



PARLIAMENT OF NEW SOUTH WALES

# Committee on the Independent Commission Against Corruption

REPORT 3/56 – SEPTEMBER 2017

REVIEW OF THE 2014-2015 AND 2015-2016 ANNUAL REPORTS OF THE ICAC INSPECTOR



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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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## Chair's Foreword

The Oversight Committee of the Independent Commission Against Corruption has reviewed the Annual Reports of the Inspector of the Independent Commission Against Corruption for the years 2014-2015 and 2015-2016.

Both those Annual Reports were provided by the Inspector against a background where there was significant controversy relating to both the jurisdiction and the processes adopted by the Independent Commission Against Corruption. Arising out of various reports provided to the Parliament by the Inspector of the ICAC, and hearings conducted by this Committee, the Parliament enacted the *Independent Commission Against Corruption (Amendment) Act 2016*.

Mr Justice Levine was the Inspector of ICAC up until 23 November 2016. Since that time, Judge John Nicholson SC has continued in the role of the Acting Inspector.

On the 1 July 2017, Mr Bruce McClintock SC replaced Mr Nicholson as the Inspector.

The work carried out by the Inspector is important work to ensure that the functions and powers of ICAC are exercised in a proper manner.

I wish to take this opportunity of placing on record the Committee's gratitude to Mr Justice Levine and Mr John Nicholson SC for the work which they have carried as Inspector of the ICAC during a turbulent time.

In addition I would like to place on record our appreciation to Ms Susan Raice, who has provided advice and assistance to both the Inspectors during their period as the Inspector of ICAC. Ms Raice has played an enormous role in assisting both the Inspectors.

The ICAC now moves into a new period under the new Inspector.

The Acting Inspector made a Final Report to the Committee in the weeks prior to his resignation. The observations made by the Acting Inspector are canvassed in this report. The matters which he raises should be addressed by the new Commissioners when they provide to the Committee and to the Parliament recommendations relating to procedural fairness and further reform of ICAC's practice and procedures.

As usual I am grateful to the Secretariat who assisted the Committee. The quality of the assistance of the Secretariat and the advice they provide to the Committee members can never be underestimated.

I commend the Report.



**Damien Tudehope MP**  
Chair



## Findings and Recommendations

Recommendation 1 \_\_\_\_\_ 3

That the ICAC Commissioners ('the three member Commission') develop procedural fairness guidelines for the conduct of the ICAC's public inquiries, as required by the *Independent Commission Against Corruption Amendment Act 2016*, as a matter of priority.

Recommendation 2 \_\_\_\_\_ 7

That the ICAC develop a formal policy for advising people subject to an ICAC investigation, at the earliest possible opportunity, where they will not be the subject of adverse findings.

Recommendation 3 \_\_\_\_\_ 8

That the Inspector of the ICAC ('the Inspector') and the three member Commission review the Memorandum of Understanding between the Inspector and the ICAC as soon as practicable.

Finding 1 \_\_\_\_\_ 14

Ongoing exercise of the Inspector's audit function is important for effective oversight of the ICAC.





# Commentary

## Introduction

- 1.1 This report fulfils one of the Committee's obligations under its establishing legislation, the *Independent Commission Against Corruption Act 1988* (the ICAC Act). The Committee's functions include examining each annual report and other report of the Inspector of the Independent Commission Against Corruption (the Inspector), and reporting to Parliament on any matter appearing in or arising out of these reports.
- 1.2 Under section 77B of the ICAC Act, the Inspector is required to prepare, within the period of 4 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and to furnish the report to the Presiding Officer of each House of Parliament.
- 1.3 The Independent Commission Against Corruption (the ICAC), investigates, exposes and prevents public sector corruption and educates the community and the public sector about corruption.<sup>1</sup>
- 1.4 The Inspector oversees the ICAC's work and his or her principal functions are:
- auditing the ICAC's operations to monitor compliance with the law of the State;
  - dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct by the ICAC or its officers;
  - dealing 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 ICAC or its officers; and
  - assessing the effectiveness and appropriateness of the ICAC's procedures relating to the legality or propriety of its activities.<sup>2</sup>
- 1.5 During the 2014-15 and 2015-16 reporting periods, the Hon David Levine AO RFD QC was the sitting Inspector. Mr Levine resigned from the position on 23 November 2016 for health reasons and the then Assistant Inspector, Mr John Nicholson SC, was appointed Acting Inspector, serving in the position until 30 June 2017.<sup>3</sup>
- 1.6 Public hearings for the Committee's review of the 2014-15 and 2015-16 annual reports of the Inspector were held on 22 March 2017, at which the Acting Inspector was called to give evidence. The transcript from the public hearing is reproduced at Appendix Two to the report.

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<sup>1</sup>*Independent Commission Against Corruption Act 1988*, s13.

<sup>2</sup>*Independent Commission Against Corruption Act 1988*, s 57B.

<sup>3</sup> See Mr John Nicholson SC, Acting Inspector of the ICAC, *Transcript of Evidence*, p4.

1.7 The Committee's review of the annual reports has focussed on the following areas:

- Recent amendments to the ICAC Act and recent appointments
- The ICAC's powers and procedures
- Liaison between the Inspector and the ICAC
- Resourcing of the Inspectorate
- The Inspector's audit function
- Disclosure of confidential information.

### **Recent amendments to the ICAC Act and recent appointments**

1.8 The Committee's review of the Inspector's annual reports was conducted at a time of significant change for the ICAC. In November 2016, the NSW Parliament passed the *Independent Commission Against Corruption (Amendment) Act 2016*, which came into force on 7 August 2017. The Amendment Act implements many of the recommendations of the Committee's 2016 report to Parliament: *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports* ('the Committee's 2016 report').

1.9 The Amendment Act restructures the ICAC. It abolishes the sole Commissioner model and introduces a three-member panel of Commissioners ('the three member Commission') to head the ICAC, with a Chief Executive Officer (CEO) to manage its day-to-day affairs.<sup>4</sup> The three-member Commission consists of a full-time Chief Commissioner and two Commissioners employed part-time.<sup>5</sup>

1.10 On 7 August 2017, the Hon Peter Hall QC was appointed to the position of Chief Commissioner for a period of five years; while Ms Patricia McDonald SC and Mr Stephen Rushton SC were appointed, on a part-time basis, to the positions of Commissioner, also for a period of five years. This three member Commission replaced the then Acting ICAC Commissioner, the Hon Reginald Blanch AM QC.

1.11 This followed the 1 July 2017 appointment of Mr Bruce McClintock SC as Inspector on a part-time basis for a period of five years, replacing Mr Nicholson.

1.12 All three Commissioners are able to exercise the ICAC's functions and powers, for example, conducting public inquiries and holding compulsory examinations. If there are inconsistencies in the decisions of the Commissioners, the Chief Commissioner's decision will prevail. The exception is decisions about the conduct of the ICAC's public inquiries. To authorise the conduct of such an inquiry, agreement between the Chief Commissioner and at least one other Commissioner is necessary.<sup>6</sup>

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<sup>4</sup>*Independent Commission Against Corruption Act 1988*, s5.

<sup>5</sup>*Independent Commission Against Corruption Act 1988*, schedule 1, clause 4.

<sup>6</sup>*Independent Commission Against Corruption Act 1988*, s6.

- 1.13 The Amendment Act also makes the following further changes:
- The Commissioners are required to issue procedural guidelines for the conduct of public inquiries, which are to be tabled in both Houses of Parliament and published on the ICAC's website. The guidelines are to cover:
    - The investigation of evidence that might exculpate 'affected persons' (that is persons against whom substantial allegations have been made in the course of, or in connection with the public inquiry concerned);
    - The disclosure of exculpatory and other relevant evidence to 'affected persons';
    - Cross-examination of witnesses regarding their credibility;
    - Provision of access to relevant documents for 'affected persons' and witnesses, and reasonable time to prepare before giving evidence;
    - Any other matter the ICAC considers necessary to ensure procedural fairness.<sup>7</sup>
  - The ICAC is not authorised to include an adverse finding against a person in a report unless:
    - The ICAC has given the person a reasonable opportunity to respond to the proposed adverse finding; and
    - The ICAC includes in the report a summary of the substance of the person's response that disputes the adverse finding if the person requests the ICAC to do so within the time specified by the ICAC.<sup>8</sup>

## The ICAC's Powers and Procedures

The Committee will continue to monitor the ICAC's powers and procedures in light of recent amendments to the ICAC Act

### Recommendation 1

**That the ICAC Commissioners ('the three member Commission') develop procedural fairness guidelines for the conduct of the ICAC's public inquiries, as required by the *Independent Commission Against Corruption Amendment Act 2016*, as a matter of priority.**

- 1.14 One of the extraordinary powers the ICAC can exercise to fulfil its functions of investigating, exposing and preventing corruption, is to conduct a public inquiry.<sup>9</sup> It also has the power to make findings about the conduct of specified individuals including findings that they have engaged in serious corrupt conduct.<sup>10</sup>

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<sup>7</sup> *Independent Commission Against Corruption Act 1988*, s31B.

<sup>8</sup> *Independent Commission Against Corruption Act 1988*, s79A.

<sup>9</sup> *Independent Commission Against Corruption Act 1988*, s31.

<sup>10</sup> See *Independent Commission Against Corruption Act 1988*, ss74A and 74BA.

