

Joint Committee on the Independent Commission Against Corruption

REVIEW OF THE ICAC INSPECTOR'S 2013-14 ANNUAL REPORT

FURTHER QUESTIONS

1. Question:

The Committee notes that the *Police Integrity Commission and Independent Commission Against Corruption (Inspectors) Act 2013* allowed the two positions of the Inspector of the Police Integrity Commission and the Inspector of the ICAC to be held by the same person. In your view has this increased the effectiveness of the Inspector positions? What other consequences have resulted from this amalgamation?

Answer:

The permitting of the two positions of the Inspector of the Police Integrity Commission and the Inspector of the ICAC to be held by the same person has increased effectiveness of the Inspector position. It has obvious consequences in terms of financial savings in that instead of there being two separate staffed units being made up of the Inspector plus two, one unit of the Inspector plus Principal Legal Advisor and Executive Support Officer has proved sufficient. Uniformity of procedures in terms of the creation and disposition of files, for example, has been achieved.

2. Question:

The Committee notes your comments, made at the public hearing, regarding the possible appointment of an Assistant Inspector of the ICAC. Could you update the Committee on this matter?

Answer:

This matter is still in the hands of the Department of Premier and Cabinet, my last communication with the Premier was on 13 August 2015. It is highly desirable that it be finalised as soon as possible.

3. Question:

The Committee notes your comments on pages 2 and 3 of the report regarding the office of ICAC Inspector being vacant from 1 October 2013 to 9 February 2014. Do you consider that the problems that arose through the lack of an Inspector could have been alleviated by the appointment of an Assistant Inspector?

Answer:

Yes. The functions and powers are personal to the Office of the Inspector and would be personal to an Assistant Inspector. An Assistant Inspector could have embarked upon any necessary inquires of ICAC or elsewhere, with authority. Another way of looking at it is this: If the Office of this Inspectorate becomes vacant, the business of the Inspectorate can be continued by the Assistant Inspector until a replacement is appointed.

4. Question:

The Committee notes the total expenditure for 2013-14 of \$316,480, within a budget of \$301,000 (page 7).

- What was the reason/were the reasons for the budgetary overrun?
- Could you please provide a breakdown of costs for 2013-14?
- The Committee notes the total expenditure for the previous year was \$425,373. What are the reasons for the significant variation in costs for 2012-13 compared with costs for 2013-14?

Answer:

The following information has been provided by the office of the Chief Financial Officer of the Department of Premier and Cabinet:

a) Comparison of 2013-14 Actual Expenditure to Budget

Expenditure in 2013-14 was \$316,480 compared to a budget of \$446,000. The 2013-14 Annual Report noted a 2013-14 budget amount of \$301,000. This budget amount related to 2014-15 and was incorrectly attributed in the 2013-14 Annual Report.

The Office's savings against budget reflect the efficiencies achieved in the appointment of Mr Levine to both the Inspector of ICAC and PIC roles and the application of a shared services model across the two offices. The budget had not allowed for these changes.

b) Breakdown of 2013-14 Costs

The table below provides a breakdown of costs for 2013-14:

Salary & Wages (Including Inspector's retainer)	\$189,101
Inspector's Fees	\$115,920
Fees for Services Rendered	\$6,838
Office Supplies	\$3,274
Other Operating Expenses	\$1,347
TOTAL EXPENSES	\$316,480

5. Question:

The Committee notes that liaison between the ICAC and the Inspector is conducted in accordance with an MOU and that 'the purpose of the MOU is to ensure that communications between the Inspector's office and the ICAC are conducted at an appropriate level' (page 7).

- Could you please expand on what 'conducted at an appropriate level' means?

- It is noted the MOU was in the process of minor revision at the time the 2013-14 report was written. Could you please provide the MOU and the details of the minor revisions?
- Do you have any comment on the effectiveness of the liaison and working relationship between the ICAC and the Inspectorate? In your view, are there areas for improvement?

