

**COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION  
ICAC Annual Report 2006-2007 - Questions on notice**

**Assessing matters**

1. **The Annual Report indicates that the Assessments section underwent structural changes during 2006-2007, partly to 'address concerns about responsiveness' (p14).**
  - a. **What concerns existed in relation to the section's responsiveness?**
  - b. **Has this aspect of the section's operation improved as a result of the structural changes?**
  - c. **Has the appointment of a Deputy Manager to the Assessments section to allow the Manager to focus on strategic direction (p14) proved effective?**

*Answer*

- a. The concerns that existed with respect to responsiveness related to the times being taken to:
  - present matters to the Assessment Panel in the first instance;
  - make any follow up assessment enquiries before representing the matter to the Assessment Panel; and
  - send final letters to complainants or agencies and finalise matters generally.

- b. Yes. For example in the Jan-March 2007 quarter, of 501 matters reported to the Assessment Panel, the average time taken to report matters to the Panel was 85.03 days.

In contrast, in the Jan-March 2008 quarter, of 740 matters reported to the Assessment Panel, the average time taken to do so had dropped in the region of 16% to 71.70 days.

In relation to finalising matters, in the Jan-March 2007 quarter, Assessments finalised 389 matters, at an average of 110.22 days.

In the Jan-March 2008 quarter, Assessments finalised 603 matters, at an average of 78.56 days.

- c. Yes. The appointment of a Deputy Manager has enabled day-to-day management of the Section to be devolved to that officer. Whilst the Manager still peruses and provides preliminary commentary in relation to all new written complaints and reports, the Manager has more time in which to build up liaison relationships with agencies and to participate in presentations and training, often in conjunction with members of the CPER Division. Moreover, the Manager has been able to devote more time to focusing on identifying what value is or should be provided by the Section and strategies for how to enhance value delivery, including addressing issues of staffing levels, training needs and improving productivity.

2. **The Annual Report also indicates that procedural improvements were introduced during 2006-2007 to enhance the Assessments section's complaint handling capacity (p14).**

- a. **What specific procedural changes were made to aid complaint handling and were there any policy changes also involved?**
- b. **What staff training needs were identified as part of the improvements?**

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

*Answer*

- a. The specific procedural changes introduced in the 06/07 year were:
- Introduction of complaint assessment checklist  
This document was created to assist assessment officers to focus on relevant issues and to ensure a systematic, consistent approach when assessing complaints. A checklist is completed on each new complaint and kept on file.
  - Revision of assessment panel report template  
The purpose of refining the previous template was to ensure assessment officers were required to provide reasons for their recommended course of action, as well as an analysis of whether a matter was potentially serious or systemic.
  - Assessment panel charter  
The charter sets out the panel's objectives and functions in order to clarify for Assessments staff and for Panel members what their respective roles and responsibilities are.
  - Assessment panel codes  
These codes were introduced in September 2006. Use of the codes ensures that the ICAC's database contains a decision and reason code for each complaint, once it has been dealt with by the assessment panel.
- b. The staff training needs identified were:
- Skills in dealing with unreasonable complainant behaviour, particularly during telephone calls
  - Enhancing analytical and writing skills
  - Time management skills
  - Comprehension/retention skills, particularly when needing to digest voluminous material
  - Technical skills in certain areas, eg local government,
  - Improved understanding of the roles played by other Divisions, particularly CPER and Investigation Divisions
3. **Table 32 in the 2006-2007 Annual Report (p108) indicates that the average time taken to deal with complaints was 109 days, up from 45 days the previous financial year.**
- a. **Have the Assessments section's staff vacancies, which are identified as having partly resulted in the longer time taken to resolve matters, been filled (p9)?**
- b. **Which agencies took a considerable amount of time to respond to ICAC's requests for information?**

*Answer*

- a. During the 2006/07 year 4 Assessments staff members resigned. The time lag between their departure and hiring their replacements contributed to the build up of a backlog in matters. Three temporary Assessment Officers were recruited on a 12

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

month basis to assist in addressing the backlog problem. The other vacancies have all been filled.

- b. There were a number of agencies that took a considerable time to respond to the ICAC's information requests, but most of these involved only one matter per agency. For some agencies, such as Department of Education (DET) and the Department of Corrective Services (DCS), there were several matters involving delay. In one instance, DET took 9 months to provide a copy of a report it had commissioned and a copy of which the ICAC requested<sup>1</sup> and 8 months in another<sup>2</sup>. In one matter involving DCS despite several requests, it took 25 months to obtain requested information<sup>3</sup>. In one matter involving DET in which the Department undertook several related investigations, delays in responding to information requests from the Commission resulted in the file remaining open for over 1000 days<sup>4</sup>.
4. **“Table 1: Key quantitative results for corruption exposure activities” on page 9 of the Annual Report indicates that the average time taken to deal with matters more than doubled from 45 days in 2005-06 to 97 days in 2006-2007. The two main factors for the increase are noted as the considerable time taken by agencies to respond in some cases and the staff vacancies in the Assessments Section. A new target for 2007-2008 was to be determined following an examination of workflows and activities.**
- a. **Has the review been conducted and a new target been set?**
- b. **Which agencies were involved in the cases mentioned and was the time taken to provide a response in each case reasonable?**

*Answer*

- a. Yes. A review resulted in the conclusion that responsiveness times were best measured in discrete areas, rather than simply averaging the time taken to finalise a matter. The primary reason for this was that there were times in the life of a complaint which were out of the control of Assessments, eg when waiting for a response from an agency, but against which Assessments was measured. A new overall target has been set at 60 days. However, this excludes times when Assessments is waiting for a report back from an agency (requisitioned under s. 53 of the ICAC Act, or where the agency has set in train an investigation, not at the ICAC's direction, and the ICAC had requested a copy of that agency's final report).

In addition, the following internal targets have been set for the Assessments Section:

Average number of days taken to register complaint on receipt by Commission	<b>target = 10 business days</b>
Average number of days taken to respond to simple inquiries not requiring reporting to Assessment Panel	<b>target = 5 days following receipt by Assessment Officer</b>
Average number of days taken to report urgent matters to Assessment Panel	<b>target = 5 business days following registration</b>

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<sup>1</sup> E06/0632

<sup>2</sup> E05/1464

<sup>3</sup> E05/2077

<sup>4</sup> E04/1455

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

Average number of days taken to report straightforward matters (eg Outside Jurisdiction, information) to Assessment Panel

**target = 10 business days following registration**

Average number of days taken to report to Assessment Panel either complex matters or those requiring some initial action

**target = 25 business days following registration**

Average number of days taken to close file

**target = 10 business days following entry of Panel decision**

Average number of days taken to review a report received from an agency incl s. 54 report, and report back to Panel

**target = 20 business days following report's receipt**

- b. Please see the answer to 3b. In addition, in one matter involving the University of Western Sydney<sup>5</sup> it took 5.5 months to obtain requested information. However, due to understaffing at the time (mid-late 2006) it took 5 months for that information to be assessed and the matter to be re-reported to the Assessment Panel, with a further delay of 2 months in closing the file. This is indicative of multiple factors contributing to the file remaining open for 14 months.

