

**ICAC ANNUAL REPORT 2007-2008**

**ASSESSING MATTERS**

**1. The 2007-2008 Annual Report indicates (p.19) that 41% of the complaints the Commission received from the public related to local government, up from 38% in 2006-2007 and 35% in 2005-2006. Of these complaints 574 related to building and development applications and rezoning, compared with approximately 180 in 2006-2007. Does the Commission consider this increase to be significant and are there any implications for the Commission's operations?**

There has been a slight trend upwards in the last few years in relation to the number of matters concerning local government. However the Commission does not consider that this is of significance. As noted in the annual report (pp. 19-20), it has been the Commission's experience that the over-representation of local government in s.10 complaints received is due, primarily, to the nature of interaction people have with local government and the personal interest many take in decisions at that level. The publicity surrounding Wollongong Council in the wake of Operation Atlas also generated a number of complaints about that agency. In addition, several other local councils such as Shellharbour and Port Macquarie-Hastings attracted publicity at a local level in response to Department of Local Government investigations, which had a tendency to see an increase in complaints about those agencies.

**2. The Annual Report states that the Commission has set up a working group to review the way it categorises the complaints and information it receives (pp. 20 & 33), as the broad categories in use may not be useful in understanding what the complaints involve. Please update the Committee on the progress of the review.**

The review has been completed. A cross-divisional working group was formed to revise the categories currently used in the ICS database, with the intention that the revised categories would be incorporated into the new MOCCA database, due to go live in August 2009. Problems had been identified with the categories being used, in that they were in some instances vague or unclear (for example, general terms like "collusion"). Furthermore Corruption Prevention Education and Research staff found them difficult to use to perform background research (e.g. for projects or training).

- The working group took the following steps:
- initial development of categories
- revision following cross-divisional consultation
- revision following more detailed consultation with Assessment officers

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- revision following a trial of categories in which four Assessment officers used them to assess 20 recent Commission matters.

This approach resulted in a two-tiered system where both function areas and corrupt conduct are classified into general “areas” and each area or type of conduct is then divided into a set of more specific “types”. The new general and specific categories are attached in Annexure A.

**3. In 2007-2008 the Commission received 282 protected disclosures, an increase of 45% from 2006-2007 when it received 194 protected disclosures (p.22 and p.19 ICAC Annual report 2006-2007). However, in terms of their proportion of complaints overall, protected disclosures only rose slightly from 9% to 10.4%, owing to an overall increase in complaints. The number of protected disclosures has in fact remained static at 9-10.7% for the past three years (p.18). Does the Commission have an explanation as to why the number of protected disclosures remained reasonably static for the past three years?**

There has been a steady rise in the overall number of complaints and reports for the last three years, including in the number of protected disclosures. While the proportion of protected disclosures, relative to all other matters, has remained reasonably static, the Commission does not consider this to be statistically significant.

**4. The number of protected disclosures relating to local government increased from 27% to 32% of disclosures received, while for transport, ports and waterways the figure more than doubled, from 8% to 14% of disclosures received (p.23 and p.19 of ICAC Annual report 2006-2007). Were these respective increases related to Operation Atlas (the investigation of allegations into corrupt conduct in Wollongong Council) and Operation Monto (the investigation into allegations of fraud and bribery in RailCorp)?**

It is likely that this is the case. A high-profile public inquiry such as those arising out of Operations Atlas and Monto, does, generally, result in a spike in complaints and reports, particularly when it is perceived by complainants that their allegations mirror those under consideration at a public inquiry.

**5. Of the 282 protected disclosures received in 2007-2008, the Commission took no further action in relation to 118 (42%), and referred a further 84 (29%) to the agency for information (p.32). Is the Commission aware of the percentage of these referrals to agencies that resulted in agencies taking action, such as disciplinary action, against the person or persons adversely named? In the Commission’s view, what conclusions can be drawn from the fact that such a high proportion of disclosures warrant no further action?**

Currently the Commission does not require an agency to advise of outcomes when a matter is referred under s.19 of the Act for that agency’s information. As commented upon in question 6 below, many matters relate to workplace grievances, which are generally matters that do not involve serious or systemic corrupt conduct. They also often concern matters which the agency involved is better placed than the Commission to address.

