



PARLIAMENT OF NEW SOUTH WALES

# Committee on the Independent Commission Against Corruption

REPORT 2/55 – JUNE 2012

REVIEW OF THE 2009–2010 AND 2010–2011 ANNUAL REPORTS OF THE INSPECTOR  
OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION



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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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# Membership

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# Functions of the Committee

## ***INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988***

### Section 64 Functions

(1) The functions of the Joint Committee are as follows:

- (a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions,
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
- (c) to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
- (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector,
- (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

(2) Nothing in this Part authorises the Joint Committee:

- (a) to investigate a matter relating to particular conduct, or
- (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
- (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

## Chair's Foreword

This inquiry is the Committee's first annual report review with the Office of the Inspector of the ICAC during the 55th Parliament. During this review, we considered the Inspector's annual reports for the years 2009–10 and 2010–11, focusing on amendments to the *Independent Commission Against Corruption Act 1988* and changes in the way in which the Inspector performs his complaint handling role.

Recent amendments to the reporting provisions of the ICAC Act have implemented recommendations made by the previous Committee. The Committee is pleased to note that that the Inspector's discretion to report on any of his functions has been clarified, to remove any ambiguity about his power to report to Parliament and to other parties.

A further amendment to the Act – requested by the Inspector – ensures that the Inspector is able to access information to conduct audits of the Commission's applications for and use of surveillance devices warrants. The broad coercive powers the ICAC can use to investigate corruption allegations mean that the Inspector's ability to audit the Commission's use of its powers is particularly important.

The Committee has noted the introduction of a more centralised complaint handling process role, whereby the Inspector has assumed primary responsibility for handling complaints. The new procedures introduced by the Inspector have had benefits which include increased efficiency and productivity and greater flexibility in dealing with complaints. The Committee notes that the change has enabled the Inspector to take a more direct role in this aspect of his functions, without having resulted in a significant increase in his workload.

I wish to express the Committee's appreciation to Mr Cooper and his staff for their co-operation throughout the review. I also thank my fellow Committee members for their contribution to the work of the Committee. Finally, I thank the Committee's staff for their support and assistance.



**Mark Speakman SC MP**  
Chair

# Commentary

## INTRODUCTION

1. The functions of the Committee on the Independent Commission Against Corruption (the “Committee”) include examining each annual report and other report of the Inspector of the Independent Commission Against Corruption (the “Inspector”) and reporting to both Houses of Parliament on any matter appearing in, or arising out of, such reports.
2. As part of the current review, the Committee held a public hearing on 17 February 2012 with the Inspector, the Hon Harvey Cooper AM. Prior to the hearing, the Inspector was provided with questions on notice on matters arising out of the Inspector's Annual Reports for 2009–2010 and 2010–2011. The full text of answers to questions on notice and the transcript of evidence from the public hearing are reproduced as Appendices to this report.
3. The Committee's review has focused on the following issues:
  - amendments to the reporting provisions in the *Independent Commission Against Corruption Act 1988*;
  - amendments to the *Surveillance Devices Act 2007* (NSW) and proposed amendments to the *Telecommunications (Interception and Access) Act 1979* (Cth); and
  - the impact of increased workload on the Inspector's performance of his functions.

## AMENDMENTS TO THE REPORTING PROVISIONS IN THE ICAC ACT

4. The *Independent Commission Against Corruption Act 1988* was amended by the *Independent Commission Against Corruption Amendment Act 2011* in September 2011 to strengthen, and to clarify the ambit of, certain powers of the Independent Commission Against Corruption (the “ICAC”) and the Inspector. The amendments to the reporting provisions in the ICAC Act follow the Committee's recommendations made in its previous report.<sup>1</sup>
5. The amendments were initiated by the Inspector of the Police Integrity Commission whose reporting requirements under Part 8 of the *Police Integrity Commission Act 1996* (PIC Act) mirror those applicable to the Inspector of the ICAC. Questions were raised in relation to:
  - the capacity of the Inspector to make reports on his statutory functions, given the construction and terms of the current reporting provisions in the Act; and

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<sup>1</sup> Committee on the ICAC, *Review of the 2008-2009 Annual report of the Inspector of the Independent Commission Against Corruption*, Report No. 11/54, November 2010, pp. 5-10.

- whether the special reporting provisions may be used for the purpose of reporting on the Inspector's functions at sections 57B(1)(b) and (c).<sup>2</sup>
6. In June 2010, the Department of Premier and Cabinet wrote to the Committee seeking its view on proposals to amend the reporting provisions of the PIC Act, which parallel the reporting provisions in the ICAC Act, emphasising that it preferred to make consistent amendments to the reporting provisions in both Acts. It had under consideration two proposals:
- A proposal put forward by the Committee on the Office of the Ombudsman and the PIC that the PIC Act be amended 'to clarify that the PIC Inspector is able to report to any party, including Parliament, at its discretion, in relation to any of its statutory functions'; and
- A possible alternative proposal 'under which the Inspector could, at his discretion, provide a report about a complaint to Parliament with a recommendation that the report be made public forthwith'.<sup>3</sup>
7. In answers to questions on notice, as part of the Committee's previous review, the Inspector stated that he had not experienced any difficulties with the reporting provisions of the ICAC Act. But, to remove any ambiguity, the Inspector suggested an amendment, similar to that recommended by the Committee on the Office of the Ombudsman and the PIC, that the Act be amended to make provision for the Inspector to report to Parliament, as he considers necessary, on any abuse of power, impropriety, maladministration and other forms of misconduct on the part of the ICAC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector.<sup>4</sup> In relation to the first proposal, the Inspector expressed reservations about a general discretion to publish to anyone and did not support an amendment along these lines. In evidence to the Committee, the Inspector argued that it would not be appropriate to utilise the special reporting provisions under s 77A, if he found that the conduct subject to complaint was not serious or systemic:

... if I were to make a finding on the part of an officer which was of a very serious nature or involved some systemic matter—not just a mere assault of one on one—then in my view the appropriate procedure is you use section 77A. If, however, the finding of misconduct was nowhere near that serious, then it is unreasonable, in my view, to make a special report which becomes public to everybody...

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<sup>2</sup> The statutory functions exercised by the Inspector under section 57B(1) of the ICAC Act include (in paragraphs (b) and (c)) the functions:

(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.

See Committee on the ICAC, *Review of the 2008-2009 Annual report of the Inspector of the Independent Commission Against Corruption*, Report No. 11/54, November 2010, p 5.

<sup>3</sup> Letter from Paul Miller, A/Deputy Director General (General Counsel), to the Deputy Chair, Mr Paul Pearce MP, dated 16 June 2010, see Appendix Four in Committee on the ICAC, *Review of the 2008-2009 Annual report of the Inspector of the Independent Commission Against Corruption*, Report No. 11/54, November 2010, p. 6.

<sup>4</sup> Inspector of the ICAC, *Answers to indicative questions*, 24 August 2010, question 4, p. 2.



So, it is for that reason that I think the Inspector should be given a general discretion to publish a report to the Commission and the person against whom the complaint has been made.<sup>5</sup>

8. The Hon David Ipp QC, Commissioner of the ICAC, gave evidence to the Committee in support of the Inspector's views on the proposal to amend the Act.<sup>6</sup>
9. To put beyond doubt the ability of the Inspector to report appropriately on the performance of his functions, the Committee supported the amendments to the Act, making the following recommendation:

That the Premier, as Minister with responsibility for the administration of the *Independent Commission Against Corruption Act 1988*, consider bringing forward amendments to the Act, to clarify that:

***Reports to Parliament***

The Inspector of the Independent Commission Against Corruption may report to Parliament, as he considers necessary, on any abuse of power, impropriety, maladministration and other forms of misconduct on the part of the ICAC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector.