In one matter involving the Department of Juvenile Justice (DJJ), the file remained open for 24 months<sup>6</sup>. DJJ was requested to conduct an investigation and report back under ss. 53, 54. It took DJJ 7 months to complete that report, following which the ICAC requested further clarifying information, which took DJJ 5 months to provide. The matter was re-reported to the Assessment Panel, which resolved that the information provided by DJJ to date was insufficient. Follow-up inquiries were made with DJJ, which resulted in the file remaining open for a further 6 months to enable it to be re-reported to the Assessment Panel.

### **Investigating corruption**

- 5. During 2006-2007 the Commission revised the categories used to classify investigations down from two to three with the aim of streamlining supervision and improving efficiency in the allocation of resources. How has the reduction in the number of investigation categories altered the supervision of matters and the allocation of resources (p33)?**

*Answer*

The reduction in the number of investigation categories from three to two has resulted in the following improvements in the supervision of matters and the allocation of resources:

- The allocation of the most serious investigations to appropriately experienced personnel;
- Increased efficiency in investigation planning and tasking;

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<sup>5</sup> E05/2311

<sup>6</sup> E05/0052

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

- More efficient direction and management of the most serious investigations by Senior Management;
- Stream-lined and reduced reporting and a decrease in the number of meetings;
- Prioritisation of limited specialist resources to investigations, including Financial Investigators, Analysts and the Senior Forensic Investigator.
- Two target timeframes for the completion of preliminary investigations and investigations allowing efficient allocation of resources and reducing the time lag in investigations and preliminary investigations.
- Senior Investigators while carrying the same work allocation can prioritise between two areas of reporting and responsibility concentrating on and managing more serious/complex Investigations.

The investigation reclassification in conjunction with the replacement of a two-team investigation model to a single Investigation Division group has allowed greater flexibility in the allocation of resources across Investigations.

- 6. Table 1 of the 2006-2007 Annual Report (p9) includes a target of 80% for the number of investigation reports to be completed within 3 months after the completion of a public inquiry in 2007-2008. 25% of investigation reports were completed in the same timeframe in 2006-2007. What strategies has the Commission adopted to help achieve this target?**

*Answer*

The Commission attempts to complete reports on its investigations as soon as possible after the completion of the public inquiry.

Report preparation involves reviewing and analysing the available evidence and submissions made on behalf of affected persons to ensure the report is factually correct, findings and recommendations are soundly based and all relevant legal requirements have been addressed. Where corruption prevention recommendations are to be made it is necessary to ensure the Commission has an understanding of the relevant systems examined and the recommendations are appropriate. Once drafted, reports are reviewed within the Commission by a review panel consisting of the Commissioner, Deputy Commissioner and Executive Directors of Legal, Investigations and CPE&R to ensure accuracy and appropriateness of findings and recommendations. The report then goes through an editing and production stage which usually takes 4 weeks.

The ability to meet the 80% target depends on the length and complexity of the matter being reported. It generally takes longer to complete reports on more complex investigations as they require more time spent on analysis of the evidence and writing of the report. Competing work priorities of those preparing, reviewing and editing the draft report may also impact on the time taken to complete the report.

In order to meet the 80% target, report preparation, review and editing is, as far as possible, given priority over other work.

Table 1 below shows the time taken between completion of the public inquiry and tabling of the report for matters reported on since 1 July 2007. To date 60% of reports have been tabled within the 3 month period. The Greenway report took longer due to the Christmas/New Year holiday period but would otherwise have been completed within the 3 month period.

**TABLE 1: Time interval between completion of public inquiry and issuing of public report – 2007/08**

Public inquiry	Date public inquiry complete	Date investigation report tabled	Days from end of PI to tabling
Investigation into corrupt conduct associated with the regulation of brothels in Parramatta (Operation Pelion)	28/05/07	22/08/07	86
Investigation into corrupt issuing of driver licences (Operation Sirona)	15/06/07	20/09/07	97
Investigation into manipulation of contract procurement procedures at Bankstown & Strathfield councils (Operation Torrens)	31/08/07 <sup>^</sup>	15/11/07	76
Investigation into allegations that Douglas Norris received payments to expedite applications for public housing (Operation Greenway)	5/10/07	31/01/08	118
Investigation into allegations of bribery affecting Wollongong City Council (Operation Berna)	12/11/07	20/12/07	38

<sup>^</sup> No public inquiry held in this matter. Date is that for receipt of final submissions.

**7. During 2006-2007 the Commission developed a risk assessment program for search warrants, controlled operations and surveillance activities (p33). What sort of mitigation strategies are used by the Commission to target high risk areas identified through the program?**

*Answer*

The Risk Assessment Program was designed to provide the Investigation Division (ID) with a formal and uniform process for each investigation undertaken. Risk mitigation allows the ID to take measures in advance of, or after, an operation aimed at decreasing or eliminating the likelihood, consequence and impact of risks.

Recurrent high risks are mitigated with standard treatment strategies to reduce the likelihood of harm. Additionally each recurrent and newly identified high risk is assessed individually and mitigated on the changing circumstances of each operation.

Operational risk mitigation strategies include:-

- Risk avoidance – treatments that limits the likelihood of an event happening;
- Likelihood reduction – treatments that reduce the likelihood of an event happening;
- Consequence reduction – treatments that reduce impact of an event occurring;
- Risk transference – treatments that share the responsibility for reducing the likelihood and consequences of an event happening currently or in the future.

High Risk Area	- Personnel safety - Possession of Firearms
Mitigation Strategy	Treatment
Risk Avoidance	<ul style="list-style-type: none"> <li>• Background checks and detailed profiles of subjects and associates as to firearm possession/violence.</li> </ul>
Likelihood Reduction	<ul style="list-style-type: none"> <li>• Operation briefings where firearms are stored.</li> <li>• ICAC personnel trained in conflict de-escalation.</li> <li>• Occupant asked whether and where firearms are held on the premises.</li> <li>• Premises and firearms secured on entry.</li> <li>• Access to firearms controlled by ICAC.</li> </ul>
Consequence Reduction	<ul style="list-style-type: none"> <li>• Personnel trained in First Aid.</li> <li>• Identification of nearest hospitals.</li> </ul>
Risk transference	<ul style="list-style-type: none"> <li>• Use of the NSW Police to enter premises.</li> </ul>

Strategic risk mitigation strategies include:-

- Capturing lessons learnt to develop policy, procedures, and training;
- Implementation of effective operational procedures through continuous improvement;
- Establishment of a knowledge management framework through the review of operational plans and procedural systems and processes relating to high risk;
- Ensuring clear and transparent decision-making on high risk areas;
- Consistency in the treatment of high risk areas.
- Improvement of operational planning and resource allocation though informed risk management.

**8. During the 2006-2007 reporting period the ICAC commenced two investigations on its own initiative under s.20 of the ICAC Act (p.35).**

- a. **What conduct was investigated by the ICAC in these two investigations?**
- b. **What led the ICAC to decide to conduct own motion investigations in these instances?**

*Answer*

- a. The conduct investigated under s.20 of the ICAC Act related to:
  1. An article in the Sydney Morning Herald said that a University of Wollongong student had been offered a position with a British company as a researcher, but that the position actually involved writing essays for university students at Australian universities. The article noted that several other companies were aiming to recruit Australian students to “cater to the plagiarism market here”.

2. An article appeared in the Sydney Morning Herald alleging that an MP had profited from private companies that bought and sold millions of dollars' worth of government land.
  