6. The overwhelming majority of protected disclosures concern workplace issues such as employment practices (211 matters) and staff management (71 matters). Most frequently the alleged misconduct relates to favouritism/nepotism (99 matters), breach of policy or procedure (83 matters) and harassment/victimisation/discrimination (51). (p. 23) What, in the Commission's view, is the significance of these figures? Do they indicate that protected disclosures are often primarily concerned with workplace grievances?

Yes, as noted in the response to question 5, many protected disclosures relate to workplace grievances.

7. In 2007-2008 the Commission referred 26 matters to agencies, pursuant to ss. 53 and 54 of the ICAC Act, which was double the number referred in 2006-2007 (p 30). The Commission notes that this is in line with s 12A of the Act, which provides that ICAC should take into account the responsibility and role that agencies have in preventing corruption.

a. The Act provides that the Commission may require an agency to submit a report detailing the action it has taken in relation to a matter referred under Part 5 of the Act. Is it the Commission's practice to require agencies to report back following a s 53 referral?

Yes. The Commission is required, by virtue of s.53(5) of the Act to first consult with the relevant person or body prior to any referral. Consultation prior to referral always takes place. In the 2007-08 year all agencies with which the Commission consulted agreed to accept such a referral and to report back to the Commission under s.54.

b. How does the Commission monitor agency responses to s53 referrals?

Assessment staff are responsible for assessing and reporting on s.54 reports which arise out of s.53 referrals. Assessments reports on a monthly basis to the Commission's Strategic Investigation Group on the progress of s.53 referrals. Once a due date by which the agency will provide its s.54 report has been agreed to, any request for an extension of time is to be made by the agency to the Deputy Commissioner in writing for her consideration. Once a report has been received under s.54 of the Act, the report is assessed, having regard to:

- the nature and quality of the investigation and resultant report
- whether the report has addressed all relevant aspects, and
- the adequacy of any recommendations made to prevent recurrences, where either corrupt conduct or corruption risks had been identified.
- The matter is then reconsidered by the Assessment Panel with recommendations made as to the next steps. The agency is then advised of the Panel's decision.
- If the Commission is not satisfied with the action taken by the agency to which a matter is referred it can take further steps pursuant to s.55. No such action was required in the 2007-08 year.

## INVESTIGATING CORRUPTION

8. The Commission held public inquiries over 51 days and 70 compulsory examinations in 2007-2008, compared with 24 and 49 inquiries and examinations respectively the previous reporting year (p.36). This increase constitutes a significant increase in the Commission's use of its statutory powers. The Annual Report notes that, in the year ahead, the Commission will seek to ensure that investigative activities are flexible enough to meet challenges arising out of an increase in the use of statutory powers (p.51).

a. What is the extent of the further increase expected by the ICAC in relation to the use of its statutory powers over the coming year?

The use of statutory powers is dependent on the number and nature of investigations conducted by the Commission. It is difficult to anticipate with any precision what future investigations the Commission may need to conduct and therefore difficult to anticipate whether there is likely to be an increase in the use of statutory powers over the course of any following year.

In the period 1 July 2008 to 30 June 2009 the Commission conducted 28 days of public inquiries and 33 compulsory examinations. This level of activity is similar to that in 2005-06 and 2006-07. The relatively high number of public inquiry days and compulsory examinations in 2007-08 is a result of a spike in investigative activity in that period predominantly as a result of investigations involving RailCorp and Wollongong City Council. The Commission's experience in 2007-08 was that the Commission's investigative procedures and management were sufficiently flexible to accommodate the increased level of investigative activity, although for some periods functions such as brief preparation or preliminary investigations had to be delayed to meet the demand.

b. What do the strategies used by the Commission to manage such increases involve?

The Commission actively monitors investigation activity through the Strategic Investigations Group (SIG). The SIG comprises the Commissioner, Deputy Commissioner, and Executive Directors of Investigations, Legal, and Corruption Prevention Education & Research. The SIG meets regularly to consider reports on all current investigations, preparation of investigation reports for publication and preparation of prosecution briefs of evidence. Part of its role is to ensure that investigations are prioritised according to the Commission's goals and that resources are efficiently deployed. If necessary, resources are re-allocated between investigations. This sometimes involves deciding to temporarily suspend or reduce work on some investigations and prosecution brief preparation in order to ensure that other investigations are appropriately resourced.

