although I am satisfied that in the vast majority of situations that the issues will be able to be resolved effectively on the papers or by interviewing Independent Commission Against Corruption staff.

Mr KERR MP (ICAC Committee): I do not wish to verbal you, so I may have this wrong, but I rather gathered from your answer to the Chairman, you talked about a number of functions that the Independent Commission Against Corruption presently perform that were inconsistent. Is that a fair summation of what you said?

Mr KELLY: It is, absolutely.

Mr KERR MP (ICAC Committee): What are those functions which are inconsistent?

Mr KELLY: It is a question of your core activity and prioritising your resources. On the one hand there is the corruption prevention division, which is a bit like an academy in some ways, in that it thinks about what issues are and how you can minimise the opportunity for corruption by having different processes. For example, without expressing a view about the outcome, its discussion paper on planning processes before Christmas I think was a very important piece of work. Why do I say that, because 20 per cent of the complaints relate to the planning process. It puts an enormous strain on resources. So is there some other way of having a planning process which further minimises the risk of corruption in that area? That corruption prevention function is enormously important, but if your priority is to conduct an Orange Grove inquiry, or some such thing as that, then a lot of your resources are dragged away on that. Then if your strategic operations people are doing the investigation, maybe wire taps or surveillance of some sort to get evidence in connection with an Independent

Commission Against Corruption inquiry that can only go to corrupt conduct, whereas there has already been a recommendation for the prosecution on something else, and they are dragged away from that to prepare a prosecution brief on that, you start to get tensions of an enormous sort internally and I think it leads to a measure of internal dissension, to be frank, and it certainly leads to a funding issue.

HON. Kim YEADON MP (CHAIRMAN): We will take a question from Mr Mills and a brief question from Ms Keneally. I do not wish to prevent members asking questions of the Inspector but he indicated that he had another matter to raise with us so we will take those questions and then move onto the next matter that the Inspector wanted to speak to us about in camera. If time permits we can return to general questions and that will save us straining the commitments of our colleagues.

Mr MILLS MP (ICAC Committee): Just to follow up the questions raised by Reverend Nile and Ms Keneally about the power you suggest you needed to refer back to the Independent Commission Against Corruption for reconsideration of its decision. The Police Integrity Commission has an Inspector. Is anybody around the table aware or are you, Inspector, about whether the Police Integrity Commission inspector has that power in relation to the Police Integrity Commission?

Mr KELLY: I do not think so, Mr Mills, not as far as I am aware.

Mr MILLS MP (ICAC Committee): There is a generic issue that we need to get our heads around as to what is happening?

Mr KELLY: Yes.

Ms KENEALLY MP (ICAC Committee): I think it is not an uncommon complaint for Members to receive from constituents that the Independent Commission Against Corruption did not take up their complaint. Has your office made contact with Members of Parliament in terms of providing a brochure, or if you would be available for a briefing at Parliament when we are sitting to advise Members of the assistance of your office and the activities you undertake?

Mr KELLY: I would certainly be happy to give such a briefing. Unless something went wrong in the process, every Member of Parliament should have received a bundle of brochures.

Mr MILLS MP (ICAC Committee): I have received one. I do not know about a bundle, or what my staff did with them when they came in the post.

Ms KENEALLY MP (ICAC Committee): When were they sent?

Mr KELLY: In February. If there has been a problem we have more available.

Ms KENEALLY MP (ICAC Committee): I just wanted to confirm that.

Mr KELLY: I would certainly be happy to give a briefing on how we go about the role and accessibility.

Ms KENEALLY: You mentioned the importance to start out with a framework from the beginning and alter it as you go along. You also mentioned that you are putting in place, if I heard you correctly, a database for managing the complaints. Is there a reason why it has taken some time to get the database in place?