- 1.15 As above, many of the recommendations of the Committee's 2016 report were implemented by the recently proclaimed Amendment Act. These included recommendations for changes to decision-making requirements for the ICAC to proceed to a public hearing; for the three member Commission to develop procedural fairness guidelines for the conduct of public inquiries; and for people to be given a reasonable opportunity to publicly respond to adverse ICAC findings against them.<sup>11</sup>
- 1.16 The Committee made these recommendations in response to concerns raised by a number of stakeholders, including former Inspector Levine, that reputational damage and other serious consequences can flow from the ICAC's public inquiries and findings, in circumstances where affected individuals have limited opportunity for judicial review of those findings.<sup>12</sup> At the 22 March public hearing, the Acting Inspector raised similar concerns.
- 1.17 Now that the Amendment Act has been proclaimed, the Committee considers that the ICAC should be given the opportunity to implement the changes contained in it; and that the ICAC should develop the procedural fairness guidelines for the conduct of public inquiries as a matter of priority. The Committee will then be in a position to monitor whether the changes it recommended have adequately resolved the concerns that have been raised.
- 1.18 At the 22 March hearing, the Acting Inspector expressed concerns about whether the ICAC places enough weight on its decisions to proceed to a public inquiry given the serious consequences that can follow for affected individuals.
- 1.19 Section 31(1) of the ICAC Act provides the ICAC can conduct a public inquiry, for the purposes of an investigation, if it is satisfied that it is in the public interest to do so. Without limiting the factors that the ICAC may take into account in deciding whether to conduct a public inquiry, section 31(2) provides the ICAC is to consider:
- the benefit of exposing to the public, and making it aware, of corrupt conduct;
  - the seriousness of the allegation or complaint being investigated;
  - any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry);
  - whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.
- 1.20 The Acting Inspector told the Committee:

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<sup>11</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, Report 2/56, October 2016, recommendations 2 & 13-20.

<sup>12</sup> See Hon David Levine AO RFD QC, Inspector of the ICAC, *Report to the Premier: The Inspector's Review of the ICAC*, 12 May 2016, in particular p20, para 51 & p28, para 78, Office of the Inspector of the ICAC's website, <http://www.oicac.nsw.gov.au/assets/oicac/reports/other-reports/Report-to-Premier-Inspectors-Review-of-the-ICAC.pdf>, viewed 22 August 2017.

One of the things that has been of concern to me...is the way in which the determination of whether or not a public inquiry should be called for may suffer some impediment in the sense that the requirements of subsection (2) of section 31, which are whether or not it is in the public interest, are probably tick-a-box considered rather than considered in reality, and the focus being on why it is in the public interest as distinct from whether it is in the public interest.<sup>13</sup>

1.21 The Acting Inspector further stated:

The legislation sets out in fairly wide terms what is required before the Commission determines to have a public inquiry. But there is no procedure that is set out anywhere that I can see that requires a sitting down and, as it were, a contest being organised – these are the reasons for, these are the reasons against...That should be something that is managed within the organisation.<sup>14</sup>

1.22 Adding to the Acting Inspector's concerns were the fact that the rules of evidence that apply in the Courts do not apply at public inquiries, and if a public inquiry results in a finding of corrupt conduct against a person, there is limited opportunity for judicial review of that finding. The Acting Inspector stated:

Where the power to conduct investigations is so vastly different from the powers of a criminal court conducting a trial, and given historically that we have always required proof beyond a reasonable doubt and that we have other safeguards in conduct of investigations and determination of guilt because of the potential incredible consequences, it is true that when a finding of corruption is made that the consequence is not custody, but it is sometimes worse than custody. I am passionate about at least some avenue of review if findings of corruption are to be made.<sup>15</sup>

1.23 The Acting Inspector also expressed disquiet about the methods that he indicated were sometimes used by the ICAC and Counsel Assisting the ICAC to elicit the material that findings of corrupt conduct were ultimately based on. He told the Committee:

...some of that testimony is garnered through superb bullying cross-examination...it advances the investigation in the sense that it advances the goals, if the goals of the investigation are predetermined, as I sense they are in an ICAC investigation, otherwise they could not have a public inquiry. If the goals are predetermined and the bullying of the questioning heads towards the designated goals they have got their corrupt finding.<sup>16</sup>

1.24 The Committee considers the changes made by the Amendment Act, as recommended by the Committee in its 2016 report, will assist to address the Acting Inspector's concerns.

1.25 The Committee's 2016 report did not recommend increased judicial review of the ICAC's findings. There is already a limited right to judicial review of ICAC findings but there is no procedure for the review of the merits of an ICAC finding,

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<sup>13</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p4.

<sup>14</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p5.

<sup>15</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p6.

<sup>16</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p5.

commonly referred to as 'merits review'.<sup>17</sup> The Committee instead agreed with the findings of the 2015 Independent Panel Review of the Jurisdiction of the ICAC, conducted by the Hon Murray Gleeson AC QC, and Mr Bruce McClintock SC. The Independent Panel had noted that the ICAC does not make judicial decisions but reports findings and opinions at the conclusion of an investigation. The Independent Panel found that introducing merits review would confuse judicial and administrative functions and would increase misunderstandings about the ICAC's role.<sup>18</sup>

- 1.26 As an alternative, given the grave consequences for the individuals concerned, the Committee recommended that increased weight be given to the ICAC's decisions to proceed to a public inquiry so that a sole Commissioner could no longer make such a decision. It would instead require majority agreement of the three member Commission.<sup>19</sup> This should assist to alleviate the Acting Inspector's concerns that the ICAC give an appropriate level of consideration to its decisions to proceed to a public inquiry. Indeed, the Acting Inspector told the Committee:

...the reason I feel more comfortable, I think, with the new legislation is that there is going to have to be a discussion among more than one person about whether it is in the public interest.<sup>20</sup>

- 1.27 In addition, the Committee's 2016 report recommended people should be given the opportunity to publicly respond to adverse ICAC findings, as outlined above. It found that in circumstances where there would continue to be limited opportunity to challenge the ICAC's findings in court, this would give affected persons a chance to have their response to adverse findings placed on the public record.<sup>21</sup>

- 1.28 The Committee also found the ICAC should comply with procedural fairness during its public inquiries and before publishing adverse findings, and recommended the development of the procedural fairness guidelines for the conduct of public inquiries outlined above.<sup>22</sup> The guidelines have the potential to assist to allay the Acting Inspector's concerns, and to reassure stakeholders more generally, that the ICAC's procedures in reaching its findings are optimal so that:

- affected persons have knowledge of, and are able to appropriately test, evidence upon which any ICAC finding is made; and

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<sup>17</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, pp11-13. As noted on p13, quoting the Independent Panel's report, a 'merits review' occurs when an appeal body reconsiders the evidence that was before the original decision-maker to determine whether it was affected by a mistake of fact.

<sup>18</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, p13, para 2.10.

<sup>19</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, see pp 1&2, recommendation 2, paras 1.4-1.6.

<sup>20</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p4.

<sup>21</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, pp19-20, see in particular recommendation 20 and para 2.38.

<sup>22</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, pp14-19.

- the ICAC is required to take all relevant evidence into account, including exculpatory evidence, in reaching its findings;
- affected persons and witnesses have access to relevant documents and reasonable time to prepare before giving evidence.

1.29 Other rather recent changes, unconnected with the Amendment Act, may also assist to reassure stakeholders that the ICAC's procedures in reaching its findings are optimal, that its powers are appropriately checked, and that people are being treated fairly at public inquiries.

1.30 For example, at a public hearing in 2016 the previous ICAC Commissioner told the Committee that prior to July 2015, the NSW Bar Rules were modelled on the conduct to be expected of a Crown Prosecutor and were thus inappropriate for use in an inquisitorial tribunal like the ICAC. In contrast, the Legal Profession Uniform Conduct (Barristers) Rules 2015 that came into force in July 2015 set out the conduct that is expected of Counsel appearing before an investigative or inquisitorial tribunal, including the ICAC.<sup>23</sup>

1.31 Similarly, on the recommendation of the Independent Panel, the Government amended the ICAC Act in 2015 to limit the ICAC's jurisdiction so that it can only make corrupt conduct findings in cases of serious corrupt conduct.<sup>24</sup> In support of its recommendation the Independent Panel stated:

If the conduct investigated ultimately is found to be other than serious it should not be stigmatised as corrupt. A power which has such obvious capacity to harm individuals should be reserved only for cases where the misconduct in question is serious.<sup>25</sup>

**The ICAC should advise persons subject to an ICAC investigation if no adverse findings are to be made against them, at the earliest possible opportunity**

## **Recommendation 2**

**That the ICAC develop a formal policy for advising people subject to an ICAC investigation, at the earliest possible opportunity, where they will not be the subject of adverse findings.**

1.32 The Committee considers that where no adverse findings are to be made against a person who has been subject to an ICAC investigation, the ICAC should advise the person of this at the earliest possible opportunity. The Acting Inspector advocated for such a process at the Committee's hearing on 22 March. In some cases the earliest possible opportunity will occur before the release of any

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<sup>23</sup> Hon Megan Latham, *Transcript of Evidence for the Committee's Review of the Inspector's Report to the Premier: The Inspector's Review of the ICAC*, 9 September 2016, p29; see also the evidence of Mr Andrew Tink, *Transcript of Evidence*, 9 September 2016, pp11-14.

<sup>24</sup> See Independent Commission Against Corruption Amendment Bill 2015, which came into effect in September 2015.

<sup>25</sup> Gleeson, M and McClintock, B, *Independent Panel – Review of the Jurisdiction of the ICAC*, July 2015, p64, NSW Department of Premier and Cabinet website: [http://www.dpc.nsw.gov.au/data/assets/pdf\\_file/0003/173235/Independent\\_Panel\\_Review\\_of\\_the\\_Jurisdiction\\_of\\_the\\_Independent\\_Commission\\_Against\\_Corruption\\_Report.pdf](http://www.dpc.nsw.gov.au/data/assets/pdf_file/0003/173235/Independent_Panel_Review_of_the_Jurisdiction_of_the_Independent_Commission_Against_Corruption_Report.pdf), viewed 22 August 2017.

investigation report under section 74 of the ICAC Act. The ICAC should develop a formal, written policy around this.