- b. The question about what specifically led the ICAC to decide to conduct own motion investigations in these instances may come within the terms of section 64(2) of the Act which provides:

Nothing in this Part authorises the Joint Committee:

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

In general terms, section 20 of the Act requires the Commission to act on information from any source, including acting on its own initiative. In these circumstances, if the Commission becomes aware of information from any source that may raise a suspicion of corrupt conduct within its investigative jurisdiction, it will assess that information to determine if it should be investigated.

9. **What is the reason for the fall since 2004-2005 in the number of summonses issued to give evidence or produce documents or both at a compulsory examination or public inquiry (Table 9)?**

*See answer to Question 10 below.*

10. **What are the reasons for the fluctuations in the number of listening device and telecommunications interception warrants issued over the last three years?**

*Answer*

The exercise of the Commission's statutory powers, including the number of summonses issued and the number of listening device warrants and telecommunications warrants sought, depends on operational requirements and the nature of investigations being conducted.

The fluctuations do not represent any reduction in investigation work or emphasis but rather reflect the fact that particular investigations conducted in the reporting period required less use of these powers.

### **Corruption Prevention**

11. **In 2006-2007 the ICAC made a total of 47 corruption prevention recommendations directed towards Railcorp, 27 of which related to Operation**



**Persis concerning the conduct of Railcorp contractors. Have these recommendations been implemented?**

The process for implementation of Commission recommendations is that agencies are requested to provide an implementation plan within three months of the publication of the investigation report. The Commission then requests progress reports regarding the implementation of this plan at approximately 12 and 24 months after the publication of the investigation report. The 24-month progress report is the final report to the Commission.

The 12 month progress report on Operation Persis would normally have been expected in June 2008, and this would have given the Commission information about the progress of implementation of recommendations. However, at this stage the finalised implementation plan which is meant to precede the 12 month progress report has not yet been received. The Commission is therefore unable at this stage to identify which, if any, of its recommendations have been implemented.

In relation to Operation Quilla, which was also reported in 2006-2007, RailCorp advised in May 2008 in its 12 month progress report that 6 of the 14 recommendations have been implemented.

**12. The Annual Report indicates the ICAC has been working closely with the health department and area health services since 2003 on a corruption resistance project in the NSW public health sector, focussing on four main corruption risks (p.51).**

- a. **What particular risks and issues were used as the basis for the program being implemented in the health area?**
- b. **How does the ICAC intend to monitor the effectiveness of this project and the associated training program to combat corruption in this sector?**

- a. In 2001 the ICAC conducted research about corruption risks in the NSW public sector. This research identified that health services conduct a large number of functions that are associated with higher corruption risks.<sup>7</sup>

In 2003, based on this information and because of the size of the health sector and its importance to the NSW community, the ICAC initiated a corruption prevention project: Strengthening the Corruption Resistance of the NSW Public Health Sector. The project was undertaken in close collaboration with the Department of Health. In the initial phase of the project the ICAC analysed information from:

- the literature
  - the ICAC's complaints data base
  - interviews with senior health administrators, and
  - the ICAC's 2001 public sector research project
- to identify four main corruption risk areas for the health sector.

These were:

- misuse of resources

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<sup>7</sup> *Profiling the NSW public sector: Functions, risks and corruption resistance strategies*, Independent Commission Against Corruption, 2003.

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

- conflict between public duty and private activities and interests
  - inappropriate relationships between clinicians and suppliers, particularly pharmaceutical companies
  - corruption in responding to errors or problems in the delivery of health services.
- b. The output of the project was a train-the-trainer resource for use by in-house trainers. As such, the effectiveness of the training package will be the measure to assess the effectiveness of the project. Senior managers (clinical and non-clinical) are the focus of the training resource.

The training resource was delivered to the health sector initially through a train-the-trainer session given by ICAC staff to in-house trainers from the public health sector. The evaluation forms completed by the attendees were very positive, both about the delivery of the session and the purpose and content of the toolkit.

The extensive consultation that was done with the Department of Health at the start and throughout the project established a very successful partnership that ensured there was executive support for the project throughout the health sector.

The Commission will continue to monitor the take-up and effectiveness of the training kit within the public health sector. After allowing sufficient time for implementation of the kit, the Commission will follow its standard review processes for evaluation. This may include a survey of users to determine use, practicality and effectiveness of the kit. Discussion will also be held with senior health sector executives to determine the need for any review or change to the kit or further corruption prevention initiatives.

### **Accountability**

- 13. The 2006-2007 Annual Report refers to a review and enhancement of liaison and reporting procedures with the Inspector of the ICAC (p11). Please provide further details on how liaison with, and reporting to, the Inspector was improved during 2006-2007.**

*Answer*

During this period, the Deputy Commissioner and the Inspector's executive officer have had regular telephone contact and face-to-face meetings to discuss liaison issues. All requests for information or interviews with ICAC officers are initially directed to the Deputy Commissioner, who ensures that full cooperation with the Inspector's inquiries is provided by the Commission. The Deputy Commissioner also facilitates access by the Inspector's executive officer and other staff for the purpose of audits that they conduct of the ICAC's operations. All requests by the Inspector for reports from the ICAC on specific matters are dealt with by the Deputy Commissioner, to ensure timely, consistent and appropriate responses.

The Commissioner also continues to have regular personal meetings with the Inspector to discuss policy issues of mutual interest and to make sure that all requests for information and access by the Inspector's office have been dealt with appropriately.

### **Our organisation**

- 14. Average staff numbers in the Assessments section have dropped in the 2006-2007 reporting period, whereas they seem to have increased in almost every**

**other ICAC division and the Commission reported an overall increase of 6.3 full-time equivalent staff over the period (p69).**

- c. How many staff vacancies were there in the Assessments section during 2006-2007?**
- d. Does the Commission find it difficult to recruit staff for this particular section of the organisation? If so, what steps are being taken to address this?**

*Answer*

- a. While the average staff number in Assessments for 2006-07 was 11.4 full-time equivalent (FTE) staff, the actual staff number at the end of June 2007 was 12.9 (FTE). During 2006-07 there were 4 resignations from the Assessment section and 7 appointments and due to the time taken to recruit staff there were approximately two vacancies for most of the year. There was one position that the Commission was unable to fill in 2006-07. This was the newly created position of Indigenous Liaison and Assessment Officer that received funding support from a grant from the Elisa Dixon Foundation. The Commission was unsuccessful in its recruitment action in 2006-07 and the funding lapsed. However, the Commission applied to the Foundation in 2007-08 for further funding for the position which was approved. The Commission has been successful in its recruitment action on this occasion.
- b. Generally it has not been difficult recruiting staff for the Assessment Section except in relation to the specialist position of Indigenous Liaison and Assessment Officer, where it took two attempts to make an appointment to that position. However, due to the time taken to undertake a full probity assessment for new employees there is a longer lead time for replacement of staff at the Commission compared to other organisations which can impact on average staff numbers for the year.

**15. The Commission's Audit Committee reviews of audit projects resulted in improvements to review and sign-off procedures in relation to complaint assessment (p72). Please provide further detail of the improvements.**

*Answers*

In their review of Assessments Section, the Commission's internal auditors noted that for complaints received by telephone which are classified as either information only or outside the jurisdiction of the Commission, there was no physical file created. While these matters are registered in the complaint handling and case management system (ICS), the auditors were concerned that there was no physical evidence of the review and assessment process for these matters.