9. The Annual Report states that, in the year ahead, the Commission will ensure that investigative activities comply with legislative and internal requirements (p 51).

**a. What internal requirements does the Commission have in place for its investigative activities?**

Commission officers are required to comply with the procedures set out in the Commission's Operations Manual in relation to the exercise of the Commission's coercive powers. The Operations Manual addresses relevant legislative and internal procedural requirements.

A Commission lawyer is assigned to each investigation team. Part of that lawyer's role is to ensure investigative activity complies with relevant legislative and procedural requirements. Any application for the exercise of coercive powers is considered by the team lawyer and reviewed by the Executive Director, Legal or his delegate.

In addition, all investigations are oversighted by and regularly reported to the Commission's Strategic Investigations Group which comprises the Commissioner, Deputy Commissioner, and Executive Directors of Investigations, Legal and Corruption Prevention, Education & Research.

Training on and communication of relevant legislative requirements and changes is also an element in ensuring Commission officers are kept abreast of legislative changes and continue to exercise their official functions in accordance with relevant legislative and internal requirements.

Further details on the Commission's internal compliance and accountability framework are set out in chapter 5 of the 2007-08 annual report.

**b. What strategies has the Commission used to meet legislative and internal requirements when there are substantial increases in investigative activity?**

The Commission's existing internal compliance and accountability framework (as set out in chapter 5 of the 2007-08 annual report) has proven sufficiently robust to meet the increases in investigative activity experienced in 2007-08.

## **PREVENTING CORRUPTION**

**10. The Annual Report states that, in the year ahead, the Commission plans to trial a proactive corruption prevention approach, focusing on high-risk functions in certain areas (p.69). Please update the Committee on the progress of the trial.**

Taskforces were established to trial a proactive corruption prevention approach. A multidisciplinary group of staff drawn from across the Corruption Prevention, Education and Research Division utilised their combined skills and capabilities to focus effort in an area of the public sector that was recognised as being of high risk or of particular vulnerability to corruption. For the 2008-09 year the Prevention

Management Group (PMG) approved the Division's choice of two focus areas: Procurement, Outsourcing and Contracting and Local Government (Council) Planning.

Procurement, Outsourcing and Contracting taskforce

The Procurement, Outsourcing and Contracting taskforce is currently examining the corruption risks associated with public sector procurement in NSW. The goal of the taskforce is to determine current and emerging risks of corruption that are likely to affect public sector agencies and the support that those agencies may need to make their procurement practices more resistant to corruption.

The work of this taskforce has been divided into three segments: understanding and mapping the regulatory environment; gathering information about identified corruption risks; and identifying preventative action. The taskforce is approximately half way through this program of work having mapped the regulatory framework, conducted focus groups with public officials responsible for procurement and distributed a survey on procurement practices to 300 agencies. Outputs will include publishing a discussion paper on the risks of corruption in public procurement.

Local government development taskforce

The ICAC also selected local government development as a high-risk function appropriate for its new proactive strategy.

The ICAC's strategy focussed on the corruption prevention lessons arising from a number of recent local government investigations, including its October 2008 *Report on an investigation into corruption allegations affecting Wollongong City Council*. This has chiefly involved the delivery of a variety of local development themed speeches, papers, training sessions and seminars for local government practitioners. To date, this has involved delivering 30 customised sessions for local government practitioners in front of 950 attendees (including Mayors, Councillors, General Managers and other local government planning and management staff). In addition to covering the high risk area of planning, these sessions have also covered recruitment, conflicts of interest and managerial discretion.

The ICAC is also in the process of developing an internal audit tool to enable local councils to self-assess their vulnerability to corruption risks in their planning function.

In addition, the ICAC is developing new website content to provide information including election donation disclosures, registers recording how councillors vote on developments and SEPP 1 registers that are required to be published on council websites.

The taskforce model will be evaluated as a method of operating. To date it has proved to be well-suited to this kind of exploratory work as it allows for a problem to be approached from different perspectives using a range of skills. The team approach also provides for the flexible application of resources, the capacity to maintain momentum – if one member is busy others can take over – and professional development of members. The focus on a particular area of risk is also a useful way to raise awareness of an issue throughout the public sector.