The Inspector may report to Parliament on any of his statutory functions, as considered necessary and, in doing so may utilise the special reporting provisions at section 77A of the Act.

***Reports to other parties***

Reports made by the Inspector under sections 57B (1)(b) and (c) in relation to complaints or matters that are not of a sufficiently serious or systemic nature to warrant being made to Parliament, can be provided to complainants, affected parties and other relevant individuals, as considered necessary by the Inspector for the purpose of resolving the complaint or matter in question.<sup>7</sup>

10. The following amendments to the ICAC Act, made in September 2011, implemented the Committee's recommendations:

**Section 57B Principal functions of Inspector**

Insert after section 57B (4): (5) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time: (a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and (b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.

**Section 77A Special reports**

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<sup>5</sup> The Hon Harvey Cooper AM, Inspector of the ICAC, *Transcript of evidence*, 27 August 2010, p. 2.

<sup>6</sup> The Hon David Ipp QC, Commissioner of the ICAC, *Transcript of evidence*, 27 August 2010, p. 16.

<sup>7</sup> Committee on the ICAC, *Review of the 2008-2009 Annual report of the Inspector of the Independent Commission Against Corruption*, Report No. 11/54, November 2010, p. 10.

Insert at the end of the section: , and (c) any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 57B that the Inspector considers warrants the making, in the public interest, of a special report.<sup>8</sup>

11. The Committee is pleased to note that the amendments to the reporting provisions in the ICAC Act have been made. As the Committee noted in its previous report, the amendments:
- provide flexible and appropriate reporting arrangements for the Inspector to deal with his statutory functions under section 57B of the ICAC Act by way of reports and recommendations; and
  - clarify that the Inspector has the discretion to determine whether or not a complaint or matter dealt with under the Inspector's functions at s 57B warrants a report to Parliament.

## INSPECTOR'S PROPOSED AMENDMENTS TO LEGISLATION

### *Surveillance Devices Act 2007 (NSW)*

12. The ICAC Act was also amended in September 2011 to provide that the prohibitions on use, communication and publication of protected information under the *Surveillance Devices Act 2007 (NSW)* do not apply to the Inspector's exercise of his functions under section 57B of the ICAC Act.<sup>9</sup> The amendment implements the recommendation made in the Committee's previous report.<sup>10</sup>
13. The amendments were initiated by the Inspector in his 2008–2009 Annual Report where he outlined the inconsistency between the ICAC Act and the provisions of the *Surveillance Devices Act*, which prevented him from performing key aspects of his functions under the ICAC Act.
14. The Inspector stated that the provisions of the *Surveillance Devices Act* prohibited communication by ICAC of 'protected information' to his office:
- Under these subsections the Commissioner is given the power to determine whether protected information will be communicated to the Inspector. This, in effect, revokes the powers of the Inspector under section 57C of the ICAC Act.<sup>11</sup>
15. The Inspector recommended an amendment to the *Surveillance Devices Act* to resolve this inconsistency with the ICAC Act by suggesting that a new subsection be inserted to the following effect:
- “nothing in subsections (5) (6) and (7) shall be deemed to restrict the powers of the Inspector of the Independent Commission Against Corruption as contained in the Independent Commission Against Corruption Act 1988”.<sup>12</sup>

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<sup>8</sup> *ICAC Amendment Act 2011*, Schedule 1.

<sup>9</sup> *ICAC Amendment Act 2011*, Schedule 1.

<sup>10</sup> Committee on the ICAC, *Review of the 2008–2009 Annual report of the Inspector of the Independent Commission Against Corruption*, Report No. 11/54, November 2010, pp. 12-17.

<sup>11</sup> Office of the Inspector of the ICAC, *Annual Report 2008–2009*, p. 7.

<sup>12</sup> Office of the Inspector of the ICAC, *Annual Report 2008–2009*, p. 7.

16. The Inspector's proposed amendment to the Surveillance Devices Act thereby sought to ensure that he is able to access 'protected information', as defined under the Act, to conduct audits of the Commission's applications for and use of surveillance devices warrants.
17. The Committee supported an amendment to the Surveillance Devices Act, in line with the Inspector's request, and is pleased to note that the amendment has been made. This amendment enables the Inspector to perform his intended functions of conducting audits, as an important accountability mechanism in view of the coercive and covert powers exercised by the ICAC.
18. The Committee also notes the Inspector's comment on the amendments:

... I am pleased that my request for amendments to the *Surveillance Devices Act 2007 (NSW)* made two years ago to enable me to conduct audits without reliance on the good will of the Commissioner, is now being implemented.<sup>13</sup>

### ***Telecommunications (Interception and Access) Act 1979 (Cth)***

19. The Inspector has repeatedly raised provisions in the *Telecommunications (Interception and Access) Act 1979 (Cth)*, which prevent the ICAC from providing information that is required for the Inspector's performance of audits of the ICAC's applications for and use of telephone intercepts. The Committee has supported the Inspector's suggested amendment to that Act.
20. In outlining the need for an amendment to the TIA Act, the Inspector noted that his principal functions include assessing the effectiveness and appropriateness of the ICAC's procedures relating to the legality and propriety of its activities. Yet, when the Inspector sought to conduct an audit of the ICAC's applications for and use of information from warrants and intercepts made under the provisions of the TIA Act, the then Commissioner stated that providing material to the Inspector for the purpose of general audits could be outside the scope of the TIA Act. Therefore, according to the Inspector, the TIA Act effectively prevents him from performing some of his audit functions.<sup>14</sup>
21. Advice obtained by the ICAC from the Commonwealth Attorney-General's Department in April 2009 indicated that the TIA Act would allow the ICAC to provide the Inspector with applications for telecommunications interception warrants for a targeted inspection into an allegation of misconduct or corruption, but not for the purpose of undertaking a general audit to determine if misconduct had occurred.<sup>15</sup>
22. In order to establish public accountability and oversight of the ICAC's compliance with the TIA Act's requirements, the Committee previously supported the Inspector's proposed amendments to the TIA Act. In its last review, the

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<sup>13</sup> Office of the Inspector of the ICAC, *Annual Report 2010-2011*, p. 20

<sup>14</sup> Office of the Inspector of the ICAC, *Annual Report 2008-2009*, p. 5.

<sup>15</sup> Office of the Inspector of the ICAC, *Annual Report 2008-2009*, pp. 5-6.

Committee recommended that the NSW Attorney-General write to the Commonwealth Attorney-General requesting an amendment to the TIA Act.<sup>16</sup>

23. In January 2010, the Commonwealth Attorney-General's Department stated in correspondence to the Inspector that the amendments would raise consistency issues across other jurisdictions and affect existing divisions of responsibility, under which the Ombudsman inspects relevant records, and that the Inspector's suggested amendments to the TIA Act would therefore not be made.<sup>17</sup>

24. At the public hearing, held on 17 February 2012, the Inspector noted the NSW Ombudsman's limited role in relation to telecommunications interception and reiterated that the ICAC's use of telecommunications interception warrants is unlikely to be the subject of a complaint to his office:

... when it comes to matters of telephone intercepts the person whose phone is being intercepted does not know about it and it is something which can be abused for personal purposes—the potential is there. The Federal Attorney General responds that the Ombudsman has to handle an investigation of the use of telephone intercepts. But the Ombudsman merely looks to see the numbers and whether the formal requirements have been complied with; it does not look to see whether the use of those intercepts is appropriate. In my audits I perhaps spend more time on looking at the appropriateness than the mere formalities.<sup>18</sup>

25. The Committee continues to support the Inspector's request to amend the TIA Act. This is vital to ensuring public accountability and oversight of the ICAC's compliance with the TIA Act's requirements and to enabling the Inspector to perform his functions of conducting audits of the ICAC's compliance with the telecommunications interception legislation, consistent with the ICAC Act.

