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12 January 2012

Mr Mark Speakman, SC MP  
Chair  
Committee on the Independent Commission Against Corruption,  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Speakman

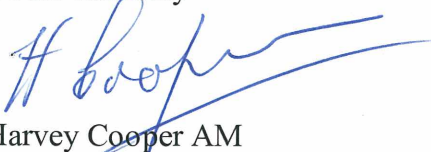
**Review of the Office of the Inspector of the ICAC's 2009-10 and 2010-11 Annual Reports and other reports**

I refer to your letter of 24 November 2011 attaching questions on notice in preparation for the public hearing to be held as part of your Committee's review.

Enclosed please find the answers to those questions.

Please advise if you require any further information.

Yours sincerely

  
Harvey Cooper AM  
Inspector

Encl.

## Review of the Office of the Inspector of the ICAC's 2009-10 and 2010-11 Annual Reports and other reports

### Questions on notice

#### QUESTION 1.

*Has the Inspector received any further advice from the NSW Attorney General on his suggested amendments to the Telecommunications (Interception and Access) Act 1979 (Cth)?*

#### ANSWER:

No.

#### QUESTION 2.

*The 2009-2010 Annual Report (p 19) states that the Inspector's complaint handling process was enhanced in 2009-10 to ensure efficiency and flexibility while giving each matter careful consideration. Please outline the improvements to the Office's complaint handling process.*

#### ANSWER:

In 2009-10 I restructured the work responsibilities undertaken by my office so that I have primary management responsibility for dealing with complaints from the time they arrive in my office. This is a different approach to that taken by my predecessor. Mr Kelly's approach was to review complaints after they were assessed by the Executive Officer, in line with the responsibilities of her position. He had sound policy reasons for such an approach including a view to minimising any allegations of bias by complainants.

In part, my decision to change the way complaints were handled in my office coincided with the fact that the Executive Officer was going on a period of unpaid leave from late August 2009. A number of temporary staff who had also been engaged on a contract basis, to assist with the office's increased workload at that time, had also completed their period of employment.

However, the key reason for restructuring the work responsibilities within my office was because I took the view that the complaint handling function was highly significant to my ability to maintain effective oversight of the ICAC. It allowed me to develop a first-hand and comprehensive understanding of all issues arising from any complaints made against the ICAC.

My decision to centralise this responsibility had inherent efficiencies including:

- There being no lag time between the handling of complaints between my staff and myself.
- I was able to effectively prioritise complaints including delegating other work to staff. This allowed me to focus on finalising complaints efficiently, particularly long and complex complaints which may have otherwise taken longer to complete.

- I involve staff to support me to finalise complaints as and when I judge that such support is required on a case-by-case basis. This flexibility ensures efficient use of the office's resources.

My ancillary decision to introduce a policy to personally interview complainants allowed me to obtain an immediate and complete 'picture' of all relevant issues without the need for further and ongoing communication correspondence over a period of time and information being revealed in a piece-meal fashion. This approach therefore reduced the time taken to finalise a complaint.

Other steps taken which supported greater efficiency and flexibility in complaint handling were:

- Updating the office's web site information on complaint handling including: updating the on-line complaint form; and making statements on the web site to encourage complainants to contact me directly.
- Development of an internal electronic reporting system on complaints which tabulates, amongst other data, the time taken by my office to finalise complaints. I review these results to ensure that all complaints are managed in a timely manner and identify any areas in which the complaint handling process can be improved in terms of further efficiencies.

### QUESTION 3.

*According to the 2010-11 Annual Report (pp 14-15) the Inspector investigated 20 complaints during the reporting period, compared with 12 for the previous financial year. The time taken to deal with complaints was not substantially affected by the rise in complaint investigations. The Committee notes that the Inspector also completed two audits during 2010-11. What strategies did the Inspector use to complete a greater number of complaint investigations in a timely manner during the reporting period?*

### ANSWER:

As stated in response to question no. 2 my main strategy to improve my office's effectiveness in handling complaints has been to centralise the complaint handling function of the office to myself. However, it has to be borne in mind that the time spent dealing with complaints is not a function merely of the number of complaints but also of the nature of each complaint received, the time taken by others to furnish information requested and the amount of work required to assess and investigate it. Of the 20 complaints investigated during the 2010-2011 reporting period most involved the following steps:

- a) considering the initial complaint which was usually received by e-mail but sometimes by letter or telephone.
- b) determining what further information is required; this may be files from the ICAC or interviewing the complainant and/or other people, researching law relevant to the complaint (this particularly applied to complaints involving local government bodies).
- c) obtaining further information arising out of the previous actions.
- d) reaching a decision and communicating that decision to the complainant.

QUESTION 4.

*The Committee notes the gradual increase in the website hits for the Inspector's website during the 2010-11 reporting period (p 10). The Annual Report states that the spike in website hits in June 2011 may have been caused by a US internet security company testing for gaps in security, as a marketing strategy. Has the spike recorded in June continued into the current financial year?*

ANSWER:

The recorded hits following June 2011 are as follows:

July 2011	907
August 2011	752
September 2011	903
October 2011	941
November 2011	826
December 2011	690

The spike recorded in June (1,316) has not continued. However, the number of hits in the second half of 2011 was greater than the number in the first half.

QUESTION 5.

*The ICAC's investigative workload has increased substantially during the previous two reporting periods. What impact has this had on the Inspector's work?*

ANSWER

Thus far I have detected no such impact. The number of complaints received over the years (apart from 2007/2008) has remained between 35 and 40 per year. In the period 1 July to 31 December 2011, 15 complaints have been received.

QUESTION 6.

*Does the Inspector have any comments on the recent amendments to the provision of the ICAC Act that deal with reports by the Inspector?*

ANSWER

Only that I welcome them.

QUESTION 7.

*Could you please provide a copy of the memorandum of understanding (MOU) is between the Inspector and the Commissioner executed on 21 December 2009 referred to on page 8 of the Inspector's 2010-11 Annual Report?*

ANSWER: Copy herewith.

QUESTION 8.

*How is that version of the MOU different from the previous version?*

ANSWER:

The previous version is dated 23 October 2007 and is between my predecessor and the predecessor of the current Commissioner. Apart from the officers nominated for liaison purposes enumerated in clause 4.4 the substance of the two versions is identical.

QUESTION 9.

*Does the Inspector have any comments on how that MOU is working?*

ANSWER:

The Commissioner and I have a good working relationship – not because of the MOU, but because of our respective approaches to our functions. The MOU provides a platform on which the working relationship can be built.

QUESTION 10.

*Are there any changes which the Inspector would like to see in that MOU?*

ANSWER:

No. I note however that a current version of the MOU will need to be executed.

**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 21<sup>st</sup> of December 2009 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 and 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 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.



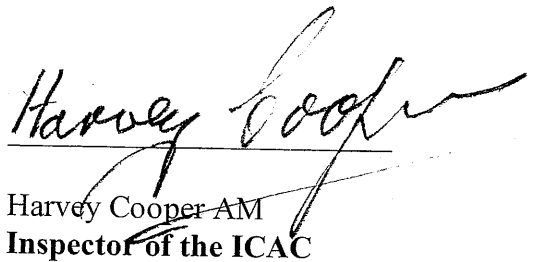
- 5.3 Notification of matters referred to in paragraph 5.1 will also be reported by way of schedule to be provided at the meeting between the Inspector and the Commissioner as referred to in paragraph 4.2. The schedule will briefly set out the relevant information as available and known to the Commission including any action 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 web page;
  - c) where a determination is made not to investigate a complaint further advise complainants, 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