- 1.33 The ICAC has advised it currently has no formal policy or procedure in place for advising those involved in a public inquiry, prior to the preparation of an investigation report, that they will not be the subject of adverse findings. The ICAC has advised it is usually only in a position to determine whether or not adverse findings will be made once the relevant investigation report has been finalised. Therefore, the publication of a report by the ICAC will usually be the earliest appropriate occasion for confirmation to be given that no adverse findings are made.<sup>26</sup>
- 1.34 However, the ICAC has further advised that there have been occasional instances where, during the course of a public inquiry, it has become apparent that the evidence is incapable of support an adverse finding. In those cases, the presiding Commissioner has exercised a discretion to make a statement to that effect.<sup>27</sup>
- 1.35 The Acting Inspector stated at the public hearing on 22 March:
- ...there must be some consideration given to a mechanism of, if I can use this term, disabusing those who fall into that category of any concern that they may have while waiting for the report. In other words, there should be some mechanism that we have to allow them to get along with their lives in the face of no adverse finding ever going to be made about them.<sup>28</sup>
- 1.36 The Acting Inspector also indicated that a range of factors can affect when that earliest opportunity will be, including ongoing, related litigation and the quality of evidence before the ICAC. For this reason, the Acting Inspector stated that this is a matter best left to the ICAC's discretion.<sup>29</sup> The Committee agrees that the ICAC is in the best position to assess this on a case by case basis. To maintain a suitably flexible approach this matter should be regulated according to the ICAC's internal policies and procedures.

## **Liaison Between the Inspector and the ICAC**

**The Inspector and the three member Commission should review the memorandum of understanding between the Inspector and the ICAC as soon as practicable.**

### **Recommendation 3**

**That the Inspector of the ICAC ('the Inspector') and the three member Commission review the Memorandum of Understanding between the Inspector and the ICAC as soon as practicable.**

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<sup>26</sup> Hon Peter Hall QC, Chief Commissioner, letter to Committee Chair dated 7 September 2017.

<sup>27</sup> Hon Peter Hall QC, Chief Commissioner, letter to Committee Chair dated 7 September 2017.

<sup>28</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p4.

<sup>29</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p7.



- 1.37 The Committee, in its previous reports, has found that a productive working relationship between the Inspector and the Commissioner was essential to allow them to perform their functions effectively and efficiently.<sup>30</sup>
- 1.38 To assist liaison between the Inspector and the ICAC, a memorandum of understanding was struck by the former Inspector, the Hon David Levine AO RFD QC and the ICAC in 2015.<sup>31</sup>
- 1.39 The Committee recommended in its 2016 report that (following the proposed replacement of the sole Commissioner model with a three member Commission), the three member Commission and the Inspector should review the existing memorandum of understanding to ensure it promotes a workable relationship between their respective offices.<sup>32</sup>
- 1.40 As the three member Commission and a permanent Inspector have now been appointed, this review should proceed as soon as practicable. The Committee was pleased to hear the following evidence from the new Inspector, Mr McClintock, at a recent Committee hearing examining the laws around voluntary disclosures to the ICAC:
- Mr Hall will find no problem with this. I have already met with him and the assistant commissioners with a view to discussing things...one thing we have to sort out is the protocol between the Inspector and the Commissioner, a memorandum of understanding, which needs updating and discussion.<sup>33</sup>
- 1.41 The Committee was also pleased at the Acting Inspector's evidence at its 22 March public hearing that he and the Acting ICAC Commissioner, the Hon Reginald Blanch AM QC, were enjoying a productive working relationship. The Acting Inspector told the Committee:
- The Acting ICAC Commissioner and I have, at least from my perspective and I trust also from his, a relationship which permits us to disagree when we need to, to speak professionally without being personal or pejorative... We have made a point to meet and have a cup of tea...There is no rancour and there is no haughtiness from either me or him...<sup>34</sup>
- 1.42 The Committee also notes evidence from the Acting Inspector about the competing tensions inherent in the respective roles of Commissioner and Inspector:

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<sup>30</sup> See Committee on the ICAC, *Review of the 2013-2014 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption*, Report 1/56, March 2016, p21; and Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, pp36-37.

<sup>31</sup> See ICAC and the Inspector of the ICAC, *Memorandum of Understanding*, signed 29 May 2015, published on ICAC Committee webpage: <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryOther/Transcript/7925/Answers%20to%20further%20questions%20-%20ICAC.pdf>, viewed 21 August 2017.

<sup>32</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, pp36-37.

<sup>33</sup> Mr Bruce McClintock SC, Inspector of the ICAC, *Transcript of Evidence*, 7 August 2017, p34.

<sup>34</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, pp3&8.

...the legislative provisions granting functions to the Inspector found in 57B and 57C of the Independent Commission Against Corruption Act are such that an element of competing tensions might be seen to be an ingredient of any honest working relationship between the Inspector and the ICAC.<sup>35</sup>

- 1.43 The Committee accepts that these tensions are part and parcel of a healthy and robust oversight framework for the ICAC. The Inspector conducts a vital oversight role to ensure that the ICAC's formidable covert and coercive powers are properly exercised and adequately scrutinised. The Committee also finds, consistent with the Acting Inspector's account of his working relationship with the Acting ICAC Commissioner, that these inherent tensions need not, and should not, prevent a productive and respectful working relationship between the Inspector and ICAC Commissioners. The Committee considers a suitable memorandum of understanding between the ICAC and the Inspector will assist in this regard.

## Resourcing of the ICAC Inspectorate

### **The Committee will continue to monitor the resourcing of the ICAC Inspectorate to ensure that it is adequate**

- 1.44 Given the importance of the Inspector's role, discussed above, it is essential the Inspector is provided with adequate resources and the Committee will continue to monitor this issue.
- 1.45 In the Committee's 2016 report, the Committee found evidence of peaks and troughs in the workload of the Inspector. It noted that under the ICAC Act, the Governor can appoint an Assistant Inspector with the Inspector's concurrence to assist the Inspector as he or she requires, thereby accommodating any peaks in workload.<sup>36</sup> It therefore recommended that the position of Inspector continue to be part time, and that there continue to be provision for the appointment of Assistant Inspectors to assist the Inspector with his or her work as required.<sup>37</sup>
- 1.46 The Committee further recommended consideration be given to resource-sharing arrangements between the ICAC Inspectorate and the Law Enforcement Conduct Commission (LECC) Inspectorate. That is, a single shared public service agency providing administrative support to both Inspectors, headed by a professional executive manager. The Committee found this would increase the overall size of the joint administrative support available to each Inspector thereby attaining a critical mass of staff and work.<sup>38</sup>
- 1.47 Given continuing evidence of fluctuations in the Inspector's workload, discussed below, the Committee still considers the position should be part-time, and that peaks in workload should continue to be managed through the appointment of Assistant Inspectors where necessary.

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<sup>35</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p2.

<sup>36</sup> *Independent Commission Against Corruption Act 1988*, s57AA.

<sup>37</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, see recommendation 27 and pp33-34.

<sup>38</sup> Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, see recommendation 25 and pp31-33.

1.48 The Committee also continues to support resource-sharing arrangements between the ICAC and LECC Inspectors, if this proves to be possible. In this regard, the Committee notes the new ICAC Inspector Mr McClintock has discussed the issue with the newly appointed LECC Inspector, Professor Terry Buddin SC. Mr McClintock told the Committee that the ICAC Inspectorate's capacity depends a lot on support and office arrangements and stated:

...I have been having discussions with the new Inspector of the LECC, Mr Buddin, about office arrangements and so on. We have been talking to DPC [the Department of Premier and Cabinet] about that. Because of the shifting of some of the functions from the Ombudsman to him, he requires high level security which I do not require. It is going to necessitate at least Mr Buddin moving to secure premises. We have been talking to the Premiers about that as well and whether we share them.<sup>39</sup>

1.49 On the subject of fluctuations in the Inspector's workload, it is instructive to examine recent statistics concerning complaints to the Inspector. A table containing statistics for the last six reporting years follows.<sup>40</sup>

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<sup>39</sup> Mr Bruce McClintock SC, *Transcript of Evidence*, 7 August 2017, pp37-38.

<sup>40</sup> The table is based on figures contained in the annual reports of the Inspector of the ICAC for relevant reporting years. See Inspector of the ICAC, *Annual Report 2012-2013*, p14, Table 1; Inspector of the ICAC, *Annual Report 2013-2014*, pp10-12; Inspector of the ICAC, *Annual Report 2014-2015*, pp16&18; Inspector of the ICAC, *Annual Report 2015-2016*, pp14-15. All annual reports are available at the ICAC Inspector's website, <http://www.oicac.nsw.gov.au/reports/>, viewed 24 August 2017.

**Table: Complaints to the ICAC Inspectorate 2010-11 to 2015-16**

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
<b>Total complaints under consideration in reporting period</b>	42	32	21	28	69	71
<b>Complaints carried over from previous reporting periods</b>	3	1	0	1	9 <sup>41</sup>	38
<b>New complaints received in reporting period</b>	38	31	20	27	60	33
<b>Complaints finalised within current reporting period</b>	41 (97.6%)	32 (100%)	20 (95.2%)	19 (67.85)	31 (44.9%)	28 (39.4%)
<b>Complaints open at end of reporting period</b>	1	0	1	9	38	43

1.50 The table shows that in the 2014-15 reporting year there was a marked increase in the number of new complaints to the Inspectorate. Both Inspector Levine and Acting Inspector Nicholson indicated the high profile High Court decision in *Independent Commission Against Corruption v Margaret Cunneen and Ors* [2015] HCA 14 may have contributed to this. The Acting Inspector told the Committee:

<sup>41</sup> The Inspector's 2014-2015 Annual Report states that eight matters were carried over from the previous reporting period, see p18, para 5.7. In contrast, the Inspector's 2013-2014 Annual Report indicates that nine complaints were carried over to the 2014-2015 reporting period, see pp11-12 and in particular para 7.2. Informal advice from the Inspectorate confirms that **nine** complaints were carried over from the 2013-2014 reporting period to the 2014-2015 reporting period. Of those nine complaints, the Inspectorate informally advised the Committee Secretariat that one was withdrawn by the complainant and the other eight closed in the 2014-2015 reporting period.