## INCREASED WORKLOAD AND THE INSPECTOR'S PERFORMANCE OF HIS FUNCTIONS

### The impact of the ICAC's investigative workload

26. The Committee notes the increase in the ICAC's investigative work during the previous two reporting periods, which was also confirmed in the ICAC's response to questions on notice:

Since 2008-09 the number of matters investigated by the Commission has increased. This has led to an increased need for compulsory examinations. The Commission commenced 138 preliminary investigations in 2009-10 compared to 58 in 2008-09. Over the same period there was also a 186% increase in the number of full investigations undertaken (up from seven in 2008-09 to 20 in 2009-10). This high workload was sustained in 2010-11 with 66 preliminary investigations commenced (in addition to the 74 preliminary investigations carried over from the previous year)

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<sup>16</sup> Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Inspector of the ICAC*, Report No 11/54, November 2010, p. v.

<sup>17</sup> Office of the Inspector of the ICAC, *Annual Report 2009-2010*, pp. 4-5.

<sup>18</sup> The Hon Harvey Cooper AM, Inspector of the ICAC, *Transcript of evidence*, 17 February 2012, questions 11-12, p. 2.

and 15 full investigations commenced (in addition to nine investigations carried over from the previous year).<sup>19</sup>

27. The Committee asked the Inspector if the ICAC's investigative workload during the last two periods had impacted on his work. In his response to questions on notice, the Inspector stated that he had not detected any impact and the number of complaints he received had not been affected.<sup>20</sup> In his opening statement at the public hearing, held on 17 February 2012, the Inspector offered a clarification of his initial answer, in terms of his audit function:

... I got working on an audit of compulsory powers of the ICAC and I found that during the six-month period the number of uses they had made of these compulsory powers had almost doubled since the last time I did an audit of the exercise of those powers some two years beforehand. So, to that extent, yes, it has impacted because it meant more work for me in the audit. Apart from that there has been no other real impact so far.<sup>21</sup>

### The implementation of a centralised complaint handling process

28. In his 2009–2010 Annual Report and response to questions on notice, the Inspector outlined that he had introduced a centralised complaint-handling process to enhance efficiency and flexibility in handling complaints. The new process means that the Inspector has primary responsibility for dealing with complaints (rather than – as was the case before – for complaints to be assessed by the Executive Officer first and then by the Inspector) from the time they arrive, and is aimed at providing the Inspector with effective and efficient oversight of the ICAC.<sup>22</sup> The Committee notes the Inspector's comments on the efficiency of the centralised process, including:

My decision to centralise this responsibility had inherent efficiencies including:

- There being no lag time between the handling of complaints between my staff and myself.
- I was able to effectively prioritise complaints including delegating other work to staff. This allowed me to focus on finalising complaints efficiently, particularly long and complex complaints which may have otherwise taken longer to complete.
- I involve staff to support me to finalise complaints as and when I judge that such support is required on a case-by-case basis. This flexibility ensures efficient use of the office's resources.

My ancillary decision to introduce a policy to personally interview complainants allowed me to obtain an immediate and complete 'picture' of all relevant issues without the need for further and ongoing communication correspondence over a

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<sup>19</sup> ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 6, p. 4 and Independent Commission Against Corruption, *Annual Report 2010–2011*, p. 9.

<sup>20</sup> Inspector of the ICAC, *Answers to questions on notice*, 12 January 2012, question 5, p. 3.

<sup>21</sup> The Hon Harvey Cooper AM, Inspector of the ICAC, *Transcript of evidence*, 17 February 2012, p. 1.

<sup>22</sup> Inspector of the ICAC, *Answers to questions on notice*, 12 January 2012, question 2, p. 1.

period of time and information being revealed in a piece-meal fashion. This approach has therefore reduced the time taken to finalise a complaint.<sup>23</sup>

29. According to the Inspector, the process has played a role (in addition to the nature of complaints received) in allowing him to investigate 20 complaints during the reporting period compared with 12 for the previous financial year, with virtually no changes in the time taken to deal with complaints.<sup>24</sup>

30. During the public hearing on 17 February 2012, the Inspector commented on the impact of the centralised complaint handling process on his workload. He explained that although the new process has led to an increase in work for him, it is not a significant burden:

**Reverend the Hon. FRED NILE:** Does it increase your own personal workload?

**Mr COOPER:** Yes, it does, but that is all right; that is what I am supposed to do.

**Reverend the Hon. FRED NILE:** You can handle it with only the two days that you normally allocate?

**Mr COOPER:** Sometimes I have to go to three.

**Reverend the Hon. FRED NILE:** How often would that happen?

**Mr COOPER:** I suppose three or four times a year. It is not a major problem.<sup>25</sup>

31. The Committee also inquired about the impact of the centralised complaint handling process on other functions performed by the Inspector:

**Reverend the Hon. FRED NILE:** Does it have any effect on other functions that you carry out with regard particularly to audits?

**Mr COOPER:** Yes. For example, I am working at the moment on two complaints and, as a result, audits have sort of been put into the background, but that does not mean that they are not being dealt with; it means that they are not being dealt with as quickly as would otherwise be the case.<sup>26</sup>

32. The Committee notes that the Inspector's workload has partly increased due to the ICAC's increased use of powers as a result of an increase in investigative work. The Committee will monitor this, for instance if the number of investigations will lead to an increase in audits and/or complaints, and if and how this will impact on the Inspector's performance of his functions.

33. The Committee is pleased with the benefits of the centralised complaint handling process that the Inspector has introduced, which allows him to take a greater role in this important aspect of his functions and has improved efficiency. The Committee notes that the centralised complaint handling process has led to an increase in the Inspector's workload. While the change in the Office of the

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<sup>23</sup> Inspector of the ICAC, *Answers to questions on notice*, 12 January 2012, question 2, pp. 1-2.

<sup>24</sup> Office of the Inspector of the ICAC, *Annual Report 2010-2011*, pp. 14-15 and *Answers to questions on notice*, 12 January 2012, question 3, p. 2.

<sup>25</sup> The Hon Harvey Cooper AM, Inspector of the ICAC, *Transcript of evidence*, 17 February 2012, p. 3.

<sup>26</sup> The Hon Harvey Cooper AM, Inspector of the ICAC, *Transcript of evidence*, 17 February 2012, p. 3.

Inspector's processes has not imposed any significant burden on the Inspector, and is delivering efficiency and effectiveness, the Committee will monitor the sustainability of the process in the long-term to determine whether the Inspector may need additional support to perform his functions.

# Appendix One – Answers to questions on notice

## Review of the Office of the Inspector of the ICAC's 2009-10 and 2010-11 Annual Reports and other reports

### Questions on notice

#### QUESTION 1.

*Has the Inspector received any further advice from the NSW Attorney General on his suggested amendments to the Telecommunications (Interception and Access) Act 1979 (Cth)?*

ANSWER: No.

#### QUESTION 2.

*The 2009-2010 Annual Report (p 19) states that the Inspector's complaint handling process was enhanced in 2009-10 to ensure efficiency and flexibility while giving each matter careful consideration. Please outline the improvements to the Office's complaint handling process.*

#### ANSWER:

In 2009-10 I restructured the work responsibilities undertaken by my office so that I have primary management responsibility for dealing with complaints from the time they arrive in my office. This is a different approach to that taken by my predecessor. Mr Kelly's approach was to review complaints after they were assessed by the Executive Officer, in line with the responsibilities of her position. He had sound policy reasons for such an approach including a view to minimising any allegations of bias by complainants.

