



## Review of the Inspector of the ICAC's Annual Report 2011-12

### Questions on notice

#### Powers of the Inspector

1. Section 3.2.2 of the annual report (pp 4-5) refers to the extent of the Inspector's power to make adverse findings against the Commission and/or its officers. You state that, unlike the ICAC, while you are entitled to make adverse findings against the Commission or its officers, you are not entitled to include a statement of any finding that the Commission or an officer of the Commission was or may have been guilty of a criminal offence or engaged in corrupt conduct.

Do you have any further comments on this issue, for example, on the adequacy of the Inspector's powers to make adverse findings and to be able to make such statements?

#### Other relevant legislation

2. Page 7 of the annual report notes that six public interest disclosures (PID) were made to the Inspector during the year. How does this compare to previous years?
3. The public interest disclosures policy of your office states that from 1 January 2012 the *Public Interest Disclosures Act 1994* requires public authorities to:
  - collect data about public interest disclosures;
  - provide to the NSW Ombudsman a six monthly report on incidence of disclosures received and compliance with the PID Act;
  - prepare an annual report on organisational compliance with obligations under the PID Act for submission to the Premier (with a copy to be provided to the Ombudsman).

Have the PID reporting requirements impacted on your Office's workload?

#### Administration

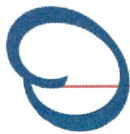
4. The annual report notes that total expenditure for the reporting year was \$438,642 and the OIICAC budget was \$453,148 (p 12). Is this budget at an appropriate level for future years?
5. Are current staffing arrangements adequate to fulfil the functions of the OIICAC if workload increases much beyond current levels?

#### Liaison and communication

6. The annual report notes that an updated version of the Inspector's memorandum of understanding with the ICAC (MOU) was executed on 14 June 2012 (p 12). Please provide the Committee with a copy of the updated MOU.

## **Concluding comments**

7. The Committee notes that one of the principal functions of the ICAC Inspector is to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities. Could you elaborate on the ways in which you have assessed the effectiveness and appropriateness of the ICAC's procedures in this reporting period?
8. The ICAC received additional annual funding from 2011 to meet an increase in its investigative workload. What impact has the ICAC's increased investigative workload had on your resources to monitor and audit the ICAC's operations during 2011-12?



## **Review of the Inspector of ICAC's Annual Report 2011-12**

### **Questions on Notice**

#### **Powers of the Inspector**

1. The powers vested in the Inspector by sub-sections 57C (a) to (e) inclusive of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) form the basis of the power to secure and consider evidence and to make findings of fact. Having made such findings of fact, the consequential powers available to the Inspector are set out in sub-sections (f) and (g); namely to refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and to recommend disciplinary action or criminal prosecution against officers of the Commission. Further powers of reporting or recommending are included in sections 57B (5) and 77A of the ICAC Act.

It is the view of the current Inspector that the existing powers are adequate to achieve the objectives set out in section 57B (1) of the ICAC Act.

#### **Other relevant legislation**

2. In 2011-12 six public interest disclosures were made. The number of public interest disclosures made in previous years were:

2010-11: 10  
2009-10: 5  
2008-09: 12

3. The extra requirements do add to the workload of the Office but they are manageable within the Office's existing resources.

#### **Administration**

4. It is difficult to say that the current budget for the office will be appropriate for future years. It has been appropriate to date. However, if there is a significant increase in the office's workload, for example, due to an increase in the number of complaints and the volume of investigations required to be undertaken then the level of the budget will need to be reviewed at the relevant time.

5. The answer to this question is the same as for question 4. A further point to be noted however is that the Inspector has the capacity to employ additional staff on a private or public sector capacity as required.

### **Liaison and Communication**

6. A copy of the Inspector's Memorandum of Understanding (MOU) with the Commissioner dated 14 June 2012 is attached. It is in substantially the same terms as the previous MOU.

### **Concluding comments**

7. The ways in which the effectiveness and appropriateness of the ICAC's procedures were assessed during the reporting period are as follows:-
- Conducting an audit of the exercise between 1 September 2010 and 31 March 2011 by the ICAC of its coercive powers under sections 21, 22, 23, and 35 of the ICAC Act. The Report on this Audit was published in March 2012.
  - Conducting an audit of the exercise during the year 2011 by the ICAC of its applications for and execution of Surveillance Device Warrants and Retrieval Warrants under Part 3 of the Surveillance Devices Act 2007. The Report of this Audit was published in April 2012.
  - When dealing with complaints against the ICAC consideration is given to the effectiveness and appropriateness of its procedures.
8. So far, the increase in the investigative workload of the ICAC has had little impact on the resources of the Inspector to monitor and audit the ICAC's operations during 2011-2012.

Examination of audit reports reveals the following use by the ICAC of its powers under sections 21, 22 and 35 of the ICAC Act over the past few years:-

S. 21 Notices	01/04/09 – 30/09/09	6
	01/09/10 – 31/03/11	38
	01/09/11 – 29/02/12	8
S. 22 Notices	01/04/09 – 30/09/09	196
	01/09/10 – 31/03/11	333
	01/09/11 – 29/02/12	295
S. 35 Summonses	01/04/09 – 30/09/09	43
	01/09/10 – 31/03/11	48
	01/09/11 – 29/02/12	54

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

This Memorandum of Understanding ("MOU") is made on this day the 14<sup>th</sup> of June 2012 between the Independent Commission Against Corruption ("the Commission") and the Inspector of the Independent Commission Against Corruption ("the Inspector").