It was decided that all signed-off case notes/inquiry reports and any signed external correspondence will be scanned and linked to the electronic file in ICS. This will provide an audit trail of signed documentation. Also the "Preliminary Instruction Sheet: Assessments - Incoming Correspondence" was amended to include "Physical file required – Yes/No" for completion by the Manager, Assessments, as part of Assessments' quality assurance review process.

**16. The Commission indicates that it will select and implement a new complaint handling and case management system in 2007-2008 (pp9 & 74).**

- e. Has the new system been implemented?**

**f. If so, has the Inspector been briefed on the new system's features and requirements?**

*Answer*

- a. The replacement of the Commission's complaint handling and case management is a major system development project for the Commission involving a number of development stages. In the first half of 2007-08 the Commission undertook a detailed review and re-engineering of business processes and prepared comprehensive user requirements and tender specifications based on this review. The evaluation of tenders for a new system has been completed and the Commission is working with the selected contractor on the detailed design of the new system. The next stage will involve configuring the new system to the Commission's requirements and developing system interfaces with the Commission's electronic records management system. This will be followed by system and user acceptance testing, development of system and user documentation and sign-off and training of all staff prior to the system launch.
- b. During the design and system configuration stage it is proposed to brief the Inspector on the new system features. Also training on the new system for the staff of the Inspector will occur at the same time as training is organised for Commission staff.

**17. The 2006-2007 Annual Report discusses the Commission's provisions of fee for service shared corporate services support to the Health Care Complaints Commission (p75).**

- a. **What is the extent of the corporate services shared by the ICAC and HCCC and how does this arrangement work?**
- b. **How much does the Commission receive in fees from the HCCC for these services?**

*Answer*

- a. Under the shared corporate services arrangement with the Health Care Complaints Commission (HCCC) for 2006-07, the ICAC provided a range of corporate services functions for the HCCC that included:
  - Overseeing the management and operation of its corporate services unit;
  - Assisting the organisation in corporate planning and risk management;
  - financial planning advice, financial management services and policy development;
  - human resources advice, planning and policy development; and
  - information management, planning and policy development, technology planning and advice.

The arrangement operates under a Memorandum of Understanding between the HCCC and ICAC which specifies the services provided by the ICAC and the input necessary from HCCC staff. The ICAC staff primarily engaged in providing corporate services to the HCCC were the Executive Director, Corporate Services, Manager, Human Resources and Administration and the Manager, Information Management and Technology. Fees are charged by the ICAC for the level of services provided.

From December 2007 the arrangement has been expanded to include accounts payable, accounts receivable and full accounting services and payroll processing and

personnel services and involves a number of ICAC staff from the Finance and Human Resources areas.

- b. Income received from the HCCC for 2006-07 was \$192,000. It is estimated that service fees income for 2007-08 will be \$385,000 which includes the cost of the additional services commenced from December 2007.

### **Financial statements**

- 18. In the 2006-2007 Annual Report's financial statements an amount of \$289,000 is listed as an operating expense for 'fees for services'. This amount increased from \$140,000 spent on the same category the previous financial year. What does this item cover?**

*Answer*

This item of expenditure relates to professional services received by the Commission and covers activities such as proof reading of reports and publications, development of corruption prevention materials and promotions, computer forensic services, fees for surveillance operations, market rent review negotiations and system development work. Also 2006-07 included the following initiatives:

- development and production of 10 corruption prevention training scenarios on DVD (\$92,000),
- review and preparation of design specifications for the redevelopment of ICAC's website (\$79,000); and
- assistance with the preparation of the business case proposal for the replacement of the Commission's complaint handling and case management system (\$25,000).

- 19. There was an increase of \$43,000 in the cost of contract security services for the same period. What factors led to the increased expenditure by the ICAC on security services?**

*Answer*

Security services at the Commission are provided under contract by the Security Management Branch, NSW Police, with the charges based on agreed hourly rates.

During 2006-07 the building owners, Stockland, undertook major renovation works that required access to the Commission's secure leased areas after normal business hours. The Commission required that these works be carried out under security supervision and Stockland agreed to the reimbursement of the Commission for the cost of additional security staff involved amounting to \$34,000. Costs for 2006-07 also included a 4% increase in the chargeable rate for security services.

### **Prosecutions and disciplinary action arising from ICAC investigations**

**Operation Agnelli – August 2003 (p110)**

- 20. The 2006-2007 Annual Report indicates that the Commission is obtaining additional material in response to the DPP's requisitions, which were received**

**in February 2007 (p110), in relation to the prosecution of Graham Lawrence and John Fitzgerald. Please provide an update in relation to these briefs.**

*Answer*

The DPP provided advice to the Commission relating to the possible prosecution of Mr Graham Lawrence and Mr John Fitzgerald on 11 February 2008 for offences under s.176 of the *Crimes Act 1900* (director or officer publishing fraudulent statements) or, in the alternative, s.176A of the *Crimes Act 1900* (director cheating or defrauding). The Commission sought clarification of this advice from the DPP and was advised on 14 February 2008 that the DPP would proceed with the prosecution of Messrs Lawrence and Fitzgerald. The Commission is awaiting advice from the DPP on the number of counts for each person and the wording of the Court Attendance Notices so that proceedings can be commenced.

#### **Operation Unicorn – April 2005 (p113)**

- 21. The 2005-2006 Annual Report indicates that the Commission is awaiting the DPP's advice in relation to the prosecution of 6 people (p101). The 2006-2007 Annual Report indicates that the Commission is awaiting DPP advice in relation to Adam Perkins, Bob Scott, Kim Wilson and Dale Holt (p113).**
- a. Has the DPP provided advice on the briefs of evidence in relation to these individuals?**
  - b. How many days passed between the date of the briefs being submitted to the DPP and the response from the DPP?**

*Answer*

The DPP has provided advice in respect of Mr Bill Smith and Mr Stephen Griffen (as detailed in response to question 22 below), but has not provided advice in relation to Perkins, Scott, Wilson and Holt.

Briefs of evidence were sent to the DPP on 3/11/05. On 29/8/06 the DPP asked the Commission to obtain 15 additional statements. On 3/11/06 the DPP asked the Commission to obtain a further 19 statements. The Commission has obtained and provided 33 of the 34 statements requested by the DPP. One statement remains outstanding.

- 22. Have the requisitions by the Office of the Director of Public Prosecutions (DPP) on the briefs of evidence in relation to Bill Smith and Stephen Griffen been responded to by the Commission? If so, when did the Commission respond to the requisitions?**

*Answer*

The Commission provided statements in response to the DPP's requisitions on 11/7/07, 7/11/07 and 13/3/08. One statement remains outstanding.

On 13 June 2008 the DPP advised the Commission that there is sufficient evidence to charge Mr Bill Smith, Mr Stephen Griffen and Ms Veronica Bailey with offences in contravention of s. 178BB Crimes Act 1900 of making a false statement with intent to obtain a valuable thing, and also to charge Mr Malcolm Smith and Ms Debbie Barwick with offences in contravention of s. 178BB of concurring in the making of the said false statements. Attached to the advice was a document specifying further requisitions which the Commission is currently attending to.