In part, my decision to change the way complaints were handled in my office coincided with the fact that the Executive Officer was going on a period of unpaid leave from late August 2009. A number of temporary staff who had also been engaged on a contract basis, to assist with the office's increased workload at that time, had also completed their period of employment.

However, the key reason for restructuring the work responsibilities within my office was because I took the view that the complaint handling function was highly significant to my ability to maintain effective oversight of the ICAC. It allowed me to develop a first-hand and comprehensive understanding of all issues arising from any complaints made against the ICAC.

My decision to centralise this responsibility had inherent efficiencies including:

- There being no lag time between the handling of complaints between my staff and myself.
- I was able to effectively prioritise complaints including delegating other work to staff. This allowed me to focus on finalising complaints efficiently, particularly long and complex complaints which may have otherwise taken longer to complete.



- I involve staff to support me to finalise complaints as and when I judge that such support is required on a case-by-case basis. This flexibility ensures efficient use of the office's resources.

My ancillary decision to introduce a policy to personally interview complainants allowed me to obtain an immediate and complete 'picture' of all relevant issues without the need for further and ongoing communication correspondence over a period of time and information being revealed in a piece-meal fashion. This approach therefore reduced the time taken to finalise a complaint.

Other steps taken which supported greater efficiency and flexibility in complaint handling were:

- Updating the office's web site information on complaint handling including: updating the on-line complaint form; and making statements on the web site to encourage complainants to contact me directly.
- Development of an internal electronic reporting system on complaints which tabulates, amongst other data, the time taken by my office to finalise complaints. I review these results to ensure that all complaints are managed in a timely manner and identify any areas in which the complaint handling process can be improved in terms of further efficiencies.

QUESTION 3.

*According to the 2010-11 Annual Report (p 14-15) the Inspector investigated 20 complaints during the reporting period, compared with 12 for the previous financial year. The time taken to deal with complaints was not substantially affected by the rise in complaint investigations. The Committee notes that the Inspector also completed two audits during 2010-11. What strategies did the Inspector use to complete a greater number of complaint investigations in a timely manner during the reporting period?*

ANSWER:

As stated in response to question no. 2 my main strategy to improve my office's effectiveness in handling complaints has been to centralise the complaint handling function of the office to myself. However, it has to be borne in mind that the time spent dealing with complaints is not a function merely of the number of complaints but also of the nature of each complaint received, the time taken by others to furnish information requested and the amount of work required to assess and investigate it. Of the 20 complaints investigated during the 2010-2011 reporting period most involved the following steps:

- a) considering the initial complaint which was usually received by e-mail but sometimes by letter or telephone.
- b) determining what further information is required; this may be files from the ICAC or interviewing the complainant and/or other people, researching law relevant to the complaint (this particularly applied to complaints involving local government bodies).
- c) obtaining further information arising out of the previous actions.
- d) reaching a decision and communicating that decision to the complainant.

QUESTION 4.

*The Committee notes the gradual increase in the website hits for the Inspector's website during the 2010-11 reporting period (10). The Annual Report states that the spike in website hits in June 2011 may have been caused by a US internet security company testing for gaps in security, as a marketing strategy. Has the spike recorded in June continued into the current financial year?*

ANSWER:

The recorded hits following June 2011 are as follows:

July 2011	907
August 2011	752
September 2011	903
October 2011	941
November 2011	826
December 2011	690

The spike recorded in June (1,316) has not continued. However, the number of hits in the second half of 2011 was greater than the number in the first half.

QUESTION 5.

*The ICAC's investigative workload has increased substantially during the previous two reporting periods. What impact has this had on the Inspector's work?*

ANSWER

Thus far I have detected no such impact. The number of complaints received over the years (apart from 2007/2008) has remained between 35 and 40 per year. In the period 1 July to 31 December 2011, 15 complaints have been received.

QUESTION 6.

*Does the Inspector have any comments on the recent amendments to the provision of the ICAC Act that deal with reports by the Inspector?*

ANSWER

Only that I welcome them.

QUESTION 7.

*Could you please provide a copy of the memorandum of understanding (MOU) is between the Inspector and the Commissioner executed on 21 December 2009 referred to on page 8 of the Inspector's 2010-11 Annual Report?*

ANSWER: Copy herewith.

QUESTION 8.

*How is that version of the MOU different from the previous version?*

ANSWER:

The previous version is dated 23 October 2007 and is between my predecessor and the predecessor of the current Commissioner. Apart from the officers nominated for liaison purposes enumerated in clause 4.4 the substance of the two versions is identical.

QUESTION 9.

*Does the Inspector have any comments on how that MOU is working?*

ANSWER:

The Commissioner and I have a good working relationship - not because of the MOU, but because of our respective approaches to our functions. The MOU provides a platform on which the working relationship can be built.

QUESTION 10.

*Are there any changes which the Inspector would like to see in that MOU?*

ANSWER:

No. I note however that a current version of the MOU will need to be executed.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE INDEPENDENT COMMISSION AGAINST CORRUPTION AND THE INSPECTOR OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

This Memorandum of Understanding ("MOU") is made on this day the 21st of December 2009 between the Independent Commission Against Corruption ("the Commission") and the Inspector of the Independent Commission Against Corruption ("the Inspector").

**1. BACKGROUND**

**1.1** The Inspector's role was created by the provision of the Independent Commission Against Corruption (Amendment) Act 2005 which inserted Part SA into the Independent Commission Against Corruption Act 1988 ("the ICAC Act"). The relevant provisions commenced operation on 1 July 2005.

**1.2** The principal functions of the Inspector are set out in section 57B of the ICAC Act and provide as follows;

- (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.

1.3 Section 57C of the ICAC Act sets out the powers of the Inspector and provides as follows;

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.

## **2. PURPOSE**

2.1 To set out arrangements for liaison between the Commission and the Inspector concerning referral of matters, exchange of information and points of contact between both agencies.

## **3. INTENT**

3.1 The Commission undertakes to co-operate fully and frankly with the Inspector and his staff in order to assist the discharge of the Inspector's functions under the ICAC Act.

## **4. LIAISON**

4.1 The primary point of liaison will be between the Inspector and the Commissioner or their respective nominated delegates.

4.2 The Inspector and the Commissioner agree to meet periodically, and at least once per month, to discuss relevant issues and raise any matters touching on the Inspector's functions and the conduct of the Commission. Both the Inspector and the Commissioner

will keep their own short notes of these meetings. Contact at other times may occur as and when required.

- 4.3 If the Inspector or his staff need information or material or to inquire of the Commission regarding a complaint or other matter touching on the conduct of the Commissioner, this will be referred to the Deputy Commissioner in the first instance. In the absence of the Deputy Commissioner, such inquiry will be directed to the Solicitor for the Commission.
- 4.4 For any other matters arising from the Inspector's functions, general inquiries, or requests for information and material etc, liaison shall occur between the Inspector's staff and the Deputy Commissioner. In the absence of the Deputy Commissioner, such inquiry will be directed by the Inspector's staff to the Solicitor for the Commission.
- 4.5 Where the Inspector and/or his staff wish to interview any of the Executive Directors of the Commission in connection with a complaint, the Commissioner will be notified wherever possible.
- 4.6 Where the Inspector and/or his staff wish to interview any staff of the Commission in connection with a complaint, the Deputy Commissioner will be advised wherever possible.
- 4.7 The Commission acknowledges however, there may be occasions where the Inspector and his duly authorized staff may need to act unilaterally without prior notification as outlined in paragraphs 4.5 and 4.6.
- 4.8 Written correspondence from the Commission to the Inspector will be addressed to the Inspector and marked "Private and Confidential" c/-;  
Office of the Inspector of the Independent Commission Against  
Corruption  
GPO Box 5341  
SYDNEY NSW 2001  
Or by email to [InspectorICAC@oiicac.nsw.gov.au](mailto:InspectorICAC@oiicac.nsw.gov.au)  
Or such other address as the Inspector may advise.