Mr KELLY: First off we did it physically as the complaints came in and when we didn't have the electronic resources. We had to identify a service provider for it. I am very cautious about databases, having been burnt badly in some other areas about databases. You can over-specify and you need follow-up services and it is really only since Ms Lake has been on board that we have been able to devote proper attention to acquiring a satisfactory database. It is not going to be terribly sophisticated. I do not want to sit there and be able to go through every combination and permutation. This is a waste of time. I do want to be able to bring out the main features of what we have been doing.

HON. KIM YEADON MP (CHAIRMAN): I now request that the Committee move into in camera proceedings.

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The ICAC Committee resumed the public hearing.

Mr KERR MP (ICAC Committee): Last time you appeared before the Committee, Inspector, Reverend Nile asked you:

"Do you intend to do any more advertising? My concern is that at the grass roots 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 be a need for some media releases and perhaps some material in suburban newspapers to reach the average person who may have a complaint"

And you responded:

"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."

Then Reverend Nile continued:

"The brochure could go in the public libraries, council, and so on".

And you responded "Yes". Did you understand you were giving an undertaking?

Mr KELLY: I am not sure that it was a complete undertaking but we did send out - I might get Ms Srivastava to answer the question about the process of sending the brochures out.

Mr KERR MP (ICAC Committee): And where to?

Mr KELLY: We did not advertise and we have not advertised. Frankly, that has been a question of priorities but Ms Srivastava will tell you the process for sending out brochures.

Ms SRIVASTAVA: We identified firstly sending it out to people in Parliament. We have also sent it to a number of agencies to whom members of the public might turn when they have a complaint, including New South Wales Attorney-General's Law Access, the Ombudsman's

Office, so it has been sent to those as a first priority and as to sending it further down the track, as the Inspector said, it has been a question of priorities to whom we send it. That was a massive exercise. We sent out 7,200 brochure. We stopped that and moved on to other work but we may revisit that.

Mr KELLY: We sent it to the Law Society and the Bar Association.

Ms SRIVASTAVA: And to the Local Government Association.

Mr KERR MP (ICAC Committee): But not to local councils and not to libraries as yet?

Ms SRIVASTAVA: No.

Mr KERR MP (ICAC Committee): You mentioned that you had a relationship with the Director of Public Prosecutions. That is Mr Cowdery, is it?

Mr KELLY: Yes.

Mr KERR MP (ICAC Committee): What is the relationship?

Mr KELLY: He was junior counsel in a case in which I was the instructing solicitor on the other side, a notorious criminal case.

Mr KERR MP (ICAC Committee): Which one was that?

Mr KELLY: It was the prosecution of Mr Justice Murphy 20 years ago, and I came to know him despite the fact that we were on opposite sides. I came to know him quite well then and when the previous Director of Public Prosecutions retired I was asked by the then Attorney-General to sit on the selection panel that recommended Mr Cowdery's appointment, and then some years later Mr Cowdery was looking to fill a number of senior positions in the office and he asked whether I would sit on a selection panel for those. It has not been a close relationship but it has been a very long-standing professional relationship.

Mr KERR MP (ICAC Committee): The Independent Commission Against Corruption is a fairly recent institution and there have only been a few Commissioners, Ian Temby, Mr Justice O'Keefe, and so on. I was wondering whether you knew any of them.

Mr KELLY: I knew Mr Temby. I have met Mr O'Keefe, but I would not want to put it any higher than that. I do not know Ms Moss at all. I know Ms Moss's husband, but not well. That is about the compass of it.

Mr KERR MP (ICAC Committee): Do you think there would be any purpose in asking them their views, having regard to their experience?

Mr KELLY: I have been reluctant to do so because some of the complaints relate to their time and indeed, without stepping over the line, some relate to them, and I think it probably behoves me to maintain a pretty arm's length relationship. I should have mentioned that as I foreshadowed on a previous occasion, I am in the process of meeting with members of the Operation Review Committee and indeed we have one such meeting scheduled for tomorrow morning to get a different perspective on it and to get a bit of the history. I just feel reluctant to meet with the previous Commissioners.