...particularly in respect of the decision in Margaret Cunneen's case, people became aware of the Office of the Inspector and that there was an avenue to appeal – appeal is not the right word – to complain.<sup>42</sup>

1.51 Other than that, new complaints to the Inspector remained relatively steady over the six years except for the 2012-13 reporting year when they were a little lower.

1.52 Another noticeable feature of the statistics is that the percentage of complaints finalised within a reporting period has steadily decreased in the six reporting years, from the finalisation of around 95 to 100 per cent of matters in earlier years, to the finalisation of only about 40 to 45 per cent of complaints within the 2014-15 and 2015-16 reporting years. The Acting Inspector commented on the recent carryover of complaints from one reporting year to another:

Another aspect of the two reports is the carryover of a large number of matters. In the 2014-15 report, 38 matters remained outstanding. In the 2015-16 report, only 10 of those matters were closed, leaving a further 28 from that year still outstanding – in other words, the clock is ticking and the quality of service the Inspector is offering would appear on the surface to be slow...

...In the 2016 report, a further 15 matters were carried over to the 2016-17 reporting period, making a total of 43 matters carried over into the 2016-17 reporting year. I can say this: Since July 2016, of those 43 matters, 21 have now been closed, leaving 22 of the old matters still unresolved. A major reason for delay centres around ongoing litigation, usually by an "affected" person...It is likely the vast majority of those matters – the 22 matters that are still unresolved and others – will demand significant resources and time for each of them to be resolved by the incoming Inspector or Inspectors.<sup>43</sup>

1.53 The new Inspector Mr McClintock has also acknowledged the carryover of matters, and the link with ongoing litigation. He told the Committee he expects to be able to manage this on a part-time basis:

There was a very great upsurge in complaints to the Inspector under Mr Levine. And there are still some outstanding, actually quite a few outstanding that I will need to deal with. Some of them cannot be concluded at this stage because some of them involve pending litigation, so it cannot be determined...But I do not think that it comes down to the part-time role. If it does and if I feel that the job can only be done appropriately on a full-time basis I will inform you...<sup>44</sup>

1.54 Mr McClintock also indicated that the changes ushered in by the Amendment Act discussed above, including the introduction of procedural fairness guidelines for the conduct of public inquiries, may result in fewer complaints to the Inspectorate in the future:

**Mr Ron Hoenig:** We are hoping without any further legislative intervention that the guidelines and functions of the Commission in the future will prevent those complaints and allow them to be either resolved by the Commissioners presiding, if

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<sup>42</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p8. See also Inspector of the ICAC, *2014-2015 Annual Report*, p16.

<sup>43</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p3.

<sup>44</sup> Mr Bruce McClintock SC, *Transcript of Evidence*, 7 August 2017, p37.

they have public hearings, and they probably allow intervention of the Supreme Court if there is no procedural fairness. So that may lessen substantially the actual complaints on major matters that you are expected to look at...

**Mr McClintock:** Mr Hoenig, I very strongly agree with you. I gave evidence here last year supporting the model. And I think I said something like what you have said to me. I would hope that if the model is successful it should mean that I rarely have to deal with complaints...<sup>45</sup>

## The Inspector's Audit Function

### Ongoing exercise of the Inspector's audit function is important for effective oversight of the ICAC

#### Finding 1

##### Ongoing exercise of the Inspector's audit function is important for effective oversight of the ICAC.

- 1.55 As outlined above, in addition to handling complaints, one of the Inspector's principal functions is to audit the ICAC's operations to monitor compliance with the law of the State.<sup>46</sup> Both functions are important in ensuring appropriate oversight of the ICAC. The Committee will continue to monitor the exercise of the audit function, in addition to monitoring the resourcing of the Inspectorate (see above) to ensure it is being carried out on an ongoing basis.
- 1.56 In the 2015-16 reporting period, the Inspector did not conduct any audits of the ICAC's operations.<sup>47</sup> For the 2014-15 period, the Inspector reported that he commenced an audit into the ICAC's Operation Hale which subsequently became an investigation and was later the subject of a special report pursuant to section 77A of the ICAC Act.<sup>48</sup>
- 1.57 In evidence to the Committee in 2016, before he had been appointed Inspector, Mr McClintock raised concerns that Inspector Levine had not used the audit function more, whilst noting the influx of complaints he had been occupied with. Mr McClintock stated:
- ...it worries me that there have been no audits by the current Inspector. In fairness to him, I realise that he has had a lot more to do than previous Inspectors...<sup>49</sup>
- 1.58 Mr McClintock raised this again with the Committee when he gave evidence on 7 August 2017 in his capacity as Inspector, stressing the importance of the audit role:

<sup>45</sup> Mr Bruce McClintock SC, *Transcript of Evidence*, 7 August 2017, p38.

<sup>46</sup> *Independent Commission Against Corruption Act 1988*, s 57B(1)(a).

<sup>47</sup> Inspector of the ICAC, *Annual Report 2015-16*, p13, para 5.2.

<sup>48</sup> Inspector of the ICAC, *Annual Report 2014-15*, p14, para 5.2; see also Inspector of the ICAC, *Section 77A Report in Operation "Hale" – ICAC v Margaret Cunneen SC & Ors – 4 December 2015*, ICAC Inspector's website, <http://www.oicac.nsw.gov.au/reports/>, viewed 24 August 2017.

<sup>49</sup> Mr Bruce McClintock SC, *Transcript of Evidence for the Committee's Review of the Inspector's Report to the Premier: The Inspector's Review of the ICAC*, 9 September 2016, 8 September 2017, p37.

I have two roles: to deal with complaints about ICAC; and to audit ICAC's operations...The audit function has been neglected. No audits were done in the terms of the Acting Inspector and the previous Inspector...and I regard that as very unfortunate. I was responsible for putting the amendments that introduced the Inspector in 2005. When I wrote that report I had strongly in mind that the function of the Inspector was to enhance the good governance of ICAC. That is done by the auditing function, not by dealing with the complaints function, important as that is.<sup>50</sup>

1.59 For his part, the Acting Inspector commented at the Committee's hearing on 22 March 2017:

To confine the work of the Inspector simply to audit...is to limit the scrutiny of the ICAC to non-contentious, semi-contentious or esoterically contentious matters. Limiting the scrutiny of the ICAC in that way would avoid discovery of any abuse of power, impropriety, misconduct, maladministration, unreasonable invasion of privacy and like matters from the role of Inspector.<sup>51</sup>

1.60 The Committee agrees with the Inspector and the former Acting Inspector that optimal oversight of the ICAC is more likely to be achieved where the work of the Inspector is not confined to either the complaint-handling function or the audit function. As above, the changes introduced by the Amendment Act have the potential to reduce the number of complaints to the Inspectorate, allowing the Inspector to better balance his or her complaint-handling function with the audit function.

## Disclosure of confidential information

### The Committee will continue to monitor the issue of the disclosure of confidential information obtained during the course of an ICAC investigation

1.61 The Inspector's 2014-15 Annual Report included details of a complaint to the Inspectorate about the disclosure to the media of information relating to an ICAC investigation.<sup>52</sup> The unauthorised disclosure of confidential information by people who have obtained that information in the course of an ICAC investigation is a serious matter, and serious penalties exist under sections 111 and 114 of the ICAC Act for such conduct. The ICAC and the Inspector should take ongoing steps to ensure their officers and any other persons who have access to confidential information are aware of the applicable confidentiality provisions. The Committee monitors this issue on an ongoing basis and will continue to do so.

1.62 The Committee's review of the 2013-14 Annual Reports of the Inspector and the ICAC highlighted the difficulties that can arise for the Inspector in investigating the disclosure of confidential information to the media obtained in the course of an ICAC investigation.

1.63 In particular, where such disclosure has occurred, it can be difficult to pinpoint its source. While officers of the ICAC and the Inspectorate may have access to the information, so may witnesses and other persons involved in the relevant investigation. In addition, while the Inspector has jurisdiction to investigate the

<sup>50</sup> Mr Bruce McClintock SC, *Transcript of Evidence*, 7 August 2017, p37.

<sup>51</sup> Mr John Nicholson SC, *Transcript of Evidence*, 22 March 2017, p2.

<sup>52</sup> See Inspector of the ICAC, *2014-2015 Annual Report*, p17, para 5.6.

disclosure of confidential information by an ICAC officer, he or she has no jurisdiction to investigate third parties.<sup>53</sup>

1.64 The Acting Inspector re-iterated this at the Committee's hearing on 22 March:

...I think that is probably how leaking occurs: not from the ICAC, not from us, but from some communication that is made by the Independent Commission Against Corruption or us to some third party...<sup>54</sup>

1.65 The Acting Inspector further noted that he has no control over third parties' disclosure of confidential information to the media, and no power to investigate such disclosure (for example, by examining email chains) in the absence of the involvement of an ICAC officer.<sup>55</sup>

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<sup>53</sup> Committee on the ICAC, *Review of the 2013-2014 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption*, see pp5-7.

<sup>54</sup> *Transcript of Evidence*, 22 March 2017, p8.

<sup>55</sup> *Transcript of Evidence*, 22 March 2017, p8.



## Appendix One – Committee's functions

Under section 64 of the *Independent Commission Against Corruption Act 1988*, the functions of the Committee are to:

- monitor and review the exercise by the ICAC and the Inspector of the ICAC of their functions
- report to Parliament, with such comments as it thinks fit, on any matter appertaining to the ICAC or the Inspector or connected with the exercise of its functions to which, in the Committee's opinion, the attention of Parliament should be directed
- examine each annual and other report of the ICAC and the Inspector and report to Parliament on any matter appearing in, or arising out of, any such report
- examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector
- 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.

Nothing in the ICAC Act authorises the Committee to:

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

## Appendix Two – Transcript of Evidence

This appendix contains a transcript of evidence taken at a public hearing held by the Committee on 22 March 2017. Page references cited in the 'commentary' section of the report relate to the numbering of the original transcript, as found on the Committee's webpage.