## **5. NOTIFICATION OF COMPLAINTS OF MISCONDUCT BY THE COMMISSION TO THE INSPECTOR**

- 5.1 The Commission will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission that comes within the principal functions of the Inspector.
- 5.2 Unless urgent and requiring immediate attention, in which case oral communication will be provided to the Inspector as soon as possible to be subsequently confirmed in writing, all such matters will be communicated to the Inspector by way of written notification.
- 5.3 Notification of matters referred to in paragraph 5.1 will also be reported by way of schedule to be provided at the meeting between the Inspector and the Commissioner as referred to in paragraph 4.2. The schedule will briefly set out the relevant information as available and known to the Commission including any action the Commission itself has taken to deal with the complaint.

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5.4 The Commission will make information concerning the Inspector's role and function publicly available to complainants. This includes:

- a) having copies of the relevant brochures concerning the Inspector's role and functions available at the waiting room and/or public areas of the Commission's premises;
- b) having appropriate information about the Inspector and links to the Inspector's website on the ICAC web page;
- c) where a determination is made not to investigate a complaint further advise complainants, the basis upon which they may be able to pursue a complaint with the Inspector and provide the Inspector's contact details.

5.5 Furthermore, where requested, Commission officers will provide any persons with the contact details for the Inspector as per the address details in paragraph 4.8 and/or the Office of the Inspector's general telephone number of (02) 8374-5381.

**6. REVIEW**

6.1 This MOU may be reviewed at any stage the request of either party but in any event shall be reviewed no later than 12 months from the date of the MOU.

## Appendix Two – Answers to questions without notice (transcript of evidence)

This appendix contains a transcript of evidence taken at a public hearing held by the Committee on 17 February 2012. Page references cited in the commentary relate to the numbering of the original transcript, as found on the Committee's website.

**HARVEY LESLIE COOPER**, Inspector of the Independent Commission Against Corruption, sworn and examined:

**SEEMA SRIVASTAVA**, Executive Officer, Office of the Inspector of the Independent Commission Against Corruption, affirmed and examined:

**CHAIR:** It is the function of the Committee on the Independent Commission Against Corruption to examine each annual and other reports of the Commission and of the Inspector of the Independent Commission Against Corruption, and to report to both Houses of Parliament, in accordance with section 64 (1) (c) of the Independent Commission Against Corruption Act 1988. This morning the Committee welcomes the Inspector of the Independent Commission Against Corruption for the purpose of giving evidence on matters relating to the Inspector's annual reports for 2009-2010 and 2010-2011. I convey the thanks of the Committee to you for your appearance today. Would you like to make an opening statement before the commencement of questions?

**Mr COOPER:** Not so much an opening statement but clarification of an answer I gave on notice in the letter dated in January. I was asked the question:

The ICAC's investigative workload has increased substantially during the previous two reporting periods. What impact has this had on the Inspector's work?

I responded, "Thus far I have detected no such impact," and pointed out that the number of complaints was pretty well static. However, after that I got working on an audit of compulsory powers of the ICAC and I found that during the six-month period the number of uses they had made of these compulsory powers had almost doubled since the last time I did an audit of the exercise of those powers some two years beforehand. So, to that extent, yes, it has impacted because it meant more work for me in the audit. Apart from that there has been no other real impact so far.

**CHAIR:** Do you have copies of your 2009-2010 and 2010-2011 reports with you?

**Mr COOPER:** Yes.

**CHAIR:** Could I ask you to turn to page 7 of your 2010-2011 report, section 7.3, Budget and Finance. Am I correct in understanding that for the previous two financial years you significantly underspent your budget?

**Mr COOPER:** Yes.

**CHAIR:** Why is that?

**Mr COOPER:** We do not have a budget in the sense of an allocation by the Government or the Parliament to us. There is not a set appropriation. We come under, for administrative purposes, the Department of Premier and Cabinet and they have a notional amount which they notionally allocate to us. That notional amount for that year was \$600,000. If I recall correctly, we had Ms Srivastava on leave for a major part of that year so consequently the costs were down during that year.

**CHAIR:** What notional amount has been allocated to your office for 2011-2012?

**Mr COOPER:** We have not had any written allocation as yet but we have been told it will be the same as last year.

**CHAIR:** Do you expect your total expenditure to be roughly in line with the last two years?

**Mr COOPER:** It will be slightly greater but I think it will be within the notional budget.

**Mr ANDREW GEE:** I have a question to ask the Inspector. One of the aims stated in the 2010-2011 report was to improve the timeliness of your investigations and I notice that in the answers to the questions you have referred to the centralisation of the complaints handling system. Page 31 of the 2010-2011 report outlines the statistics with respect to completion of investigations. I was wondering how you are going with your goal of improving the timeliness of your investigations. Beyond the centralisation of handling of complaints are there any other steps that you have been taking to improve the timeliness of those investigations?

**Mr COOPER:** No, because I think that we have done everything that we can within the office. It does not mean that things will necessarily speed up during the current year or future years; it depends on the nature of the complaints we get. For example, recently, in the last few weeks, I received one complaint which involves investigating conduct over a period of 10 years. The documents are in boxes—there are some 18 or 19 folders in all. That is going to take some time; that will not be done in a couple of weeks. Another one we have similarly involves going into events over a period of time—in this case about 18 months—and this takes time. In other words, the time that is taken is not based on a pure numerical amount; it is what is involved in each individual investigation or complaint.

**Mr ANDREW GEE:** A related issue perhaps: In the same area of your 2010-2011 report you mention that a considerable number of matters investigated over 2010-2011 have required detailed computer forensic analysis. The report states that a review was conducted of the computer forensic analysis capability and a business case was provided and then an upgrade was approved. What is the status of the upgrade and has it made a difference to—

**Mr COOPER:** Sorry, where is this?

**Mr ANDREW GEE:** On page 31 of the report.

**Mr COOPER:** I am sorry, my copy of the 2010-11 report only goes up to page 21.

**Mr ANDREW GEE:** I am sorry; I was looking at the annual report of the Commission.



**Mr COOPER:** Of the Commission? What the Commission is doing is not within my jurisdiction. I am aware that they have spent a lot of money and effort in upgrading their computer system but the details I really do not know.

**The Hon. NIALL BLAIR:** In terms of your suggested amendments to the Telecommunications (Interception and Access Act) 1979 do you plan to pursue this matter further?

**Mr COOPER:** I have gone as far as I can go. I have asked the Federal Attorney General, I have asked the State Attorney General, and it seems that they take the view that whilst the Inspector can get the information for a targeted investigation it would be inappropriate to give me the information for an audit. I do not agree, because if you have got a targeted investigation it means someone has already complained that they have been hurt. The purpose of an audit is to see whether there is conduct which is likely to lead to someone being hurt, and that is where we have a difference of opinion at the moment.

**The Hon. NIALL BLAIR:** Would you like to comment on the importance of this matter in terms of the work that you wish to undertake in the future?