Reverend the Hon. FRED NILE MLC (ICAC Committee): Following up this publicity issue, you said earlier that nearly all the complaints were Caucasian people.

Mr KELLY: Yes.

Reverend the Hon. FRED NILE MLC (ICAC Committee): Does that mean that the ethnic community is not aware of your work, do you think? Is that another area where there needs to be some information through some of their main journals or the Ethnic Affairs Councils or some of those bodies? I assume that they have had complaints. It seems odd that they have not.

Mr KELLY: The extraordinary thing, Mr Nile, is our experience replicates the experience of ICAC, so I suspect the problem is not at our level, it is at the ICAC level.

Reverend the Hon. FRED NILE MLC (ICAC Committee): They have only had Caucasian complainants?

Mr KELLY: Yes, and predominantly men.

Reverend the Hon. FRED NILE MLC (ICAC Committee): Maybe they are not aware of the Independent Commission Against Corruption's purposes in the ethnic communities.

Mr MILLS MP (ICAC Committee): There may be a different thing about the culture of complaint as well.

HON. Kim YEADON MP (CHAIRMAN): It might be worth contacting the Ethnic Affairs Council because it is an umbrella body and if they disseminated information to their various constituent bodies that may be the most efficient way of going about it.

Mr KELLY: Thank you for the suggestion, Mr Nile, and we will contact the Ethnic Affairs Council and have a discussion with them. Any further questions?

Mr MILLS MP (ICAC Committee): What is the website, please?

Ms SRIVASTAVA: It is www.oiiac.nsw.gov.au.

Appendix 1 - Extracts from the minutes of the ICAC Committee regarding the quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006

This appendix contains the relevant extract from the minutes of the ICAC Committee meeting held on:

- Wednesday 29 March 2006; and
- Wednesday 7 June 2006

regarding the quarterly examination of the Inspector of the Independent Commission Against Corruption for the period January-March 2006.

**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 Nordin, Senior Committee Officer, Ms Phelps, Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

....

**8. Hearing to examine the Inspector of the Independent Commission
Against Corruption, activities January – March 2006**

The public were admitted.

**Graham John Kelly
Seema Srivastava**

were called and sworn.

The Committee examined the witnesses.

**9. In Camera hearing to examine the Inspector of the Independent
Commission Against Corruption, activities January – March 2006**

The Inspector requested that certain evidence be taken in camera.

The Committee deliberated. The Committee agreed that the evidence to be given should be heard in private.

On the motion of Mr Price, seconded Mr Turner:

Pursuant to the Independent Commission Against Corruption Act 1988 Section 70, certain evidence proposed to be given before the Committee will be taken in camera.

Passed unanimously.

The public were excluded.

The Committee continued examination of the witnesses.

10. Resumption of public hearing to examine the Inspector of the Independent Commission Against Corruption, activities January – March 2006

The Committee resumed the public hearing.

The public were readmitted.

The Committee continued examination of the witnesses.

Evidence concluded, the witnesses withdrew.

11. General business

...

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

Chairman

Committee Manager

PROCEEDINGS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

5:00 P.M., WEDNESDAY 7 JUNE 2006
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council
Ms Gardiner

Legislative Assembly
Mr Yeadon
Mr Mills
Mr Pearce
Mr Turner
Ms Keneally
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. Apologies

Apologies were received from Mr Primrose, Rev. Nile and Mr Roberts.

2. Previous minutes

On the motion of Mr Price, seconded Ms Keneally, the minutes of Wednesday 29 March 2006 were accepted as a true and accurate record.

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6. Consideration of Chairman's report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006"

The Chairman presented his draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006".

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

On the motion of Mr Price, seconded Mr Mills:

That the draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006", be read and agreed to.

Passed unanimously.

On the motion of Mr Price, seconded Mr Mills:

That the draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006" 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 Mr Price, seconded Mr Mills:

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

Passed unanimously.

....

8. General business

There being no further business, the Committee adjourned at 5:35 p.m..

Chairman

Committee Manager