**The CHAIR:** Thank you for attending this public hearing of the Joint Committee on the Independent Commission Against Corruption [ICAC]. Today's hearing is to review the 2014-15 and 2015-16 annual reports of the ICAC Inspector. It will review the Acting Inspector's report regarding Operation Dewar. My name is Damien Tudehope and I am the Chair of the Committee and the member for Epping. With me today are my colleagues from the Legislative Assembly: Mr Mark Taylor, the member for Seven Hills; Mr Ron Hoenig, the member for Heffron; Ms Tania Mihailuk, the member for Bankstown; and Mr Paul Lynch, the member for Liverpool. The Committee members from the Legislative Council are: Reverend the Hon. Fred Nile and the Hon. Lynda Voltz.

Today the Committee will hear from witnesses from the Office of the Inspector of the Independent Commission Against Corruption; the Acting Inspector, John Nicholson, SC, and Ms Susan Raice, the principal legal adviser. I thank the witnesses for making themselves available to appear today. I remind everyone to switch off their mobile phones, as they can interfere with the Hansard recording equipment. For the benefit of the gallery I note the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing coverage of proceedings are available. I declare the hearing open.

**Mr RON HOENIG:** I should indicate that I know Mr Nicholson well. When I was called to the bar and appointed a public defender I read with Mr Nicholson, I served with him as a public defender, and he was a senior defender whilst I was a public defender for a period of time before his appointment to the bench. If there are any credit issues involving Mr Nicholson I will have to withdraw from consideration of those matters.

**JOHN CECIL NICHOLSON,** Acting Inspector, Office of the Inspector of the Independent Commission Against Corruption, and

**SUSAN AUDREY RAICE,** Principal Legal Adviser, Office of the Inspector of the Independent Commission Against Corruption, sworn and examined

**The CHAIR:** I thank you for appearing before the Committee today. Do you have any questions regarding the procedural information that was sent to you in relation to witnesses and the hearing process?

**Mr NICHOLSON:** No, I do not.

**The CHAIR:** Thank you for appearing before the Committee. Would either of you like to make an opening statement before we commence with questions?

**Mr NICHOLSON:** I would seek to make an opening statement. At the outset I welcome the opportunity to speak to the annual reports of 2014-15 and 2015-16 compiled by my

predecessor Mr David Levine, AO, QC. I will speak to the report arising from Operation Dewar in respect of the complainant, who I might indicate is present in the gallery. Through the course of this statement I referred to him only as "the employee" or "complainant" in the hope that any reporting of the matters will refer to him only in those terms. I can indicate that I will be asking for the Committee to sit in camera when we come to that report because, as you are aware, the issue of privacy was crucial.

I know that the complainant is very keen to keep his name and any further publicity in respect of this matter out of the public eye. I note and thank the Chair for having organised to remind me that given the privacy issue I may have the hearing, or part of the hearing, in camera and I will seek to do that in respect of Operation Dewar. For that reason I divided my opening statement into two parts. The first part is in respect of the two reports and any questions that might arise. I would seek an opportunity to deal with the second part in camera and make an opening statement in respect of the other matter at that time.

**The CHAIR:** That is an appropriate course.

**Mr NICHOLSON:** I can indicate in respect of the in camera hearing I would not object to transcripts of the in camera portion being made available to the ICAC. It seems to me proper and sensible to do so. When I previously appeared as part of the Inspectorate in support of my predecessor Mr Hoenig indicated, as he has today, our past relationship. I can only add two things to that: first, I sought to be his mentor; and, secondly, I did support his campaign for election by way of a donation, which has been registered. I am hoping that will not make any difference.

**The CHAIR:** It probably shows a lack of judgement!

**Reverend the Hon FRED NILE:** It depends how big it was.

**Mr NICHOLSON:** In respect of the two annual reports I do not intend to occupy the Committee for any length of time. My predecessor in his 2014-15 report noted in his first sentence that concomitant with the powers and functions allocated to him he would take steps to ensure that the institution of the ICAC, as best he could see it, would enjoy respect and high standing in the community. In other words, he did not see himself as working against the ICAC but rather working for it. To that I add that the clear purpose of the legislation in introducing an Inspector to ICAC was to identify and minimise such unsatisfactory practice that may have crept into the ICAC by way of reports and recommendations. The concept being that in so doing the ICAC would be and remain a world class corruption investigator.

The former Inspector also noted in both reports that the years reported on could not have been said to be ones that reflected well on the relationship between the Inspector and the Independent Commission Against Corruption. However, it is worth noting that the overwhelming percentage of complaints submitted during that two year period to the Inspector had been resolved and were normally resolved in favour of the ICAC methodology, practice and procedure. The second feature that is worth noting in that context is that the legislative provisions granting functions to the Inspector found in 57B and 57C of the Independent Commission Against Corruption Act are such that an element of competing tensions might be seen to be an ingredient of any honest working relationship between the Inspector and the ICAC. To confine the work of the Inspector simply to audit, as is provided in section 57B (1) (a), is to limit the scrutiny of the ICAC to non-contentious, semi-contentious or esoterically contentious matters. Limiting the scrutiny of the ICAC in that way would avoid discovery of any abuse of power, impropriety, misconduct, maladministration, unreasonable invasion of privacy and like matters from the role of Inspector. That is not to say they may not be discovered by the Supreme Court, as may be instanced in one of the recent cases. On the

other hand, one can hardly expect the ICAC to accept unquestioningly reports of an Inspector critical to the ICAC in the terms granted by section 57B of the ICAC Act. My immediate predecessor and I have found cause to be critical of one aspect or another of ICAC conduct. That criticism seems to be confined particularly to two recent reports. I have in mind particularly the report on Hale and the one we are looking at later, and some general remarks in the annual reports.

This depends on the criticism of the decisions made at ICAC that was a feature of his and my terms but that differs from terms of others who have held the position of Inspector, as best I can see. That is to say: Since the creation in 1988 there have been only two occasions—and those recently—where an Inspector of the ICAC has been seriously critical of it. It may be the rarity of that event and the difference between the view between ICAC and the Inspector, and indeed the very nature of the difference, which has caused an absence of a "settled" relationship that my predecessor called for. Personalities also play some role in the tone of the relationship. I choose not to look back or be critical of past players but to focus on the present. The acting ICAC Commissioner and I have, at least from my perspective and I trust also from his, a relationship which permits us to disagree when we need to, to speak frankly and professionally without being personal or pejorative. I have worked under him for many years, but that does not interfere with my own independence in the role of Acting Inspector.

Another feature of the early reports I wish to comment on pertains to subject matter developed by my predecessor in paragraph 5.5 of his 2014-15 report. There he made comment regarding the nature, dimensions and thoroughness of complaints being made to him in respect of Operation Jasper and Arcadia. As a consequence of those matters, Inspector Levine commented that: "It would require the expenditure of time and increase in resources almost to the point where the Inspector of ICAC would have to mirror the resources and time spent by the ICAC in coming to findings in these matters." There is a bit of an editorial contribution from me in that.

An analysis of the two annual reports prepared by Inspector Levine would appear to indicate that work done on the bulk of complaints can be reviewed and finalised within a relatively short period of time, but there is also a growing number of complaints demanding extensive time and extensive review of a myriad of ICAC documents, transcripts and exhibits—all of which result in extensive time taken preparing a report. For example, the report done by me on Operation Dewar took more than six months to complete from the time his file first landed on my desk. While supply of resources is a departmental matter, I think it useful for the joint Committee to understand the next Inspector, I believe, would be looking for increased means of being able to answer the challenges.

A review of complaints made to the Inspector in the two years shows that seven of 33 in the years 2014-15 and 11 of 60 in 2015-16 focused on a failure of ICAC to investigate a complaint made to it. These complaints to ICAC invariably focused on conduct that the relevant complainant considered as either corrupt conduct or a public interest disclosure requiring its attention. An early matter to be determined in any complaint made to the Inspector is whether the complaint falls within the scope of corrupt conduct as provided by part 3 of the ICAC Act. It would seem from these complaints that the discretion and the public interest imperatives contained within the ICAC Act and relied upon by the Commission in determining whether or not a matter will be picked up are poorly understood by complainants and, I suspect, the general public. Putting that in another way, many of the people who make complaints to ICAC come to the Inspector saying, "I've made a complaint, and I expect each and every complaint made to ICAC to be the subject of a major investigation". Clearly

somehow or other we have got to get the message out that ICAC has a discretion as to which complaint it will pick up and the extent to which it will pick them up.

Another aspect of the two reports is the carryover of a large number of matters. In the 2014-15 report, 38 matters remained outstanding. In the 2015-16 report, only 10 of those matters were closed, leaving a further 28 from that year still outstanding—in other words, the clock is ticking and the quality of service the Inspector is offering would appear on the surface to be slow. I will come to a reason why that may be. In the 2016 report, a further 15 matters were carried over to the 2016-17 reporting period, making a total of 43 matters carried over into the 2016-17 reporting year. I can say this: Since July 2016, of those 43 matters, 21 have now been closed, leaving 22 of the old matters still unresolved. A major reason for delays centres around ongoing litigation, usually by an "affected" person—I use that term in quotes, and you would understand that means somebody who is targeted by ICAC. It is likely the vast majority of those matters—the 22 matters that are still unresolved and others—will demand significant resources and time for each of them to be satisfactorily resolved by the incoming Inspector or Inspectors. However, a problem arising from the delay that I understand the current Commissioner and I are aware of is that there may be individuals involved within those reports who are awaiting a declaration of whether they are impacted in an adverse way or not. Not surprisingly, number of them hold very significant positions within the community.