**Mr COOPER:** I think it is important because when it comes to matters of telephone intercepts the person whose phone is being intercepted does not know about it and it is something which can be abused for personal purposes—the potential is there. The Federal Attorney General responds that the Ombudsman has to handle an investigation of the use of telephone intercepts. But the Ombudsman merely looks to see the numbers and whether the formal requirements have been complied with; it does not look to see whether the use of those intercepts is appropriate. In my audits I perhaps spend more time on looking at the appropriateness than the mere formalities.

**The Hon. LYNDA VOLTZ:** Just following up on that: When you say the Ombudsman, is that the telecommunications Ombudsman?

**Mr COOPER:** No, it is the Federal Ombudsman.

**The Hon. LYNDA VOLTZ:** So they do a straightforward audit of all agencies, all police and investigation agencies, as far as telecommunications?

**Mr COOPER:** All agencies that use telephone intercepts under the Federal telecommunications interception legislation.

**The Hon. LYNDA VOLTZ:** You have no access to that Ombudsman in terms of asking him to widen his ability to review those at your request?

**Mr COOPER:** I can always make requests. He says, "I am doing all I am required to do. I have a budget to work with and I have other work to do", and that is as far as it can go.

**Reverend the Hon. FRED NILE:** In your report you highlighted that the method you used concerning complaints was to centralise the complaint handling process. Do you recommend that this centralised complaint handling process be used as best practice in the future?

**Mr COOPER:** May I say I hate that term "best practice" because what is best in some circumstances can be a disaster in others. All I can say is that for the type of complaints we get

it is the best practice at this particular stage. I certainly would not be so bold as to say that it would be best practice, for example, for the Inspector of the Police Integrity Commission. He has different sorts of problems. But for our purposes, yes, it is the best practice.

**Reverend the Hon. FRED NILE:** Does it increase your own personal workload?

**Mr COOPER:** Yes, it does, but that is all right; that is what I am supposed to do.

**Reverend the Hon. FRED NILE:** You can handle it with only the two days that you normally allocate?

**Mr COOPER:** Sometimes I have to go to three.

**Reverend the Hon. FRED NILE:** How often would that happen?

**Mr COOPER:** I suppose three or four times a year. It is not a major problem.

**Reverend the Hon. FRED NILE:** Does it have any effect on other functions that you carry out with regard particularly to audits?

**Mr COOPER:** Yes. For example, I am working at the moment on two complaints and, as a result, audits have sort of been put into the background, but that does not mean that they are not being dealt with; it means that they are not being dealt with as quickly as would otherwise be the case.

**Reverend the Hon. FRED NILE:** Would you allocate some time during the year to do the audits so that you spend so many days on audits, or do you not divide up the days?

**Mr COOPER:** I do not divide it up that way because, with complaints, you never know when you are going to get them and you never know in advance what is involved. For example, from about the beginning of December until about two weeks ago, we did not get a complaint. Then in they come. I do not like the idea of having a set program, such as for the first two weeks of the month I will deal with audits and the next two weeks complaints. I try to deal with complaints as quickly as possible and in between time deal with audits.

**Reverend the Hon. FRED NILE:** You said there was a sudden increase in complaints.

**Mr COOPER:** Yes.

**Reverend the Hon. FRED NILE:** Did anything trigger that off?

**Mr COOPER:** No, it just happens, probably people being away, some of them preparing the material to give to me. It just happens that way.

**Mr RICHARD AMERY:** I think in one of your reports you say there was an increase in the number of complaints received from 12 to 20. Is that right?

**Mr COOPER:** No, it was not an increase in the number, it was an increase in the investigations or the matters I investigated.

**Mr RICHARD AMERY:** Has there been a change in the case mix or the type of complaints? I do not expect you to name people, but can you give the Committee an example of the type of complaints and indicate whether the types of complaints have changed during your role? My second question is this: Have there been any complaints ever sustained by the complainant? Has anything ever been regarded as justified and, as a result, action was taken against the person or organisation complained of? There are just those two points—the results of complaints and any change in the type of complaints received by your office?

**Mr COOPER:** No, I do not think there has been any basic change. The types of complaints, or the majority of them, relate to the decision by the Independent Commission Against Corruption not to investigate particular matters. That is most of the complaints. We have had complaints where the Independent Commission Against Corruption has taken action on a complaint and that is the complaint from the persons who have been dealt with by the Commission. On the second aspect, which is whether any complaints were sustained, yes, there were, if I recall correctly, and I think I may have referred to it in the report. There were three instances where I felt that the Independent Commission Against Corruption could have taken further action or different action. Their failure to do so did not amount to misconduct within the meaning of the Act, but I did make suggestions to the Commissioner regarding those matters and he did act on my suggestions.

**CHAIR:** You have dealt with audits at pages 11 and 12 of the last annual report. What audits have you been undertaking, if any, this financial year?

**Mr COOPER:** This financial year I have completed the draft of a report on the use of compulsory powers. My practice is to send a copy of that draft to the Independent Commission Against Corruption for their perusal before publishing it. That is not because there is any adverse finding against the Independent Commission Against Corruption in respect of anything, but sometimes they do not want certain material published because it could prejudice ongoing operations, and I respect their views on that. Secondly, it could be that they can point out that there is an error in something that I have said and if they point that out to me I am only too happy to correct it. At the moment that particular report is with the Independent Commission Against Corruption and I am waiting on their response.

**CHAIR:** Do you have any other audits planned this year?

**Mr COOPER:** Not at the moment. I will make a decision on which particular line I will take probably within the next couple of weeks.

**The Hon. NIALL BLAIR:** In addition to putting your reports on your website, do you communicate the release of your reports to the media or any other areas of the public?

**Mr COOPER:** Not to the media. If this Committee feels that I should do that, I will comply with it, but my view is that I do not see the need to, particularly when I do not make any adverse findings, but that is a matter on which I would be happy to accept the guidance of the Committee. We send it to the Independent Commission Against Corruption, the Police Integrity Commission, the various Inspectors, the Ombudsman, the Department of Premier and Cabinet and various libraries—the National Library and the State library. I know that there is quite a list that we send them to.

**The Hon. NIALL BLAIR:** How do you assess the public's awareness of the work that you do and the role that you play?

**Mr COOPER:** My assessment is that the public—the ordinary man and woman in the street—would be quite surprised to know that the Office of the Inspector of the Independent Commission Against Corruption [ICAC] exists. Whether that is a good thing or a bad thing I am quite prepared to debate. I really do not know. But all I know is if I tell people I am the Inspector of ICAC they seem to think that I have some position as an inspector within ICAC sort of above the rank of sergeant.

**The Hon. LYNDA VOLTZ:** Following up from that, do people who are under investigation by ICAC know of your existence?

**Mr COOPER:** Yes. There is a system under which ICAC does tell them of us.

**The Hon. LYNDA VOLTZ:** Going back to the telecommunications issue and the interception—maybe you can tell me this or maybe you cannot—have you ever received complaints about warrants being issued under that Act for interception of telecommunications?

**Mr COOPER:** No, I have not received any alleging an abuse of warrants under the Telecommunications Interception Act.

**The Hon. LYNDA VOLTZ:** Do you know what people who are under investigation are actually told when they are informed about you?

**Mr COOPER:** Yes, they are given, if I recall correctly, a little pamphlet which tells them about us. I have had complainants say, "When I told the investigator down there that I was unhappy with what they are doing he said, 'Well, you have the right to contact the Inspector'," and they were given details of where to contact me.