**11. The Corruption Prevention, Education and Research Division gave 57 training sessions and 37 speaking presentations in 2007-2008 (p.60), an increase of 46% and 19% respectively on the previous year, in spite of a slight decrease in staff.<sup>1</sup> Is the increase in training sessions and speaking presentations a response to demand from agencies?**

Training sessions

The increase in training sessions was due to a combination of factors:

The introduction of a new service offering training sessions twice each calendar year. These training sessions are offered to individuals rather than agencies and are provided at a venue arranged by the ICAC. These sessions are proactively marketed by the ICAC across the public sector. This is in contrast to the agency requested training which is provided to the agency at their request, within their venue, to staff of that agency. The new calendar training program aims to meet the needs of agencies that are too small in either staff numbers or budget to have training provided in-house.

A number of additional agency requests were generated as agencies decided to run the training in-house after initially expressing interest in the calendar based program.

A number of training workshops were also delivered in October 2007 as part of the inaugural Australian Public Sector Anti-Corruption Conference.

Speaking sessions

The increase in speaking sessions was due to the number of presentations by ICAC staff delivered at the APSAC conference in October 2007.

**12. The Annual Report notes that resources for education and training were not increased in 2007-2008 and that the main challenge for the Division is to maximise the impact of its corruption prevention work, using limited resources (pp. 60 & 69). During the Committee's review of the Commission's 2006-2007 Annual Report, Dr Waldersee told the Committee that, in his view, 'we probably have not achieved the maximum impact out of the resources we already have' and that the Commission would be using a more focussed approach to corruption prevention to maximise its resources.<sup>2</sup> What strategies has the Commission used to maximise the impact of its corruption prevention work, given its limited resources?**

Resources

In 2008-09 we reviewed our core activities and streamlined our approach to a number of work functions, including training systems. Efficiencies have been achieved by eliminating the practice of having a

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<sup>1</sup> The Annual Report states that in 2006-2007 the average number of staff in the CPER Division was 24.3, while in 2007-2008 it was 23.2: ICAC, *Annual Report 2007-2008*, p.88.

<sup>2</sup> Committee on the ICAC, Review of the 2006-2007 Annual Report of the Independent Commission Against Corruption, Report 3/54, October 2008, p.89.

corruption prevention officer co-present with learning and development officers. This has enhanced divisional frontline corruption prevention capacity and enabled an increase in face to face training.

Focus

The Commission has adopted a proactive corruption prevention approach focusing on those areas of highest risk and with the potential for greatest impact. The Commission has targeted senior level public servants and focused on matters of policy and legislation.

The Commission has taken an active interest in ensuring that all parties involved with the implementation of the federal government stimulus package are aware of and take action to deal with the heightened corruption risks. This has involved the adoption of a high visibility deterrence approach.

As stated above, taskforces in the areas of planning and procurement were established to focus effort in areas of the public sector that were recognised as being of high risk and vulnerable to corruption.

**IMPLEMENTATION OF ICAC’S CORRUPTION PREVENTION RECOMMENDATIONS**

13. According to the Annual Report, the Commission considers a corruption prevention recommendation to have been addressed if it has been implemented, action is being taken to implement it, or the agency has considered the recommendation and found an alternative way of addressing the issue. However a note that appears below tables 44 and 45 states that ‘addressed includes fully implemented, partially implemented or not agreed’ (pp. 147-148).

a. What is the significance of the distinction between these two ways of defining whether recommendations are considered to have been ‘addressed’?

These descriptions refer to the same three circumstances. The footnote text is an abbreviated way of referring to the same situations, that is:

Footnote text:	Paragraph text:
Fully implemented	Has been implemented
Partially implemented	Action is being taken to implement
Not agreed	Agency has considered the recommendation and found an alternative way of addressing the issue.

Depending on the circumstances ‘not agreed’ may also include situations in which the agency has considered a recommendation and found it to be incapable of implementation or unnecessary.