I have not turned my mind to it, and I do not know whether the Commissioner has, but there must be some consideration given to a mechanism of, if I can use this term, disabusing those who fall into that category of any concern that they may have while waiting for the report. In other words, there should be some mechanism that we have to allow them to get along with their lives in the face of no adverse finding ever going to be made about them. I just point that out to the Committee as a problem that is occurring not just in my organisation but, it seems to me, also with the Commission, of allowing people who are subject to press speculation, unwarranted, to get on with their lives.

The final matter I wish to raise arising out of the report of 2015-16 is that the then Inspector noted that his term of office would expire on 31 January 2017, as it was anticipated would my own. For the record I make it clear that, in the event, Mr Levine resigned for reasons of health well after his doctors had advised him to do so, and his resignation was dated 23 November 2016. In my own case, my term has been extended until 30 June or until such time as a new Inspector is appointed, whichever is the sooner, and I indicate that I am not a candidate for any office—I am retiring. That completes the report I want to make in that area.

**The CHAIR:** Any questions for the Inspector?

**Mr PAUL LYNCH:** Picking up on the last point, has anyone given you any indication of when they are going to get around to appointing a new Inspector?

**Mr NICHOLSON:** The only matter that I am aware of is that I have been sent from a headhunting group the relevant material for both the Commissioner and the Inspector, so I imagine that some steps are being taken to finalise the matter.

**Mr PAUL LYNCH:** And you have had no advice or there has been no suggestion about who the new Inspector might be?

**Mr NICHOLSON:** If I did I would not say so publicly. Incidentally, I should disclose that Mr Lynch once instructed me in Liverpool years and years ago.

**Mr PAUL LYNCH:** And it was such a memorable event that I have completely forgotten about it. Whilst we are also trying to explore interesting aspects of the history of this matter,

have you been given any advice or any indication about when the amending legislation that went through in November is actually going to come into operation?

**Mr NICHOLSON:** I do not know when it is going to be promulgated, no.

**Mr PAUL LYNCH:** I guess the other speculative question that I am inclined to ask is have you got any indication of the identity of the new Chief Commissioner or the other two Commissioners for the ICAC?

**Mr NICHOLSON:** I have had some discussion with a person in respect of an offer made to him or her which I am not at liberty to disclose, as I understand it, and, all things being equal, which is not likely to be taken up by him or her unless "duty requires it".

**Mr PAUL LYNCH:** I might leave it there, I think.

**Mr RON HOENIG:** Do you think that the amendments to the Act enacted by Parliament, which seem to have been in a mad rush towards the end of last year but still having not been proclaimed, would go some way to rectifying some of the causes of complaints that the Inspector has received from the recent inquiry?

**Mr NICHOLSON:** It would certainly ease some concerns that I have about the operation of the present Act. One of the things that has been of concern to me—and this probably moves beyond the reports, Mr Chairman—during my short time is the way in which the determination of whether or not a public inquiry should be called for may suffer some impediment in the sense that the requirements of subsection (2) of section 31, which are whether or not it is in the public interest, are probably tick-a-box considered rather than considered in reality, and the focus being on why it is in the public interest as distinct from whether it is in the public interest. If I may say so, the reason I feel more comfortable, I think, with the new legislation is that there is going to have to be a discussion among more than one person about whether it is in the public interest.

The second is that it seems to me, as I have read material coming to me—and, again, I stress I have only been there a short time—from the Commission is that there has been no focus upon any reasons other than those set out in 31 (2) as to why something would not be in the public interest or why it would be in the public interest, particularly having regard to the second reading speech of Premier Greiner, as he then was, in introducing the legislation. There were a whole host of things that he was concerned about that do not appear to me to be reflected in the existing 31 (2) and that are of value in considering whether the public interest is or is not served by calling a public inquiry. I do not know whether that answers your question.

**Mr RON HOENIG:** Your predecessor, in some of his reports criticises—and certainly in evidence—how the Commission went about a particular task or investigation. Parliament creates these statutory organs of the executive; it authorises them to do certain things; it enables them to obtain their information from any source, whether it be hearsay or whether it be rumour or whether it be from any source; the legislation enables it to effectively produce material that is untested, say, for credit. The fault that results in these things of which the Inspector is being critical is actually the fault of Parliament and not the office holders, is it not?

**Mr NICHOLSON:** There may be some fault lying with Parliament in terms of the lack of guidance through the legislation, but my own view is that it may be a culture that arises from continual practice of the powers, and my predecessor spoke of an arrogance that might be attached to that. I do not like a pejorative term like that but there is a sort of customisation of oneself to the arrogance. A good example is the example I just gave in respect of public interest. The legislation sets out in fairly wide terms what is required before the Commission

determines to have a public inquiry. But there is no procedure that is set out anywhere that I can see that requires a sitting down and, as it were, a contest being organised—these are the reasons for, these are the reasons against. The legislation should not have to do that, in my view. That should be something that is managed within the organisation. It may be that the pressure of work just does not give them time to do that. I do not know.

**Mr RON HOENIG:** In terms of public hearings I will use a different example. There have recently been complaints about an Ombudsman's private hearing in relation to some police matters where varieties of contentions of unfairness occurred as a result of an Ombudsman's inquiry. Isn't a public inquiry a better way in which you can judge the fairness or otherwise of the conduct of someone conducting an investigation? Having said that, I am not sure those who may well have been affected by the Ombudsman's inquiry, for example, would have really wanted it to be public anyway, because asking what might have been your reasonable belief to obtain a warrant could cause irreparable reputational damage. Apart from that, doesn't a public inquiry have some sort of way in which to keep the functioning of the Commission at least open to public criticism as it has been in recent times?

**Mr NICHOLSON:** The problem with the public inquiry and the extensive powers is you are indicating the ways in which evidence—I prefer the word "testimony"—can be gathered. In a sense it is not really evidence because it is not covered by the Evidence Act but the Independent Commission Against Corruption Act uses the word "evidence" and so I acknowledge it as being evidence but really it is testimony. But some of that testimony is garnered through superb bullying cross-examination. That cannot be relied upon as evidence or testimony, but it advances the investigation in the sense that it advances the goals, if the goals of the investigation are predetermined, as I sense they are in an ICAC investigation, otherwise they could not have the public inquiry. If the goals are predetermined and the bullying of the questioning heads towards the designated goals they have got their corrupt finding. Just to complete my concern about it all, that corrupt funding will last almost every challenge once it is made—a proposition that does not even occur after the Court of Criminal Appeal or the High Court has made a determination of guilt. Look at, for instance, Lindy Chamberlain or look at McLeod-Lindsay. There were mechanisms for having those convictions quashed with what they called in my and your day a 475 inquiry. There is no way to deal with a finding of corruption.

**Mr RON HOENIG:** With the amendments that were passed through Parliament there is a requirement, for example, of guidelines being formulated to provide for procedural fairness to apply at public inquiries. The ability to be able to cross-examine witnesses as to credit and to instil some sort of fairness in a public inquiry is what Parliament decided as a mechanism to provide some level of protection, and also to require corruption to be serious and systemic. Add to that the changes to the bar rules in 2015, which some of us call the Geoffrey Watson amendments, that might prevent the way council assisting conducted themselves in other inquiries. That should change the whole nature of public inquiries, should it not?

**Mr NICHOLSON:** It is going to make an impact. I do not know whether it will change. At the end of the day it is an inquiry. It has a useful purpose from the community's point of view. Where crime is sophisticated it has this useful purpose of advancing an investigation where the normal mechanisms of investigation might not. But it has to avoid the appearance of a show trial. One, because it is not a trial and yet a public hearing—I was reading a transcript the other day where experienced counsel was addressing the Commissioner as "your Honour". It is the wrong perception to give to the public and indeed to the Commissioner. I note the Commissioner is calling for documents. I do not know under what power under the Act he can do that in the course of running a matter. As a Supreme Court judge he could and a call can be

made by the bar as though on subpoena. I do not know where he gets the power to do that, but he does it because he is presiding and he is an ex-judge. In fact, it is a requirement of the qualification that he be an ex-judge or capable of being an ex-Supreme Court justice, which incidentally I am not because I am prohibited by age. I point it out, age discrimination.

**The CHAIR:** In relation to that issue, on page 19 of the annual report for 2014-15 there is a reference made by your predecessor to the observation made by the previous Commissioner about the focus of ICAC which is generally not understood by the community. Paragraph 5.8 says:

I mention these matters as they point to the fact that it is not well known publicly but does in fact represent the position of the ICAC. Namely, the Commission's activities are focused on exposing corruption and doing something by way of addressing policies and procedures that prevent its furtherance in the public sector. We do not consider the number of successful prosecutions that arise from inquiries as any relevant indicator of our success. However, we accept that there is a public interest in it.

**Mr NICHOLSON:** I wonder if he means public curiosity in it?

**The CHAIR:** Indeed. In relation to the manner in which the ICAC works and the observations made by the Commissioner, would it be your view that a finding of corruption by the Commissioner is probably a wrong finding; rather, that he or she refer the matter to the DPP is the appropriate finding rather than making a definitive finding of corruption?

**Mr NICHOLSON:** I support the proposition that there should not be a definitive finding of corruption. I think that there then needs to be perhaps a concern that there may have been corruption—a finding expressed in those terms—and that we would look to the DPP or that further investigation should be undertaken because the evidence we have relied upon is not evidence that would be admissible in court. In other words, options. One of the matters that I am currently looking at concerns a finding that was made—I think I have got this right—that they would not recommend the matter to the DPP because there was insufficient admissible evidence to establish it, but the aroma was left hanging in the air.

**Mr RON HOENIG:** When we heard from one of the architects of ICAC as to the purpose of its establishment that person told us in a private briefing that ICAC was enabled by them to tackle that serious corruption of which there would very rarely be any admissible evidence established or obtained. Therefore, it was to operate effectively as a deterrent for serious corruption for which you would never be able to collect admissible evidence. He saw the Commission then embarking upon areas that were generally criminal matters, such as \$100,000 university contracts and those sorts of things. If an act is criminal and there is the prospect through proper criminal investigation to be able to have a person charged and then bring them to justice then is that not a more preferable outcome that would enable the Commission to deal with that serious type of corruption that it is supposed to deal with?