**Operation Cordoba – June 2005 (pp113-14)**

- 23. In relation to the prosecution of Anne Bechara, the DPP did not proceed with the offence of procuring false testimony, under section 89 of the ICAC Act.**
- a. How many requisitions were made by the DPP in relation to the prosecution of Ms Bechara?**
  - b. Is the ICAC able to provide the reasons given by the DPP for the decision not to proceed with the prosecution?**

*Answer*

- a. No requisitions were made by the DPP concerning Anne Bechara.
- b. Ms Bechara pleaded guilty to 11 offences under s.87 of the *ICAC Act* of giving false or misleading evidence to the Commission. She was sentenced on 19/12/06 to 4 months imprisonment to be served as home detention. The factual basis of the s.87 charges overlapped that of the offence of conspiracy to cause false testimony under s.89 of the *ICAC Act*. The DPP therefore decided not to proceed with the s.89 prosecution.

- 24. In relation to the prosecution of Scott Allman, in July 2006 the DPP advised that there was sufficient evidence to proceed with the prosecution of the offence of use of a listening device under section 5 of the Listening Devices Act. The DPP then withdrew prosecution in November 2006. Is the Commission aware of the DPP's reasons for the withdrawal?**

*Answer*

The DPP advised the Commission that his decision to withdraw the charges under the *Listening Devices Act* was based on "an assessment of the strength of the Crown case, the available admissible evidence to prove the offences, as well as the likelihood of the accused successfully making out the defence provided under the Act on the balance of probabilities." Section 5(3)(b) of the *Listening Devices Act* permits the recording of conversations if a principal party consents to that use of the device and the recording of the conversation is reasonably necessary to protect the lawful interests of that party. The Commission did not agree with this assessment, and provided further information to the DPP, including a judicial decision which seemed to support a contrary view in respect of the availability of the suggested defence, but the DPP's view remained unchanged.

- 25. In relation to the prosecution of Michael Saklaoui, in July 2006 the DPP advised that there was sufficient evidence to proceed with the prosecution of the offence of use of a listening device under section 5 of the Listening Devices Act, and insufficient evidence to proceed with prosecution for offences of blackmail and corrupt rewards under the Crimes Act. In November 2006, the DPP withdrew prosecution for the offence under the Listening Devices Act.**
- a. How many requisitions were made in relation to the prosecution of Mr Saklaoui?**
  - b. Is the Commission satisfied with this outcome?**

*Answer*

- a. Four (also relevant to Alfred Tsang).
- b. The prosecution under the *Listening Devices Act* was withdrawn for the reasons stated in the preceding answer concerning Mr Allman, and the Commission was not satisfied with this outcome for the reasons set out in that response.

The DPP also advised that the admissible evidence against Michael Saklaoui to support a charge of blackmail was insufficient to warrant proceeding against him. It was his view that the most probative piece of evidence had been produced by Mr Saklaoui under objection and could not be used against him.

At the request of the Commission, the DPP reconsidered his decision in relation to the prosecution of Mr Saklaoui for an offence under s249B of the *Crimes Act 1900*. His original decision that no prosecution should be commenced was not changed.

**26. Are there any other prosecutions resulting from Operation Cordoba?**

*Answer*

Three other persons have been prosecuted. Table 2 below sets out these matters. The prosecution of John Abi-Saab is yet to be finalised.

**TABLE 2 – Cordoba Prosecutions**

Name	Offences Charged	Date Of Result	Result
Geoffrey Howe	2 x s.80(c) ICAC Act  2 x s.87 ICAC Act	24 Oct 2005	Good behaviour bond – 2 years S80(c) – On each count – Good behaviour bond – 2 yr S87 – 1st count – 3 months – suspended S87 - 2nd count – 6 months - suspended
Alfred Tsang	2 x s.249B(1) Crimes Act	2 Nov 2007	Four months periodic detention
John Abi-Saab	2 x s.112 ICAC Act 1 x s.100A Crimes Act (blackmail) 5 x s.80(c) ICAC Act 6 x s.87 ICAC Act 1 x s.89 ICAC Act	19 Jan 2006 14 Mar 2008	Fined \$2000 on each s.112 count. Committed for trial; has pleaded guilty to the counts under s80(c) and s87 of the ICAC Act and these will be finalised after trial.

**Other Operations (pp114-15)**

**27. The 2006-2007 Annual Report indicates that the Commission is preparing briefs of evidence in relation to the prosecution of individuals for various criminal offences as a result of the following investigations. Please provide an update on the status of briefs of evidence relating to these investigations:**

- **Operation Cassowary (December 2005)**
- **Operation Cadmus (September 2006)**
- **Operation Aztec (October 2006)**
- **Operation Quilla (December 2006)**
- **Operation Persis (June 2007)**



Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

Answer

Cassowary

All briefs in Operation Cassowary (involving 19 individuals) were delivered to the DPP on 14 December 2007. The Commission is currently awaiting advice from the DPP on these matters.

Cadmus

Mr Michael Ishac was convicted of 6 offences under s.308H(1) of the *Crimes Act 1900* (unauthorised access to computer data) on 15 January 2007 and placed on a one year good behaviour bond.

On 2 June 2008 the DPP advised that there is sufficient evidence in relation to Mr Michael Ishac, Mr John Tourni, Mr Brian Khouzame, Ms Mariam Tourni and Father Elias Houry with respect to all the offences identified in the Commission report. Criminal proceedings will be commenced against each of these shortly. The Commission is yet to receive advice in relation to Mr Albert Bullen and Mr Hammurabi Barhy.

Aztec

The Commission is awaiting advice from the DPP.

Quilla

All briefs of evidence were sent to the DPP on 21 April 2008. The DPP has allocated a lawyer to the matter. It is anticipated that, in accordance with the current MOU with the DPP, a conference will be arranged shortly between the Commission and DPP lawyers with responsibility for the matter.

Persis

All briefs of evidence were sent to the DPP on 3 April 2008. DPP officers and Commission lawyers were to meet on this matter in May, but court commitments intervened. A meeting will take place on 20 or 21 July 2008.

- 28. Please provide a table, similar to that provided to the Committee during its previous review<sup>8</sup>, detailing the period of time between ICAC's provision of briefs of evidence to the DPP and the DPP's decision on each matter, for matters current during the 2007-2008 reporting period (to date). Please include the date of all requisitions received from the DPP with respect to each matter.**

Answer

**PROSECUTION TIMESCALES FOR MATTERS CURRENT  
FROM 1 JULY 2007 TO 30 APRIL 2008**

REPORT	DATE OF REPORT	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF DPP REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO DPP REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN SUBMISSION OF BRIEF AND FINAL DPP ADVICE
AGNELLI Lawrence Fitzgerald	28/8/03 28/8/03	1/3/04 1/3/04	<b>186</b> <b>186</b>	25/10/04, 25/8/06 & 27/2/07	Various. One statement to come.	11/2/08	<b>1442</b>

<sup>8</sup> See ICAC, Answers to questions on notice, 3 September 2007, Attachment C.