Answer:

Communication “at an appropriate level” means the Inspector communicates with the Commissioner initially on a matter and vice versa, the Principal Legal Advisor of the Inspectorate might communicate with the Deputy Commissioner or an Assistant Commissioner or indeed with the lawyer to ICAC. Whilst a matter might be initiated as between the Inspector and the Commissioner or vice versa its further conduct can satisfactorily be dealt with for example as between Principal Legal Advisor of the Inspectorate and the legal personnel of the ICAC.

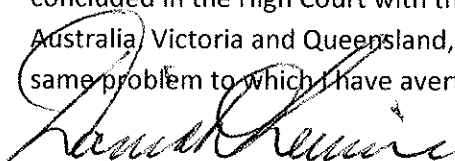
A copy of the MOU is provided on a **confidential basis**. The minor revisions were matters of grammar, office addresses, there no longer being a requirement for meetings as between the Inspector and Commission at fixed periods but rather when required. As at the time of answering these questions no such meetings have been found to be necessary. Save for the matter dealt with in 6 below liaison and the working relationship has been effective. This may be exemplified further in the Annual Report for the reporting year concluded 30 June 2015.

6. Question:

The Committee notes your comments in relation to the *Telecommunications (Interception and Access) Act 1979* (TIA Act) on pages 9 and 10 of the report and made at the recent public hearing. In your recent special report furnished to the NSW Parliament on 18 June 2015, and arising out of the Independent Panel Review of the Jurisdiction of ICAC, you stated (page 13) that litigation may be needed to resolve the issues around the TIA Act. Could you please expand on this point?

Answer:

In relation to the *Telecommunications (Interception and Access) Act 1979* (TIA Act) Counsel’s advice is being sought. It is difficult to expand upon that fact: if Counsel advises that the position of ICAC is correct, there is no present point in challenging it. If their advice is to the contrary, then a decision will have to be made as to whether any litigation in relation to a particular inquiry that may have been conducted by ICAC should be initiated and probably concluded in the High Court with the intervention of at least Western Australia, South Australia, Victoria and Queensland, their Inspectors or cognate office holders having the same problem to which I have averted in the reports etc referred to in the question.



The Hon David Levine AO RFD QC
Inspector: ICAC
August 2015

**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 29th of MAY 2015 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, 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.
- 4.3 If the Inspector or his staff need information or material or to inquire of the Commission regarding a complaint or other matter touching on the conduct of the Commissioner, this will be referred to the Deputy Commissioner in the first instance. In the absence of the Deputy Commissioner, such inquiry will be directed to the Solicitor for the Commission.
- 4.4 For any other matters arising from the Inspector's functions, general inquiries, or requests for information and material etc, liaison shall occur between the Inspector's staff and the Deputy Commissioner. In the absence of the Deputy Commissioner, such inquiry will be directed by the Inspector's staff to the Solicitor for the Commission.
- 4.5 Where the Inspector and/or his staff wish to interview any of the Executive Directors of the Commission in connection with a complaint, the Commissioner will be notified wherever possible.
- 4.6 Where the Inspector and/or his staff wish to interview any staff of the Commission in connection with a complaint, the Deputy Commissioner will be advised wherever possible.
- 4.7 The Commission acknowledges however, there may be occasions where the Inspector and his duly authorized staff may need to act unilaterally without prior notification as outlined in paragraphs 4.5 and 4.6.
- 4.8 Written correspondence from the Commission to the Inspector will be addressed to the Inspector and marked "Private and Confidential" c/-;

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

Or by email to oiicac_executive@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 appropriate information about the Inspector and links to the Inspector's website on the ICAC webpage;
 - b) 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) 9228 5260.

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 24 months from the date of the MOU.



The Hon. Megan Latham
Commissioner of the ICAC

29/5/15



The Hon. David Levine AO RFD QC
Inspector of the ICAC

29/5/15