I raise this because the evidence given by the Commission seems to be that it embarks upon a course to obtain material from any source simply at the end of the day to determine whether or not there is a corrupt finding. There is a technique to obtain evidence for a criminal prosecution. Barging in to obtain material just for a corruption finding invariably leaves the Office of the Director of Public Prosecutions in an almost impossible position if the matter is referred to it. It also leaves the police in a difficult position because they may well have alerted others to prevent them from obtaining admissible evidence. There seems to be a substantial crossover in what they are doing.

**Mr NICHOLSON:** In answer to your question—I think it will answer the question—has the Committee ever considered the model of the Coroner's Court?



**Mr RON HOENIG:** That has been my suggestion from the beginning, but it has not been taken up by the Government of the day.

**Mr NICHOLSON:** Perhaps I can speak in support of it to some extent. The Coroner's Court does not perhaps have the coercive powers that the independent Commissioner has, but it has fairly wide powers to explore avenues of investigation. I am thinking particularly of cases of arson and criminal activity such as unlawful killings. It comes to a view at some point that there may well be a person who has a case to answer. It does not make that determination, but it adjourns the proceedings and refers the matter, I think to the Director of Public Prosecutions if memory serves me, who in turn can refer it on to the police for further investigation.

Where the power to conduct investigations is so vastly different from the powers of a criminal court conducting a trial, and given historically that we have always required proof beyond a reasonable doubt and that we have other safeguards in conduct of investigations and determinations of guilt because of the potential incredible consequences, it is true that when a finding of corruption is made that the consequence is not custody, but it is sometimes worse than custody. I am passionate about at least some avenue of review if findings of corruption are to be made. But better still would be some system of indicating—even publicly as is done in the Coroner's Court—that this is a matter that will be referred to someone.

**The CHAIR:** One of the things you alluded to in your opening statement, and it is consistent with what you are saying, is that persons who are the subject of an investigation ought be notified at an early time if there were going to be no adverse finding made against them.

**Mr NICHOLSON:** Yes.

**The CHAIR:** You may well recall that the Independent Commission Against Corruption adopted a process of advising people who were potentially the subject of an adverse finding—I think this happened in Operation Spicer—that they would not be the subject of a finding. Is that the process you had in mind?

**Mr NICHOLSON:** That is the process I had in mind. One of the problems with that kind of procedure is that people who are then not notified—

**The CHAIR:** That is right; they have sleepless nights.

**Mr NICHOLSON:**—have some real concerns. That may be the price we pay. Would they not have concerns with the other method—

**The CHAIR:** Yes.

**Mr NICHOLSON:**—saying, "I am referring this to the police"? They would still have the same concerns. It would wear a different label, but there would be the same concerns.

**The CHAIR:** It would be your position that that should be done at an early stage rather than just prior to releasing the report.

**Mr NICHOLSON:** There is the case of ongoing litigation. As a consequence of the litigation in the case of Mr Obeid, we cannot finalise the matter he has with us simply because to do so might not be contempt but it would be straying precariously close to it for me to make a report in circumstances where the contents of my report might be contradicted by a Supreme Court judge—usually a Supreme Court judge.

**Reverend the Hon. FRED NILE:** I would like to follow up that question. When you first raised it I wondered whether there was a system whereby if there were no adverse finding the

Independent Commission Against Corruption would have some guidance that within a month, six months or 10 years you would do something. It would not be left hanging. Some issues have been left hanging for a number of years. In the case of politicians it has affected their careers.

**Mr NICHOLSON:** I agree. It is not only politicians, but they are an example of people holding important positions in the community to whom I was referring. In my view there must be some mechanism. While it may be appropriate for the Parliament to set a guideline, I think it should still be a discretionary matter available to the Commissioner because some of the cases may be borderline depending upon the quality of the evidence and whatever.

**Reverend the Hon. FRED NILE:** You mentioned that you spent six months on one report.

**Mr Nicholson:** Yes.

**Reverend the Hon FRED NILE:** I wonder whether you are setting up an argument that the Inspector's position should be full time. I would agree with that; I do not think it should be a part-time position.

**Mr NICHOLSON:** I have spoken to my staff about it and it seems to me, if I can put it this way, that there is probably 2.6 weeks of work available every week. In other words, there could be either three part-time people working four days a week or one or two full-time people and another one working a bit. I have not done the sums, but if you added the figures you would see that the number of unresolved cases is still growing year by year.

**The CHAIR:** There was a reduction in the number of complaints last year.

**Mr NICHOLSON:** Because the Inspector left he was able to close a number of cases that were sitting on the pot quietly boiling. We are now left with the hard work cases.

**Reverend the Hon. FRED NILE:** The point I have observed, being on this Committee since it commenced, is the workload of the Inspector has changed from when it was first appointed.

**Mr NICHOLSON:** Yes.

**Reverend the Hon. FRED NILE:** It was almost a nominal position and we did not hear much from the Inspector.

**Mr NICHOLSON:** For two reasons: the earlier work was confined to auditing, possibly because there were no complaints received. The second reason, particularly in respect of the decision in Margaret Cunneen's case, people became aware of the Office of the Inspector and that there was an avenue to appeal—appeal is not the right word—to complain. There is another aspect which I should have mentioned when I was reviewing the reports, at least the ones I have seen, many people are coming to us to "clear my name". We cannot do that. Even where there is merit in the proposition we cannot do it.

**Mr RON HOENIG:** Maybe the workload will be reduced with amendments to the Act—when the Government gets around to proclaiming it. On a different subject, the tension that existed between the former Inspector and the former Commissioner: I got the impression from what you said in your opening statement because it is the former Chief Judge of the District Court, whom you worked with for 10 or 11 years and you have known for 40, that has had an impact in reducing the tension between the two offices.

**Mr NICHOLSON:** We have made a point to meet and have a cup of tea that my predecessor mentioned when he was here. I do not know if we will get to [REDACTED] today and I do not mind if we do not. I have a long opening for that matter. He has sent me a number of documents since, some of which have caused me to shift my position slightly, not a lot but

slightly. That all needs to be explained. There is no rancour and there is no haughtiness from either me or him. I accept that personalities will play a part but I think, as I said earlier, that the selection of people for the offices is going to have to bear in mind the inherent competing tensions that are set out in the Act for the Commission on the one hand and the Inspector on the other.

**The CHAIR:** There was reference in the report to an investigation of a leak to the media. Can you give me some idea how you would investigate that matter?

**Mr PAUL LYNCH:** Declare your interest.

**The CHAIR:** I have no interest.

**Mr NICHOLSON:** There was today a report in the Australian that appears to me to be a leak to the media. The way in which we have explained it is that as a consequence of communicating the progress of that matter to those who had made the complaint that may have gone further than the office of those who received that notification. I think that is probably how leaking occurs: not from the ICAC, not from us, but from some communication that is made by the Independent Commission Against Corruption or us to some third party.

**The CHAIR:** And that is then provided to the media.

**Mr NICHOLSON:** I have no control over that.

**The CHAIR:** I am not being facetious, if someone complains about the ICAC who have provided material to the media and a complaint was made to your office about it, what would you do? What does the Office of the Inspector do to investigate that complaint?

**Mr NICHOLSON:** That is something I will address in the complaint I am examining now. That complaint was made as a complaint. I do not have any powers other than those set out in 57C and the power to make a report in 77A.

**The CHAIR:** You cannot investigate email chains?

**Mr NICHOLSON:** If an ICAC officer does it I can, but absent an ICAC officer or the ICAC in some way being involved, I cannot. I have royal commission powers so far as the Independent Commission Against Corruption staff are concerned, but not so far as anyone else is concerned.

**The CHAIR:** At the risk of being tortuous about this: Is it merely a matter of you ringing the ICAC or calling for a file on a particular matter and looking at the file and satisfying yourself?

**Mr NICHOLSON:** That the ICAC was not responsible, yes, that is the best I can do.

**Reverend the Hon. FRED NILE:** We had a number of questions about the [REDACTED] matter. Mr Nicholson said he had a statement.

**The CHAIR:** Committee members must be careful not to use the name.

**Mr NICHOLSON:** The "employee's" name. I have a fairly lengthy statement. I have some embarrassment as I have handwritten notes but no typed notes.

**The CHAIR:** One of the issues raised by the Acting Inspector was an issue relating to privacy. To the extent any names are mentioned, I request they be redacted from the transcript.

**Mr NICHOLSON:** I am indebted to you, Chair.

**The CHAIR:** Are there any questions in relation to the annual reports?

**Mr NICHOLSON:** Assuming I can access it, I have two pages and handwritten notes. It was more than an hour of typing, it will be a substantial time.

**The CHAIR:** Has anyone any further questions to ask in relation to the annual reports? Mr Taylor?

**Mr MARK TAYLOR:** No, I do not think it is overwhelmingly important.

**The Hon. LYNDA VOLTZ:** I am happy with Mr Lynch's questions.

**The CHAIR:** For the benefit of members of the gallery we are now going to consider an application to hold the next part of this inquiry in camera.

**Mr NICHOLSON:** Can I ask [REDACTED] remain?

**The Hon. LYNDA VOLTZ:** No.

**The CHAIR:** Would you be comfortable if a person was provided with a copy of the transcript?

**Mr NICHOLSON:** Yes, I would.

**(The Committee deliberated)**

**(The Committee adjourned at 16:22)**

## Appendix Three – Extracts from Minutes

### **MINUTES OF MEETING No 22**

1:03pm, 23 February 2017  
Room 1254, Parliament House

#### **Members Present**

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Mr Lynch, Revd Nile and Ms Voltz.

#### **Officers in Attendance**

Carly Maxwell, Elspeth Dyer, Jacqueline Linnane, Tanja Zech and Millie Yeoh.

#### **1. Apologies**

The Committee noted apologies from Mr Humphries, Ms Mihailuk, Mr Patterson and Mr Taylor.