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

HUNTER Harb	29/7/04	11/4/06	<b>621</b>	12/12/06	N/A	11/12/06	<b>243</b>
UNICORN Smith Perkins Scott Wilson Holt Griffen	1/4/05 1/4/05 1/4/05 1/4/05 1/4/05 1/4/05	3/11/05 3/11/05 3/11/05 3/11/05 3/11/05	<b>216</b> <b>216</b> <b>216</b> <b>216</b> <b>216</b>	29/8/06 & 3/11/06	10/7/07, 7/11/07 & 13/3/08. One statement to come.	2/6/08 Smith & Griffen	<b>942</b>
CORDOBA Abi-Saab (2) Tsang	23/6/05 23/6/05	28/9/05 28/9/05	<b>96</b> <b>96</b>	Nil 06/06	Nil 19/10/06	21/11/06 28/8/06	<b>418</b> <b>326</b>
CASSOWARY Whitcher Whaanga Fraser Ratkovic Browning Gomez Mohammad Abboud Leon Noel Ritchie Kalland Burton Bacon Bishop McAndrew Atkins McMaster Moya Senior	14/12/05 14/12/05	14/12/07 14/12/07	<b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b> <b>730</b>				
<b>REPORT</b>	<b>DATE OF REPORT</b>	<b>DATE BRIEF TO DPP</b>	<b>DAYS FROM REPORT TO BRIEF TO DPP</b>	<b>DATE OF DPP REQUISITIONS</b>	<b>DATE OF ICAC FINAL RESPONSE TO DPP REQUISITIONS</b>	<b>DATE OF FINAL DPP ADVICE</b>	<b>DAYS BETWEEN SUBMISSION OF BRIEF AND FINAL DPP ADVICE</b>
ARGUS * El Zahab, A El Zahab, J Daher	26/3/06 26/3/06 26/3/06	26/3/06 26/3/06 26/3/06	<b>0</b> <b>0</b> <b>0</b>	6/9/06 6/9/06 6/9/06	Various Various Various	6/9/06 6/9/06 6/9/06	<b>163</b> <b>163</b> <b>163</b>
INCA Strange Wade	8/6/06 8/6/06	3/11/06 3/11/06	<b>150</b> <b>150</b>	Nil Nil	- -	26/4/07 26/4/07	<b>174</b> <b>174</b>
AMBROSIA Williams More Younis Kayrouz Aboulhosn Sleiman Karam Bazouni Tannous Makdessi Nader	21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05 21/12/05	16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07 16/3/07	<b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b> <b>450</b>				

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

Ben	21/12/05	16/3/07	450				
Dib	21/12/05	16/3/07	450				
Punz	21/12/05	16/3/07	450				
Borovina	21/12/05	16/3/07	450				
Akiki	21/12/05	16/3/07	450				
Ayoub	21/12/05	16/3/07	450				
Harb	21/12/05	16/3/07	450				
Allem	21/12/05	18/9/07	636				
Megas	21/12/05	22/4/08	853				
Constantin	21/12/05	18/9/07	636				
Nehme, J	21/12/05	24/5/06	154	Nil	N/A	31/1/08	616
Massoud	21/12/05	-	-				
Zaiter	21/12/05	24/5/06	154				
Barrakat	21/12/05	17/3/08	817				
Sabra	21/12/05	-17/3/08	-				
Nguyen	21/12/05	-	817				
Boumelhem	21/12/05	28/4/08	-				
Nehme, N	21/12/05	22/4/08	859				
Nakhoul	21/12/05	22/4/08	853				
Daoud	21/12/05	-	853				
Haidar	21/12/05	17/3/08	-				
Mouwad	21/12/05		817				
<b>CADMUS</b>						2/6/08	320
Tourni	20/9/06	18/7/07	301				
Khoury	20/9/06	18/7/07	301				
Khouzame	20/9/06	18/7/07	301				
Hilal	20/9/06	18/7/07	301				
Bullen	20/9/06	18/7/07	301				
Barhy	20/9/06	18/7/07	301				
<b>AZTEC</b>							
Wade	26/10/06	10/8/07	288				
Williams	26/10/06	10/8/07	288				
Ashe	26/10/06	10/8/07	288				
<b>REPORT</b>	<b>DATE OF REPORT</b>	<b>DATE BRIEF TO DPP</b>	<b>DAYS FROM REPORT TO BRIEF TO DPP</b>	<b>DATE OF DPP REQUISITIONS</b>	<b>DATE OF ICAC FINAL RESPONSE TO DPP REQUISITIONS</b>	<b>DATE OF FINAL DPP ADVICE</b>	<b>DAYS BETWEEN SUBMISSION OF BRIEF AND FINAL DPP ADVICE</b>
<b>QUILLA</b>							
Stepito	21/12/06	21/4/08	487				
Job	21/12/06	21/4/08	487				
<b>PERSIS</b>							
Marcos, S	18/06/07	31/4/08	290				
Marcos, B	18/06/07	31/4/08	290				
Mourched	18/06/07	31/4/08	290				
Mikhail	18/06/07	31/4/08	290				
<b>PELION</b>							
Fryar	22/08/07	12/6/08	294				
Lu	22/08/07	12/6/08	294				
Srijan	22/08/07	12/6/08	294				
Innes	22/08/07	12/6/08	294				
Kuang	22/08/07	12/6/08	294				
Tina	22/08/07	12/6/08	294				
Song	22/08/07	12/6/08	294				
Shan	22/08/07	12/6/08	294				
Xu	22/08/07	12/6/08	294				

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

Huang Carle	22/08/07 22/08/07	12/6/08 12/6/08	<b>294</b> <b>294</b>				
SIRONA McPherson Phomsavanh Jaturawong	20/09/07 20/09/07 20/09/07	7/5/08 7/5/08 7/5/08	<b>230</b> <b>230</b> <b>230</b>				
BERNA Tasich	20/12/07						
GREENWAY Norris Hogan Murray Peters Nolan	31/1/08 31/1/08 31/1/08 31/1/08 31/1/08						

\* No report. Date taken from date brief sent to DPP.

### **Memorandum of Understanding**

- 29. During the Committee's review of ICAC's 05-06 Annual Report, certain issues were raised concerning the operation of the Memorandum of Understanding between the DPP and ICAC (MoU).<sup>9</sup> In recent correspondence you have advised the Committee that the MoU has been reviewed, as a result of which a number of changes were made, and that a revised MoU was signed on 12 December 2007.**
- a. Are you satisfied with the terms of the current MoU and its operation?**
  - b. Do you consider that the changes have led or will lead to improvements in the handling of prosecutions arising from ICAC investigations?**

#### *Answer*

- a. The Commission had a lead role in drafting the current terms of the MoU, and made several changes that it considered would improve the timeliness and effectiveness of the liaison between the ICAC and the DPP's office. In particular, the MOU now specifies that the ODPP will assign a senior lawyer to a brief referred by the ICAC and advise the ICAC of the name of that lawyer within two weeks of the receipt of the brief. It also provides that:
  - the assigned lawyer will arrange a conference with relevant ICAC officers within four weeks of the receipt of the brief;
  - issues arising from the brief will be discussed at that conference, including whether any requisitions will be issued;
  - a timetable will be agreed for the issuing of and response to the requisitions and, if no requisitions are to be issued, a timetable will be agreed for the furnishing of advice by the ODPP.
- b. Some of the problems with delay in the provisions of advice in criminal matters and the pursuit of those matters through the court system have developed over many years, and improvements in the process will take some time to take effect.