Any of these situations could occur as the result of changes in the agency’s structure, functions, staffing, resources or operating environment in the time since the corrupt conduct occurred. In some cases agencies take action to deal with the structural arrangements that produced the



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corruption risk after an investigation exposes the corrupt conduct and before they receive the recommendations. In others completely unrelated management decisions or events may have an effect on the agency’s operating environment.

**b. Is it a requirement for an agency that disagrees with a recommendation to identify an alternative way of addressing the issue?**

It is rare for agencies to disagree with recommendations and it has not been necessary to formulate a ‘requirement’ of this kind. If an agency’s response to recommendations appears not to address a particular recommendation the Commission’s practice has been to seek clarification about the way the agency intends to implement it. This approach allows the Commission to assess the agency’s reasons for not agreeing with a recommendation and respond in a way that facilitates implementation.

**c. Please provide the Committee with a table indicating 12 and 24 month progress reports received to date for the investigations listed in tables 44 and 45 (Appendix 4), with recommendations broken down into the number that have been implemented, partially implemented and not implemented.**

All of the agencies in those tables have now provided 24 month (final) reports. See attached table.

Agency	Report	Received	Recommendations			
			Total	Implemented	Partially implemented	Not implemented
<b>Investigation into safety certification and the operations of the WorkCover NSW licensing unit</b>						
<b>WorkCover NSW</b>	Final	Dec 2007	19	19	-	-
<b>Investigation into schemes to fraudulently obtain building licenses</b>						
<b>TAFE</b>	Final	Feb 2008	8	8	-	-
<b>VETAB</b>	Final	Feb 2008	7	7	-	-
<b>Office of Fair Trading</b>	Final	Feb 2008	8	4	-	4*
<b>Minister for Education</b>	Final	Feb 2008	1	1	-	-
<b>Investigation into the conduct of an officer of the Local Court Registry in Penrith</b>						
<b>Attorney-General’s Department</b>	Final	Feb 2008	12	4	6	2**
<b>Report on an investigation and systems review of corruption risks associated with HSC take-home assessment tasks</b>						

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<b>Board of Studies</b>	Final	May 2008	14	14	-	-
<b>Department of Education</b>	Final	May 2008	5	5	-	-
<b>Minister of Education</b>	Final	May 2008	1	1	-	-
<b>Investigation into defrauding the RTA and RailCorp in relation to provision of traffic management services</b>						
<b>RTA</b>	Final	Feb 2009	16	16	-	-
<b>RailCorp</b>	Final	April 2009	14	9	3	2***
<b>Investigation into the sale of surplus public housing properties</b>						
<b>Department of Housing</b>	Final	Nov 2008	4	3	-	1****

\* *These recommendations were rendered obsolete as a result of the agency removing the practice that created the greatest corruption risk.*

\*\* *Implementation of these recommendations is not feasible in the agency's current operating environment.*

\*\*\* *One of these recommendations was not agreed to by the agency and the other is not yet implemented - Recommendation 30 (classified as "not agreed") recommended that RailCorp consider placing the Alternative Transport Unit (ATU) and other such small units that report directly to a general manager, under the supervision of a branch manager (answerable to a division general manager). RailCorp considered the recommendation and reported that as the ATU reports to the General Manager, Standards and Passenger Information implementing the recommendation would create another level of management. RailCorp does not intend to create another level of management. However a separate contract administration position has been tasked with checking contracts and ensuring processes are in place to monitor performance.*

\*\*\*\* *This recommendation is not capable of implementation until 2010 when the agency will have completed a major ICT rollout.*

**AGENCY PROGRESS REPORTS**

**14. The Annual Report states that in 2007-2008 two agencies did not provide the Commission with progress reports on the implementation of recommendations, in spite of repeated requests (p 58). Which agencies failed to provide the Commission with progress reports and have they been provided since the publication of the Annual Report?**

The two agencies that had not provided the Commission with progress reports in 2007-2008 were:

- the Attorney General's Department (final report) regarding the Report on investigation into the conduct of an officer of the Local Court registry at Penrith
- RailCorp NSW (12 month progress report) regarding the Report on investigation into defrauding the RTA and RailCorp in relation to provision of traffic management services.

The outstanding reports from RailCorp and the Attorney General's Department were subsequently provided.