2. \*\*\*

3. \*\*\*

#### **4. Committee work program 2017**

The Committee considered its expected work program for 2017 including:

- \*\*\*
- Committee hearings to review the 2014/15 and 2015/16 annual reports of the ICAC and its Inspector;

\*\*\*

Discussion ensued.

\*\*\*

Resolved, on the motion of Mr Provest, seconded by Revd Nile:

- That the Committee conduct a hearing with the Acting ICAC Inspector, Mr John Nicholson SC, to review the 2014/15 and 2015/16 Inspector's annual reports \*\*\*

\*\*\*

5. \*\*\*

6. \*\*\*

7. \*\*\*

#### **8. Next meeting**

\*\*\*

The Committee adjourned at 1:20pm until a date and time to be determined.

### **MINUTES OF MEETING No 23**

2:47pm, 22 March 2017  
Macquarie Room, Parliament House

#### **Members Present**

Mr Tudehope (Chair), Mr Hoenig, Mr Khan, Mr Lynch, Ms Mihailuk, Revd Nile, Mr Taylor and Ms Voltz.

#### **Officers in Attendance**

Carly Maxwell, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

#### **1. Apologies**

The Committee noted apologies from Mr Humphries, Mr Patterson and Mr Provost.

#### **2. Confirmation of Minutes**

Resolved, on the motion of Mr Hoenig, seconded by Mr Taylor:  
That the draft minutes of meeting no 22, held on 23 February 2017, be confirmed.

3. \*\*\*

4. \*\*\*

5. \*\*\*

#### **6. Inquiry to review the ICAC Inspector's 2014-15 and 2015-16 Annual Reports \*\*\***

The Committee considered standard resolutions for its 22 March hearing to review the ICAC Inspector's 2014-15 and 2015-16 Annual Reports \*\*\*

Resolved, on the motion of Mr Khan, seconded by Mr Lynch:

- That the Committee conduct a public hearing on 22 March 2017 to review the 2014-15 and 2015-16 ICAC Inspector's Annual Reports \*\*\*
- That the Committee take evidence from the Acting ICAC Inspector, Mr John Nicholson SC and Ms Susan Raice, Principal Legal Advisor, Office of the ICAC Inspector, at the public hearing on 22 March 2017.
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 22 March 2017.
- That the Chair send questions on notice to the witnesses following the public hearing on 22 March 2017 as required.
- That the Committee secretariat publish the answers to any questions taken on notice at the public hearing on 22 March 2017 on the Committee's webpage.
- That the Committee secretariat publish the transcript of evidence taken at the public hearing on 22 March 2017, after making corrections for recording inaccuracy, on the Committee's webpage.

7. \*\*\*

**8. Public hearing – Inquiry to review the ICAC Inspector’s 2014-15 and 2015-16 Annual Reports \*\*\***

At 3:00pm the Chair declared the public hearing open and witnesses and the public were admitted.

Mr Hoenig declared that he has known Mr John Nicholson SC, Acting ICAC Inspector, in a professional capacity for many years.

Mr John Nicholson SC, Acting ICAC Inspector, was sworn and examined.

Ms Susan Raice, Principal Legal Advisor, Office of the ICAC Inspector, was sworn and examined.

Mr Nicholson confirmed that he has known Mr Hoenig for many years and that he made a donation to Mr Hoenig’s election campaign for the seat of Heffron.

Mr Nicholson made an opening statement.

\*\*\*

At 3:59pm \*\*\* the public hearing was adjourned and the public and the witnesses withdrew.

9. \*\*\*

10. \*\*\*

**11. Next meeting**

The Committee adjourned at 4:22pm until a date and time to be determined.

**MINUTES OF MEETING No 24**

12:32pm, 2 May 2017

Room 1254, Parliament House

**Members Present**

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Humphries, Mr Khan, Mr Lynch, Ms Mihailuk, Revd Nile, Mr Patterson, Mr Taylor and Ms Voltz.

**Officers in Attendance**

Helen Minnican, Carly Maxwell, Elspeth Dyer, Jacqueline Linnane, Derya Sekmen and Millie Yeoh.

**1. Confirmation of Minutes**

Resolved, on the motion of Mr Patterson, seconded by Mr Khan:

That the draft minutes of meeting no 23, held on 22 March 2017, be confirmed.

2. \*\*\*
3. \*\*\*
4. **Next meeting**

The Committee adjourned at 1:46pm until Thursday 4 May 2017.

#### **MINUTES OF MEETING No 27**

2:07pm, 24 July 2017  
Room 1254, Parliament House

#### **Members Present**

Mr Tudehope (Chair), Mr Hoenig (by telephone, outside jurisdiction), Mr Khan, Ms Mihailuk, Mr Patterson (by telephone), Mr Taylor and Ms Voltz.

#### **Officers in Attendance**

Helen Minnican, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

#### **1. Apologies**

Apologies were received from Mr Provest (Deputy Chair), Mr Humphries, Mr Lynch and Revd Nile.

2. \*\*\*
3. \*\*\*
4. \*\*\*

#### **5. Inquiry to review the ICAC Inspector's 2014-15 and 2015-16 Annual Reports \*\*\***

\*\*\*

Resolved, on the motion of Mr Taylor:

- \*\*\*
- That the inquiry to review the ICAC Inspector's 2014-15 and 2015-16 Annual Reports \*\*\* proceed into the report drafting phase.

6. \*\*\*
7. \*\*\*
8. \*\*\*
9. \*\*\*
10. \*\*\*

#### **11. Next meeting**

The Committee adjourned at 3:28pm until a date and time to be determined.

#### **MINUTES OF MEETING No 28**

9:07am, 7 August 2017  
Jubilee Room, Parliament House



**Members Present**

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Ms Mihailuk, Revd Nile, Mr Patterson (by telephone), Mr Taylor.

**Officers in Attendance**

Jason Ardit, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

**1. Apologies**

Apologies were received from Mr Humphries, Mr Khan, Mr Lynch and Ms Voltz.

**2. Confirmation of Minutes**

Resolved, on the motion Mr Taylor, seconded by Revd Nile:

That the draft minutes of meeting no 27, held on 24 July 2017, be confirmed.

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

**4. Inquiry to review the ICAC Inspector's 2014-15 and 2015-16 Annual Reports \*\*\***

The Committee noted an indicative reporting timeline and themes for its report for its inquiry to review the ICAC Inspector's 2014-15 Annual report \*\*\*.

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

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

**7. \*\*\***

**8. \*\*\***

**9. \*\*\***

**10. \*\*\***

**11. \*\*\***

**12. \*\*\***

**13. \*\*\***

**14. Next meeting**

The Committee adjourned at 3:59pm until a date and time to be determined.

**MINUTES OF MEETING No 29**

9:08am, 15 September 2017

Jubilee Room, Parliament House

**Members Present**

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Revd Nile and Mr Taylor.

**Officers in Attendance**

Jason Ardit, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

**1. Apologies**

Apologies were received from Mr Humphries, Ms Mihailuk and Mr Patterson.

## 2. Confirmation of Minutes

Resolved, on the motion of Revd Nile, seconded by Mr Hoenig:

That the draft minutes of meeting no 28, held on 7 August 2017, be confirmed.

## 3. Correspondence

The Committee noted the following items of correspondence sent:

- i. \*\*\*
- ii. \*\*\*
- iii. Hon Peter Hall QC, Chief Commissioner, ICAC, dated 24 August 2017, seeking information about the ICAC's procedures to advise people regarding the absence of adverse ICAC findings.

The Committee noted the following items of correspondence received \*\*\*

- i. \*\*\*
- ii. \*\*\*
- iii. \*\*\*
- iv. \*\*\*
- v. \*\*\*
- vi. Hon Peter Hall QC, Chief Commissioner, ICAC, dated 7 September 2017, responding to the Committee's request for information about the ICAC's procedures to advise people regarding the absence of adverse ICAC findings.

Resolved, on the motion of Revd Nile, seconded by Mr Hoenig:

- That the correspondence be noted;
- \*\*\*

4. \*\*\*

5. \*\*\*

6. \*\*\*

7. \*\*\*

8. \*\*\*

9. \*\*\*

## 10. Next Meeting

The Committee adjourned at 12 noon, until 19 September 2017 at 1pm.

## MINUTES OF MEETING No 30

1:06pm, 19 September 2017  
Room 1254, Parliament House

**Members Present**

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Ms Mihailuk (from 1:11pm), Revd Nile, Mr Patterson (from 1:09pm), Mr Taylor.

**Officers in Attendance**

Jason Arditi, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

**1. Apologies**

Apologies were received from Ms Voltz.

**2. Confirmation of Minutes**

Resolved, on the motion Mr Taylor, seconded by Mr Khan:

That the draft minutes of meeting no 29, held on 15 September 2017, be confirmed.

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

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

**5. Inquiry to review the 2014-15 and 2015-16 Annual Reports of the ICAC Inspector**

The Committee noted the Chair's draft report, *Review of the 2014-2015 and 2015-2016 Annual Reports of the ICAC Inspector*, distributed to members by email on Tuesday 12 September 2017.

Resolved, on the motion of Mr Khan, seconded by Mr Provest:

That the Committee consider the Chair's draft report *Review of the 2014-2015 and 2015-2016 Annual Reports of the ICAC Inspector*, distributed to members by email on Tuesday 12 September 2017, *in globo*.

Chair's draft report put, *in globo*.

Resolved, on the motion of Revd Nile, seconded by Mr Provest:

- That the Committee adopt the Chair's draft report and that it be signed by the Chair and presented to both Houses;
- That the Committee authorise the Secretariat to make appropriate final editing and stylistic changes as required;
- That once tabled the report be published on the Committee's webpage;
- That the Chair issue a media release announcing the tabling of the Committee's report, for dissemination by the Committee Secretariat.

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

**7. Next Meeting**

The Committee adjourned at 1:12pm until a date and time to be determined.