<sup>9</sup> Transcript of proceedings, 11 September 2007, pp 1-2

However, the regular liaison meetings with the DPP's office have resulted in advice being provided on charges in several old matters recently, including Operation Cadmus, Operation Unicorn and Operation Agnelli.

Unlike past years, where many of the matters within the DPP's office had been there for many years, all matters on which the ICAC is now awaiting advice from the DPP's office (except for some parts of Unicorn and two matters in Ambrosia, as detailed above) were sent over in 2007 or later.

### **Implementation of ICAC recommendations**

**30. Table 38 records that the Department of Corrective Services, as at June 2007, had addressed only 6 of 16 recommendations (38%) made by the ICAC in its report on an investigation into the cover-up of an assault on an inmate at Parramatta Correctional Centre.**

**a. Has there been any further progress by the Department in implementing the remaining recommendations?**

The practice of the Commission is to seek a report on progress in implementing corruption prevention recommendations 12 months after the report is published, and again 24 months after the report is published. In this case the 24 month progress report was due in June 2008. An interim report was received on 20 June 2008. The initiatives implemented by the Department of Corrective Services include new policies on "Using force on inmates" and "Managing Video Evidence". The Department advises that these policies will commence on 31 August 2008, and that a final 24 month progress report will then be provided to the Commission.

**b. What were the reasons for the Department not implementing all of the recommendations in the Commission's report?**

The Commission was advised that the reason a number of recommendations had not been implemented at the time of the 12 month report was that the Department had established a high level Steering Group to address the handling of use of force incidents and to revise policy in that area. One of the issues under consideration was the replacement of video cassette recordings with DVD-R cameras and direct download to a new TRIM records management system, an initiative which would make some of the original recommendations redundant.

The interim report of 20 June stated that there had been technical difficulties with this preferred solution. An alternative strategy has been devised and is in the process of implementation. Therefore, there are some recommendations that have not yet been adopted but which are intended to be adopted on 31 August 2008. These relate to revised policies, which the Department advises require incorporation into local operating procedures and delivery of training to staff before they take effect. One other recommendation will be delivered on during 2008.

There are three recommendations the DCS advises it does not propose to implement, or proposes to implement only in part, for reasons of practicality or because it believes the issue has been addressed in a different way.

**c. What percentage of recommendations have been addressed by the Department to date?**

Forty four per cent of recommendations have now been implemented. From 31 August 2008, if the Department proceeds as it has advised, 75% of recommendations will have been implemented.

### **Section 14(2) Report**

**31. The Commission's 'Report to the Minister for Local Government under section 14(2) of the Independent Commission Against Corruption Act 1988 in relation to Burwood Local Council' appears to have been tabled by the Minister for Local Government in the Legislative Assembly on 7 May 2006<sup>10</sup>. However, the Commission did not release the report until August 2006. What was the reason for the delay in the release of the report by the ICAC?**

Investigation reports are generally furnished to Parliament under the provisions of section 74 of the ICAC Act. These reports generally contain a recommendation that the report be made public immediately. In such cases the report is prepared in advance for publication and so can be posted on the ICAC website as soon as the report is tabled in Parliament.

The Commission may, under section 14 of the ICAC Act, furnish a report on the exercise of the functions of a public authority to the authority or to the Minister for the authority. The decision on whether and when section 14 reports are made public is a matter for the authority and/or Minister to whom the report is addressed (and who must also comply with any directions in the report under section 111 of the ICAC Act in relation to confidential information).

Consequently the ICAC does not prepare section 14 reports for publication on its website until after receiving information that the report has been made public. The delay in this case occurred between the report being tabled and initiating the publication process. Once the report was approved on 27 July 2006 by the Deputy Commissioner for publication on the ICAC website it was prepared in standard investigation report format and posted on the ICAC website on 7 August 2006.

### **Inspector's Audit Reports**

**32. Do you have any comment to make on the recommendations contained in the Inspector's audit reports and has the ICAC implemented the Inspector's recommendations?**

*Answer*

There were two reports during the 2006/07 year as follows:

1. Report into compliance with sections 21, 22, 23, 35 and 54 of the *ICAC Act*
2. Report into compliance with section 12A of the *ICAC Act*

Report into compliance with sections 21,22, 23, 35 and 54 of the *ICAC Act*

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<sup>10</sup> Legislative Assembly, *Votes and Proceedings*, 9 May 2006, item 6, p 2019

The Inspector's report on the audit of the Commission's compliance with ss.21, 22, 23, 35 & 54 of the *ICAC Act* noted that the notices and summonses audited complied with the relevant provisions of the *ICAC Act*.

The audit revealed that in some cases records concerning service of some notices were missing from the relevant file and in some cases notices and summonses and minutes in support of the issuing of some notices and summonses could not be located on file.

All notices and summonses are required to be registered with the Commission's Property Section before being served. Details of service are also filed with the Property Section. New procedures introduced as a consequence of the audit require a copy of the supporting minute, setting out the reason for the exercise of the relevant power, also be filed with the notice or summons.

#### Report into compliance with section 12A of the *ICAC Act*

On page 10 of the report the Inspector noted that "*the Commission's practice of referring matters pursuant to s. 19 without providing any context or information to the authority or officer to whom the matter is being referred is problematic. It would be more consistent with the objectives of s. 12A if the Commission provided the context of a referral, for example, explaining why a matter itself and what, if any, inquiries it made regarding the veracity of the allegations. Such information would assist the authority or the official to whom a matter has been referred to make an informed decision on whether or not to investigate*".

On page 15 the Inspector recommended that "*the ICAC develop a policy to ensure that information and context is provided to public agencies and officials where referrals are made under s. 19. For example such information could include*

- *Any inquiries made by the ICAC;*
- *The reasons why the ICAC did not investigate; and*
- *The likelihood of serious and or systemic conduct existing if the allegations were substantiated*'.

**Comment:** Referrals to public authorities under s. 19 are used where less serious corrupt conduct issues are raised or, alternatively, where a matter does not involve corrupt conduct but the ICAC considers it should be brought to the authority's attention. It is used in preference to ss. 53, 54 in cases where the matter is not serious and systemic in nature. It does not impose an obligation upon an authority to investigate, nor does it impose an obligation upon the ICAC to consult with that authority prior to referral. It does not abrogate authorities' responsibilities to report appropriate matters to the ICAC under section 11. If, in the course of making enquiries, further issues are identified that warrant reporting to the ICAC, a report under s. 11 is still expected.

In contrast there is an expectation within the public sector that the ICAC will refer only serious matters under ss. 53, 54, for example where, if resources allowed, the ICAC may have otherwise investigated the matter itself. Referrals under ss. 53, 54 are also utilised to build capacity within an authority for it to oversee the investigation of appropriate matters and make recommendations about remedial action.

During the 2006/2007 year, but prior to receipt of the Inspector's comments, the Assessments Section revised its template documents with respect to s. 19 referrals. All such matters are referred under a covering letter, which makes it clear that the ICAC does not propose to take any action. It is noted that the matter may be of interest to the authority to whom it is referred. It is noted that if, in the course of the authority conducting inquiries,

further issues are raised which warrant reporting to the ICAC under s. 11, then these issues should be reported by the authority.

Accompanying the referral letter is a summary document, the contents of which may vary slightly depending upon whether the complainant is anonymous, the complainant's identity is disclosed, or the complainant's identity is not disclosed to the authority to whom the matter is referred. The referral document requires the author to set out the context to the complaint. The document reiterates that the referral is for the information of the authority only.