**15. In answers to questions on notice for the Committee's review of the Commission's 2006-2007 Annual Report, the Commission indicated that the Department of Corrective Services had implemented 54% of the corruption prevention recommendations made in relation to Operation Inca, with 75% due to have been implemented by 31 August 2008.<sup>3</sup> What percentage of the recommendations have been implemented to date? Did the Department disagree with any recommendations?**

The final report from the Department of Corrective Services indicated that of the 16 recommendations made by the ICAC, 82% had been implemented. This included 69% that had been fully implemented, and 13% partially implemented.

Three recommendations had not been implemented, because they had been addressed differently or were made redundant because of other changes to procedures resulting from the implementation of other recommendations.

**16. The Commission's 2007-2008 Annual Report stated that the Attorney General's Department had addressed 83% of the Commission's corruption prevention recommendations arising out of Operation Hunter, with the final 24 month progress report on implementation of the recommendations having been due in February 2008 (p 147).**

**a. Has the Commission received the Department's final progress report?**

Yes

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<sup>3</sup> ICAC, Answers to questions on notice, 30 June 2008, question 30(c), pp. 21-22.

**b. If so, what percentage of the recommendations have now been addressed by the Department?**

Ten of the 12 recommendations were implemented or in progress at the time of the final report (83% of the recommendations).

**c. Did the Department disagree with any recommendations?**

Two recommendations (3 and 4) were not implemented.

The Department did not 'disagree' with the recommendations but reported that their implementation would not be feasible. They both relate to a new information management system, JusticeLink, that the Department was developing at the time of the investigation but was not finalised by the time the recommendations were made.

They were as follows:

Recommendation 3:

That the Attorney General's Department considers modifying the local court information databases to record the following information about accesses as an additional accountability measure:

- whether information was printed out
- whether information was copied/pasted.

Response: As JusticeLink is an Internet Explorer browser-based system, the browser can be used to print information or copy and paste information. It is not possible to track what operations are performed at the browser level. It is not possible to implement the recommendation in relation to the legacy systems.

Recommendation 4: That the Attorney-General's Department modifies the local court information databases to record a 'reason for access' when information is viewed on the system.

Response: This recommendation has been considered in relation to the JusticeLink product. The modification of JusticeLink to record a 'reason for access' when information is viewed on the system was considered, however, the implementation of this recommendation is not planned:

If the 'reason for access' was implemented, most staff would enter 'enquiry' which would be valid. It would be difficult to determine if it was a valid enquiry or not. It would not be possible to identify unauthorised access.

Operational efficiency – it is anticipated that the 'reason for access' would need to be filled out at least 40,000 times per day. The operational delay that this would cause is unacceptable.

17. The Annual Report also indicated that RailCorp had not addressed any of the Commission's corruption prevention recommendations arising out of Operation Quilla, with the 12 month progress report having been due in February 2008, while the RTA had addressed all of the Commission's recommendations in relation to the same investigation (p 148).

a. Has the Commission received RailCorp's 12 month progress report?

Yes.

b. If so:

i. Did RailCorp provide the Commission with an explanation for the delay in providing the progress report?

No.

ii. What percentage of the recommendations have been addressed by RailCorp?

100% have been addressed – the breakdown is as follows:

- 64% fully implemented (9 out of 14 recommendations)
- 21% partially implemented (3 recommendations)
- 7% not agreed (1 recommendation)
- 7% not yet implemented (1 recommendation)

Recommendation 30 (classified as "not agreed") recommended that RailCorp consider placing the Alternative Transport Unit (ATU) and other such small units that report directly to a general manager, under the supervision of a branch manager (answerable to a division general manager). RailCorp considered the recommendation and reported that as the ATU reports to the General Manager, Standards and Passenger Information implementing the recommendation would create another level of management. RailCorp does not intend to create another level of management. However a separate contract administration position has been tasked with checking contracts and ensuring processes are in place to monitor performance.

Recommendation 18 (classified as "not yet implemented") was that RailCorp introduces a system whereby invoices are provided to the unit involved in procuring goods and services as an additional check on the accuracy of the invoice. At the date of the annual report it was described as due for implementation in July 2009.

Recommendation 14 (classified as "partially implemented") was for training to all staff with responsibilities for procurement. At the date of the annual report training had commenced and was planned to continue over several months.