**The Hon. LYNDA VOLTZ:** So they are only informed of your presence when they complain about the actions of ICAC?

**Mr COOPER:** My functions only come into existence when there is a complaint about ICAC.

**The Hon. LYNDA VOLTZ:** I am only thinking of the fact that since I have been in Parliament I have become aware of processes that I would not have been aware of out on the street and I may not have felt there was an avenue to complain through. Particularly if you are a person with not a great deal of education or who does not have a good experience with authority anyway, and therefore usually feel disenfranchised from the system, you may not feel that even though you have been pulled in for questioning by ICAC there is anywhere that you can complain to and you may not ask the question. Is there a formal process by which people are informed from the beginning that there is always an avenue for them to go through?

**Mr COOPER:** My understanding is that ICAC does tell them of us. Perhaps that is something I should look into in more detail.

**Reverend the Hon. FRED NILE:** On page 16 of your report you refer to some of the complaints you receive that are outside your jurisdiction. Obviously some people think you have the power to investigate anything and everything: these were complaints about police officers and

so on. How do you handle those? Do you follow those through? In your report you said you refer them, for example, to the Police Integrity Commission [PIC]. Do you check to see whether they in fact followed it up or got the complaint after you told the person to complain to the PIC?

**Mr COOPER:** No, I do not follow that up because basically I have got no jurisdiction to do so. I think it is a matter of jurisdiction. But if someone comes in who we cannot handle I tell them or write to them or email them and say that we do not have jurisdiction to do this but perhaps they could contact X, Y or Z, and I give them the address and the details. That is as far as we can go.

**Reverend the Hon. FRED NILE:** So there is no way of knowing whether they did in fact complain to that other agency?

**Mr COOPER:** No, but I have sometimes had the response, "They are no darned good, I've already been there." You do get that.

**Mr RICHARD AMERY:** In answer to some earlier questions you said, "I do not make any adverse findings." Is that because in practice there has not been a case for an adverse finding, or are you restricted by legislation or the rules and regulations? Pardon my ignorance but I am not quite aware in this regard.

**Mr COOPER:** Are you talking about after an investigation?

**Mr RICHARD AMERY:** Yes, I think you said you do not make adverse findings. Is that right?

**Mr COOPER:** No, I think I probably said I did not make adverse findings because there was no evidence of any misconduct.

**Mr RICHARD AMERY:** But you can make adverse findings?

**Mr COOPER:** Yes, most definitely, both in the course of dealing with a complaint and in the course of an audit.

**Mr MARK COURE:** Inspector, other than writing or emailing do you have a system in place to handle matters outside your jurisdiction?

**Mr COOPER:** No, because when my jurisdiction limits me to doing certain things I have got to be careful not to exceed that jurisdiction because the various protections that the Act gives me probably would not apply if I did.

**CHAIR:** On page 14 of your 2010-2011 report at table 2 you refer to one complaint in 2009-2010 and two in 2010-2011 being referred back to ICAC. How and why were those complaints referred back to ICAC?

**Mr COOPER:** They were complaints that related to an allegation of misconduct on the part of employees of ICAC. I was given details of the allegations and I felt that they were in a better position to investigate those matters than I was, so I sent that to them and said, "But you have got to report back and let me know what is going on," which they did. They complied with that and I was quite happy with what they did at the end.

**CHAIR:** At question 10 in your answers to questions on notice you say that the current version of the memorandum of understanding [MOU] will need to be executed. Which is the current version of the MOU?

**Mr COOPER:** No, there I said, "However, a current version will have to be executed." That is, the most recent one of which we sent you a copy is two years old now. I think it was November 2009. We should really update it. That is what I meant there.

**CHAIR:** So you meant an updated version of the MOU when you draft it?

**Mr COOPER:** Yes.

**Reverend the Hon. FRED NILE:** You said that there are cases of complaints where ICAC will not investigate a matter. Have you always been satisfied with ICAC's explanation as to why they did not investigate that matter?

**Mr COOPER:** Yes.

**CHAIR:** Inspector, is there anything you would like to say in closing?

**Mr COOPER:** No. Thank you very much for your courtesy.

## Appendix Three – Extracts from Minutes

### Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (No. 2)

9.35pm, Wednesday, 10 August 2011  
Room 1254, Parliament House

#### Members Present

Mr Amery, Mr Blair, Mr Coure, Mr Gee, Mr George, Mr Owen, Mr Rees, Mr Speakman and Ms Voltz

#### 1. Apologies

Ms Mihailuk, Revd Nile

#### 2. Confirmation of minutes

Resolved, on the motion of Mr Coure, seconded by Mr Owen, that the minutes of the deliberative meeting of 23 June 2011 be confirmed.

3. \*\*\*

4. \*\*\*

5. \*\*\*

#### 6. Forward planning - reviews of the ICAC's and ICAC Inspector's annual and other reports

The Committee discussed its work program for the year.

Mr Gee moved that the Committee examine the ICAC's 2009-2010 and 2010-2011 annual reports, and other reports tabled since December 2010 concurrently (excluding the two reports on procurement which have been tabled by the ICAC since 2010), following the publication of the ICAC's Annual Report for 2010-2011. Discussion ensued.

Question put that the motion be agreed to.

The Committee divided.

Ayes [7]: Mr Amery, Mr Blair, Mr Coure, Mr Gee, Mr George, Mr Owen, Mr Speakman

Noes [1]: Ms Voltz

Question passed.

Resolved, on the motion of Mr Gee, seconded Mr Blair, that the Committee examine the ICAC's reports on corruption risks in government procurement concurrently.

Discussion ensued.

#### 7. General business

\*\*\*

*Forward planning*

Resolved, on the motion of Mr Rees, seconded Mr Gee, that the Committee examine the ICAC Inspector's 2009-2010 and 2010-2011 annual reports, and other reports tabled since December 2010 concurrently, following the publication of the Inspector's Annual Report for 2010-2011.

\*\*\*

The committee adjourned at 10.15am until 9.30am on 10 November 2011.

#### **Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 4)**

9.39am, Thursday, 10 November 2011  
Room 1254, Parliament House

#### **Members Present**

Mr Blair, Mr Coure, Mr Gee, Ms Mihailuk, Revd Nile, Mr Speakman and Ms Voltz

#### **Apologies**

Mr Amery, Mr George, Mr Owen and Mr Rees

#### **1. Confirmation of minutes**

Resolved, on the motion of Mr Coure, seconded by Mr Blair, that the minutes of the deliberative meetings of 10 August 2011 and 15 September 2011 be confirmed.

2. \*\*\*

#### **3. Forward planning - reviews of the ICAC's and ICAC Inspector's annual and other reports**

The Chair noted the indicative timetable and draft questions on notice prepared by committee staff for the Committee's reviews of the ICAC's and ICAC Inspector's annual and other reports.

The Committee agreed that members would submit any additional questions on notice they wished to ask in relation to the Inspector's and the ICAC's annual and other reports to committee staff by Thursday November 17 and that a consolidated list of questions would be circulated to members and considered by the Committee at its next meeting.

The Chair noted that members would also have the opportunity to ask questions without notice during public hearings with the ICAC and the Inspector, and to ask supplementary questions arising out of the hearings.

The Chair proposed holding public hearings with the Commissioner and Inspector on a day during the week preceding the first sitting week in February 2012, subject to members' availability and approval. Discussion ensued.

The Chair noted that answers to questions on notice would be requested from the ICAC and the Inspector by the end of January and provided to members in advance of the hearings.

The Committee agreed that Committee staff would determine members' availability for public hearings on Friday 17 February and Friday 24 February 2012.

Resolved, on the motion of Mr Blair, seconded Mr Coure, to adopt the indicative timetable for the Committee's reviews of the ICAC's and ICAC Inspector's annual and other reports.