**1. BACKGROUND**

- 1.1 The Inspector's role was created by the provision of the *Independent Commission Against Corruption (Amendment) Act 2005* which inserted Part 5A into the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). The relevant provisions commenced operation on 1 July 2005.
- 1.2 The principal functions of the Inspector are set out in section 57B of the ICAC Act provide as follows;
  1. *The principal functions of the Inspector are:*
    - a) *To audit the operations of the Commission for the purpose of monitoring Compliance with the law of the State, and*
    - b) *To deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and*
    - c) *To deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and*
    - d) *To assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*
  2. *The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.*
  3. *The Inspector is not subject to the Commission in any respect.*
  4. *For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:*
    - a) *contrary to law, or*
    - b) *unreasonable, unjust, oppressive or improperly discriminatory, or*
    - c) *based wholly or partly on improper motives.*

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

*The Inspector:*

- a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and*
- b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and*
- c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and*
- d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and*
- e) may investigate and assess complaints about the Commission or officers of the Commission, and*
- f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and*
- g) may recommend disciplinary action or criminal prosecution against officers of the Commission.*

**2. PURPOSE**

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

**3. INTENT**

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

**4. LIAISON**

- 4.1 The primary point of liaison will be between the Inspector and the Commissioner or their respective nominated delegates.
- 4.2 The Inspector and the Commissioner agree to meet periodically, and at least once per month, to discuss relevant issues and raise any matters touching on the Inspector's functions and the conduct of the Commission. Both the Inspector and the Commissioner will keep their own short notes of these meetings. Contact at other times may occur as and when required.
- 4.3 If the Inspector or his staff need information or material or to inquire of the Commission regarding a complaint or other matter touching on the conduct of the Commissioner, this will be referred to the Deputy Commissioner in the first instance. In the absence of the Deputy Commissioner, such inquiry will be directed to the Solicitor for the Commission.

- 4.4 For any other matters arising from the Inspector's functions, general inquiries, or requests for information and material etc, liaison shall occur between the Inspector's staff and the Deputy Commissioner. In the absence of the Deputy Commissioner, such inquiry will be directed by the Inspector's staff to the Solicitor for the Commission.
- 4.5 Where the Inspector and/or his staff wish to interview any of the Executive Directors of the Commission in connection with a complaint, the Commissioner will be notified wherever possible.
- 4.6 Where the Inspector and/or his staff wish to interview any staff of the Commission in connection with a complaint, the Deputy Commissioner will be advised wherever possible.
- 4.7 The Commission acknowledges however, there may be occasions where the Inspector and his duly authorized staff may need to act unilaterally without prior notification as outlined in paragraphs 4.5 and 4.6.
- 4.8 Written correspondence from the Commission to the Inspector will be addressed to the to the Inspector and marked "Private and Confidential" c/-;

Office of the Inspector of the Independent Commission Against  
Corruption  
GPO Box 5341  
SYDNEY NSW 2001

Or by email to [InspectorICAC@oiicac.nsw.gov.au](mailto:InspectorICAC@oiicac.nsw.gov.au)

Or such other address as the Inspector may advise.

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

- 5.1 The Commission will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission that comes within the principal functions of the Inspector.
- 5.2 Unless urgent and requiring immediate attention, in which case oral communication will be provided to the Inspector as soon as possible to be subsequently confirmed in writing, all such matters will be communicated to the Inspector by way of written notification.
- 5.3 Notification of matters referred to in paragraph 5.1 will also be reported by way of schedule to be provided at the meeting between the Inspector and the Commissioner as referred to in paragraph 4.2. The schedule will briefly set out the relevant information as available and known to the Commission including any action of the Commission itself has taken to deal with the complaint.
- 5.4 The Commission will make information concerning the Inspector's role and function publicly available to complainants. This includes:
  - a) having copies of the relevant brochures concerning the Inspector's role and functions available at the waiting room and/or public areas of the Commission's premises;

- b) having appropriate information about the Inspector and links to the Inspector's website on the ICAC webpage;
- c) where determination is made not to investigate a complaint, further advise the complainants of the basis upon which they may be able to pursue a complaint with the Inspector and provide the Inspector's contact details.

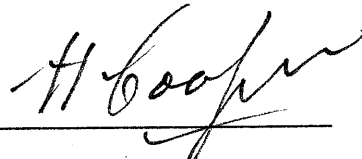
5.5 Furthermore, where requested, Commission officers will provide any persons with the contact details for the Inspector as per the address details in paragraph 4.8 and/or the Office of the Inspector's general telephone number of (02) 8374-5381.

## 6. REVIEW

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



The Hon. David Ipp QC  
Commissioner of the ICAC



Harvey Cooper AM  
Inspector of the ICAC