The Manager, Assessments regularly raises the issue of referrals under s. 19 with public sector authorities during liaison meetings and discussions, to gauge whether authorities have appropriate systems in place to manage such referrals, and to answer queries about the basis upon which such referrals have been or may be made.

Furthermore, in June 2007 the ICAC published its *Guidelines for Principal Officers*, which was distributed to all principal officers of state authorities. This document outlines, amongst other things, the points of difference between referrals under s. 19 as opposed to ss. 53, 54 and the expectations of the ICAC in relation to both.

A local government version of these Guidelines will be finalised once the Department of Local Government has issued its new Model Code of Conduct.

## **ICAC COMMITTEE PUBLIC HEARING – 28 MAY 2008**

### **Additional Questions on Notice**

#### **s.31 of the ICAC Act – Public inquiries**

**33. What guidelines does the ICAC have in place with respect to the interpretation of those factors specified at s.31(2) of the ICAC Act as the type of matters to be considered when determining the public interest in conducting a public inquiry?**

The Commission does not have any specific guidelines in place relating to the interpretation of the factors specified in s.31(2) of the *ICAC Act*. It is not considered necessary to establish such guidelines. Each matter is considered on its own merits with any decision on whether to proceed to a public inquiry made by the Commissioner after taking into account the specific statutory criteria listed in section 31 and the advice of the Commission's Strategic Investigations Group (SIG).

**34. What considerations, in addition to those specified at s.31(2), does the ICAC take into account when making a determination that it is in the public interest to conduct a public inquiry?**

*Answer*

Procedure 5 of the Commission's Operations Manual deals with the conduct of public inquiries. It provides that in addition to the matters set out in s.31(2) of the *ICAC Act* the criteria for determining to hold a public inquiry may include:

- the allegations involve serious or systemic corrupt conduct;
- it is desirable to widely expose any corrupt conduct or systems failures;
- the allegations are already in the public domain and a Public Inquiry would provide a transparent mechanism for public officials and others to be publicly accountable for their actions;



- public exposure of issues are likely to provide those subject to false accusations or innuendo an opportunity to clear their names;
- public exposure will educate the public about serious corruption or systemic issues;
- public exposure will be an important deterrent to similar corrupt conduct by others. If people know their conduct may be subject to public exposure they may be less likely to engage in corrupt activity;
- public exposure is likely to encourage others to come forward with information relevant to the investigation;
- public exposure of failed or inadequate systems is necessary to encourage public agencies to actively engage in reform and/or to establish public understanding of why change is necessary; and
- the desirability of enhancing public confidence in the operations of the Commission by demonstrating openness and public accountability in the Commission's conduct of investigations.

### **RailCorp investigation – June 2007**

- 35. The ICAC's report on its investigation into corrupt conduct associated with RailCorp air-conditioning contracts, explains that the evidence and other material obtained through compulsory examinations, search warrants, and s.22 notices "indicated a clear likelihood that Mr Marcos had misused his position as a RailCorp employee to obtain financial gain through dealings with Mr Mourched and Mr Mikhail". The report further notes that:**

**Given the serious nature of the allegations and the need to take further evidence from a number of witnesses, including Mr Marcos, Mr Mourched and Mr Mikhail, to establish the facts and evaluate conduct and to identify any systems weaknesses, the Commission determined it was in the public interest to conduct a public inquiry. (p.10).**

- a. Was the evidence available to the ICAC, at the point when the decision was taken to conduct a public inquiry, sufficient to establish a *prima facie* case in respect of the corruption allegations under investigation?**
- b. How did the ICAC assess the benefits of using a public inquiry to obtain further evidence at this point of the investigation, rather than further compulsory examinations or other investigative techniques?**
- c. What was the advantage of the public inquiry process in identifying systems weaknesses within RailCorp?**
- d. What is the current situation in respect of RailCorp's implementation of the recommendations made by the ICAC in this investigation report?**

*Answer*

- a. As this question relates to a decision taken by the Commission in respect of a particular investigation, the Commission considers that it may come within the terms of section 64(2) of the Act which provides:

Committee on the ICAC  
ICAC Annual Report 2006-2007 - Questions on notice

Nothing in this Part authorises the Joint Committee:

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

In general terms, the Commission does not consider that it is useful to introduce concepts such as the requirement for a “prima facie” case into its statutory functions. The Act sets out in some detail the circumstances in which the ICAC may conduct a public inquiry and the criteria which must be taken into account in deciding whether to hold a public inquiry. These are the matters the ICAC considers in such cases.

- b. As pointed out above, in response to a., this question relates to a specific decision taken by the ICAC in relation to an investigation, and therefore appears to come within the terms of s.64(2) of the Act. The Commission has outlined in its responses to questions 33 and 34 the statutory and other factors that it takes into account in deciding to hold a public hearing.
- c. In the course of an investigation, information about systems weaknesses are obtained through a variety of means including statements and interviews, informal requests for policies, formal powers such as s21 and s22 notices, compulsory examinations and public inquiries.

Public inquiries are particularly useful for clarifying any ambiguous and inadequate information about systems and system weaknesses that has been acquired during the investigation. Generally, clarification will be sought from senior managers and system administrators.

- d. The process for implementation of Commission recommendations is that agencies are requested to provide an implementation plan within three months of the publication of the investigation report. The Commission then requests progress reports regarding the implementation of this plan at approximately 12 and 24 months after the publication of the investigation report.

The Operation Persis implementation plan was due in September 2007. In February 2008 the ICAC wrote to Railcorp requesting clarifying and additional information, and a finalised response, in relation to an implementation plan received earlier from Railcorp. To date this information and the finalised implementation plan is outstanding.

**SUBMISSION RE AMENDMENT OF S.116 OF THE *INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1987***

The Commission would like to seek the Committee's support for an amendment to s.116 of the *Independent Commission Against Corruption Act 1987*.

Section 116 provides that offences against the ICAC Act are generally to be dealt with summarily in the Local Court, unless otherwise specified.

Prosecution action for such summary offences must be commenced within 6 months of the offence being committed.

This has caused problems for the Commission, most recently in the Operation Atlas investigation, in relation to offences under s.82(b) of the Act. Section 82(b) makes it an offence for a person to knowingly provide false or misleading information in response to a Notice issued by the Commission.

The requirement that a prosecution for such an offence must be commenced within 6 months causes a problem for the Commission on two bases:

1. The Commission often does not become aware of the falsity of information provided until further investigation has been undertaken. Notices requiring information are issued early in an investigation to obtain information, and the fact that the information is false may not come to light until further steps, including in some cases a public inquiry, have been taken.
2. Even if the Commission does become aware within 6 months that false information has been provided, it may prejudice the ongoing investigation to commence a prosecution at that time, as it would alert persons subject to investigation that the Commission was aware through other means of the falsity of the information supplied.

Section 116(4) of the Act presently specifies that prosecutions for offences under s.80(c) (willfully making a false statement to the Commission) and s.81 (making a false complaint to the Commission) may be commenced within 3 years, presumably recognizing that such offences may not come to light for some time after their commission.

In the Commission's view, section 82(b) of the Act should be included in section 116(4) as an offence in respect of which prosecution action may be commenced up to 3 years after the commission of the offence.