The Chair advised the Committee that the ICAC had indicated that its third report on government procurement was expected to be tabled by the end of the year. The Chair proposed that the timing of the Committee's examination of the ICAC's procurement reports not be determined at this stage.

**4. \*\*\***

The committee adjourned at 9.49am until 10.00am on 24 November 2011.

**Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 5)**

10.01am, Thursday, 24 November 2011  
Room 1254, Parliament House

**Members Present**

Mr Speakman, Mr Coure, Mr Owen, Mr Amery, Ms Mihailuk, Ms Voltz

**Apologies**

Mr Gee, Mr Blair, Revd Nile, Mr George, Mr Rees

**1. Confirmation of minutes**

Resolved, on the motion of Mr Coure, that the minutes of the deliberative meeting of 10 November 2011 be confirmed.

**2. Forward planning - reviews of the ICAC's and ICAC Inspector's annual and other reports**

Resolved, on the motion of Mr Coure, that the Committee's questions on notice arising from the ICAC's and ICAC Inspector's 2009-10 and 2010-11 Annual Reports be forwarded to the ICAC Commissioner and Inspector this week, with a request that they respond by 31 January 2012.

Discussion ensued.

Resolved, on the motion of Ms Mihailuk, that the public hearing with the ICAC Commissioner and Inspector be held on Friday 17 February 2012.

The Chair proposed that the Committee meet on Thursday 16 February 2012 at 10.00am to discuss arrangements for the public hearing and the timing of the Committee's examination of the ICAC's procurement reports. Resolved, on the motion of Mr Owen, that the Committee meet on Thursday 16 February 2012.

Discussion ensued.

The committee adjourned at 10.05am until 10.00am on 16 February 2012.

**Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 6)**

9:45 am, Friday, 17 February 2012  
Macquarie Room, Parliament House

**Members Present**

Mr Speakman (Chair), Mr Gee (Deputy Chair), Mr Coure, Mr George, Mr Amery, Ms Mihailuk, Ms Voltz, Mr Blair, Revd Nile, Mr Owen (from 11:58 am)

**Apologies**

Mr Rees

**1. Public hearing: Review of the 2009-2010 and 2010-2011 Annual Reports of the Inspector of the ICAC; Review of the 2009-2010 and 2010-2011 Annual Reports of the ICAC**

The press and the public were admitted. The Chair opened the public hearing and, after welcoming the witnesses, gave a short opening address.

Mr Harvey Leslie Cooper, Inspector, Office of the Independent Commission Against Corruption (ICAC) sworn and examined. Ms Seema Srivastava, Executive Officer of the Inspector of the ICAC affirmed and examined. Also in attendance, Ms Felicity Cannon, Office Manager/ Executive Assistant to the Inspector of the Independent Commission Against Corruption.

The Inspector made a brief opening statement.

The Chair commenced questioning of the witness followed by other members of the Committee. Questioning concluded, the Chair thanked the witness and the witness withdrew.

The Committee took a short adjournment at 10:20am and resumed the public hearing at 10:30am.

The Hon David Andrew Ipp AO QC, Commissioner of the ICAC, Mr Robert William Waldersee, Executive Director of Corruption Prevention, Ms Jacqueline Fredman, Manager of the Assessments Section, and Ms Sharon Loder, Executive Director, Investigation Division affirmed and examined.

Ms Theresa June Hamilton, Deputy Commissioner of the ICAC, Mr Steven Osborne, Deputy Director Investigation Division, and Mr Roy Alfred Waldon, Solicitor to the Commission, and Mr Andrew Kyriacou Koureas, Executive Director of Corporate Services, all sworn and examined.

The Commissioner made an opening statement.

The Chair commenced questioning the witnesses, followed by other members of the Committee. Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

The public hearing concluded at 11:54 am.

**2. Deliberative meeting (11:58pm)**

Mr Owen participated via teleconference, pursuant to Standing Order 295.

**a) Minutes**

Resolved, on the motion of Mr Blair, seconded by Ms Voltz, that the minutes the deliberative meeting of 24 November 2011 be confirmed.

**b) Publication orders**

Resolved, on the motion of Mr George, seconded by Mr Blair, that the corrected transcript of evidence given today (and any tabled documents, which are not confidential) be authorised for publication and uploaded on the Committee's website.

Resolved, on the motion of Ms Mihailuk, seconded by Mr Blair, that the answers to questions on notice from the Inspector of the ICAC, received 12 January 2012, be authorised for publication and be uploaded on the Committee's website.

Resolved, on the motion of Ms Mihailuk, seconded by Ms Voltz, that the answers to questions on notice from the ICAC, received 25 January 2012, be authorised for publication and uploaded on the Committee's website.

**c) Time and date for the next deliberative meeting**

The deliberations concluded at 12:07pm and the Committee adjourned until Thursday, 15 March 2012 at 1pm.

**Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 7)**

1:07pm, Thursday, 15 March 2012  
Room 1153, Parliament House

**Members Present**

Mr Speakman (Chair), Mr Gee (Deputy Chair), Mr Coure, Mr George, Mr Amery, Ms Mihailuk, Ms Voltz, Mr Blair, Mr Rees

**Apologies**

Mr Owen, Revd Nile

**1. Confirmation of minutes**

Resolved, on the motion of Mr Coure, that the minutes of the deliberative meeting of 17 February 2012 be confirmed.

**2. Review of the ICAC's and the ICAC Inspector's annual reports**

The Committee noted the questions on notice, resulting from the hearing with the ICAC on 17 February, sent to ICAC and the indicative timetable for the review of ICAC's and the ICAC Inspector's annual reports. Committee staff undertook to follow up the responses to the questions on notice to ensure that they are received and distributed within 21 days of the meeting.

**3. \*\*\***

**4. \*\*\***

**5. \*\*\***

**6. \*\*\***

**7. Time and date for the next deliberative meeting**

The Committee agreed to meet on Thursday 31 May at 1:05pm. The deliberations concluded at 1:37pm and the Committee adjourned until Thursday 31 May 2012 at 1:05pm.

**Minutes of proceedings of the Committee on the Independent Commission Against Corruption (no. 8)**

1.12pm, Thursday, 31 May 2012  
Room 1153, Parliament House

**Members present**

Mr Speakman, Mr Coure, Mr Owen, Mr Amery, Ms Mihailuk, Ms Voltz, Mr Rees, Mr Gee, Mr Blair, Revd Nile

**Apologies**

Mr George

*Staff in attendance:* Carly Maxwell, Dora Oravec, Vedrana Trisic, Meike Bowyer

**1. Confirmation of minutes**

Resolved, on the motion of Mr Rees, seconded Mr Coure, that the minutes of the deliberative meeting of 15 March 2012 be confirmed.

2. \*\*\*

3. \*\*\*

4. \*\*\*

**5. Consideration of Chair's draft report on the review of the ICAC Inspector's 2009–2010 and 2010–2011 annual reports**

The Chair spoke to the draft report, previously circulated.

Resolved, on the motion of Mr Owen, seconded Mr Coure, that the draft report be the report of the Committee and that it be signed by the Chair and presented to the House.

Resolved on the motion of Mr Owen, that the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

Resolved on the motion of Mr Blair, seconded Mr Coure, that, once tabled, the report be placed on the Committee's website.

6. \*\*\*

**7. General business**

The Committee discussed tabling arrangements. The Chair advised that the reports would be tabled in both Houses on the last sitting week in June.

The Committee agreed that committee staff would contact their offices regarding arrangements for the Committee's next meeting.

The committee adjourned at 1.30pm until a date to be determined.