

## ICAC Inspector – Answers to indicative questions (received 24 August 2010)

### **1. What are the Inspector’s current practices in respect of the publication of reports relating to the functions at ss.57B(1)(b) and (c) of the ICAC Act?**

**Answer:** When performing an audit under section 57B (1)(a) I have looked to see whether there is any conduct amounting to maladministration under clause (c) and whether the procedures are effective and appropriate under clause (d). The findings of the audit are then included within a Special Report to the Parliament in accordance with section 77A of the Act.

When dealing with complaints under section 57B (1)(b) my practice has been to make a report only to the parties concerned.

### **2. Has the Inspector of the ICAC encountered any specific difficulties with the operation of the reporting provisions applicable to that office under the ICAC Act?**

**Answer:** So far no specific difficulty with the operation of the reporting provisions have been encountered.

### **3. In relation to what types of matters and in what circumstances do you envisage that the Inspector would consider making a report to Parliament about a complaint investigation and what level of reporting is required on a complaint investigation that does not warrant a report to Parliament?**

**Answer:** A report to Parliament about a completed investigation would occur where the complaint was referred by the Parliamentary Joint Committee or where the complaint involved an allegation of serious misconduct on the part of a senior officer of the Commission or involved an allegation of systemic misconduct. The term “misconduct” includes all forms of impropriety and maladministration referred to in section 57B of the Act.

Where the complaint is one of misconduct on the part of an individual officer of the Commission not involving systemic misconduct, a report would be given to the officer concerned and to the Commissioner.

### **4. Two options have been suggested by the Department of Premier and Cabinet as possible amendments to overcome difficulties with the reporting provisions of the *Independent Commission Against Corruption Act 1988* and the Committee would seek your comment on the relative merits of the suggested amendments:**

- i. that the Inspector be given a general discretion to publish to anyone; and**
- ii. that the Inspector, in his discretion, provide a report about a complaint to Parliament with a recommendation that the report be made public forthwith.**

**Answer:** The question of reporting involves two separate considerations. First, on what subject matters is the Inspector authorised to report?

The word “reports” occurs only in paragraphs (b) and (c) of section 57B (1). If there is power to report on the subject matters referred to in paragraphs (a) and (d) of section 57B (1), it is

to be found in section 77A which authorises the Inspector to make a special report to the Presiding Officer of each House of Parliament on:

“(a) any matters affecting the Commission, including, for example, its operational effectiveness or needs”

I have construed this authorisation as enabling me, as the result of an audit, to make findings whether there is any conduct amounting to maladministration under clause (c) and whether the procedures are effective and appropriate under clause (d) and to include those findings within a Special Report to the Parliament in accordance with section 77A of the Act.

A contrary view is arguable. To put the matter beyond doubt, I would suggest an amendment similar to recommendation 17 that the Act be amended to make express provision for the Inspector to report to Parliament, as he considers necessary, on any abuse of power, impropriety, maladministration and other forms of misconduct on the part of the ICAC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector.

The second consideration is to whom should the report being made?

The Act provides for only one recipient of reports, namely a special report to the Presiding Officer under section 77A. If I were to make a finding of misconduct on the part of an officer of the ICAC which was not serious or systemic it would be unreasonable to make a special report to the Presiding Officer. The appropriate course would be to address the report containing the finding to the officer concerned and to the Commissioner. If the victim of the misconduct were a member of the public should he/she receive a copy of the report? It could be argued that the Act does not authorise me to publish the report to the Commissioner let alone to the member of the public with the possible consequence that my report loses the protection of absolute privilege under schedule 1 of the Defamation Act 2005.

To overcome this difficulty I suggest that the Inspector be given a general discretion to publish a report to the Commissioner and/or the officer against whom the complaint has been made. In addition, the Inspector should continue to have power, in his discretion, to provide a report about a complaint to Parliament with a recommendation that the report be made public forthwith.