Recommendation 29 (classified as "partially implemented") recommended that RailCorp ensures its performance management system is properly implemented among all staff, with

ATU staff being a priority. At the date of the annual report implementation had begun and was to continue progressively through the organisation.

**c. If not:**

**i. Why has RailCorp not supplied the progress report?**

N/A

**ii. Does the Commission have any comments regarding RailCorp's response to its recommendations?**

N/A

## **PART 5 REFERRALS**

**18. As part of its review of the Commission's 2006-2007 Annual Report, the Committee encouraged the Commission, in pursuing problems with the implementation of corruption prevention recommendations, to make greater use of its powers under Part 5 and s 77 of the ICAC Act, which provide for it to refer matters to agencies, and report to the Minister and ultimately the Parliament.<sup>4</sup> In its Annual Report, the Commission states that it is considering reporting certain uncooperative agencies to the responsible Minister, or to the Committee (p.58).**

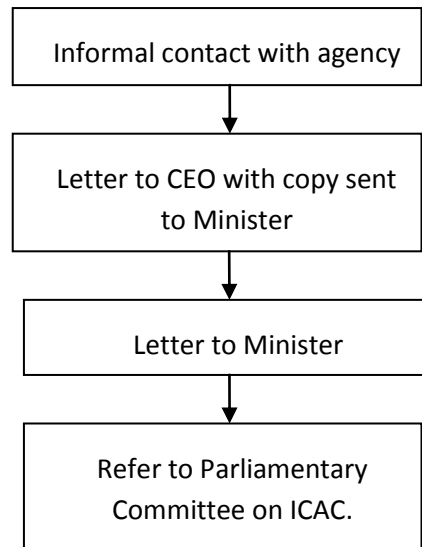
**a. Has the Commission referred or reported any matters, pursuant to Part 5 and s 77 of the Act?**

An escalation protocol (see flowchart below) was approved by the Executive. To date it has not been necessary to make use of the protocol as there have not been significant delays in receiving agency reports.

Flowchart 1: Escalation protocol shows the steps of escalation that might be available to the Commission. It assumes the possibility of the Parliamentary Committee on the ICAC undertaking hearings on this subject and that appropriate options for publicising the failure of agencies to comply can be found.

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<sup>4</sup> Committee on the ICAC, Review of the 2006-2007 Annual Report of the Independent Commission Against Corruption, Report 3/54, October 2008, pp. 14-16.



**b. If so, what was the outcome of the referral/s and was the Commission satisfied with the outcome?**

N/A

## COMPLIANCE AND ACCOUNTABILITY

**19. The Annual Report states that the Commission developed new procedures for the exercise of powers and keeping of records in preparation for the commencement of the *Surveillance Devices Act 2007* (p.77). Please outline to the Committee the changes the Commission has made to its procedures and the operational implications of the new legislation.**

In addition to regulating the use of listening devices the *Surveillance Devices Act 2007* also regulates the use of optical surveillance devices, data surveillance devices and tracking devices. The Commission introduced a new procedure to its Operations Manual to address these changes. As was previously the case with applications for listening device warrants under the *Listening Devices Act 1984*, the procedure requires all applications for surveillance device warrants to be approved by the Executive Director, Investigation Division, reviewed by the team lawyer and finally reviewed and approved by the Executive Director, Legal.

The *Surveillance Devices Act 2007* also imposes strict limitations on the use of certain information (defined as “protected information”) and imposes a number of new record keeping requirements. A new Operations Manual procedure was introduced to meet these requirements.

The *Surveillance Devices Act 2007* has assisted the Commission’s operations by making provision for warrants to be obtained for the use of optical surveillance devices and data surveillance devices and thereby allowing their use in circumstances where previously they could not be used.

## OUR ORGANISATION

20. According to the Annual Report, the Commission's new complaints handling and case management system (MOCCA) is expected to be implemented by June 2009, subject to successful completion of stage 1 of the implementation program (p.95). The Report notes that MOCCA will improve performance and provide better support for the Commission's operational areas.

a. Please provide a progress update on MOCCA's implementation.

On completion of Stage I, the ICAC executive accepted the 'Proof of Concept' and the 'Technical Design' of the MOCCA System in September 2008. ICAC then entered into a contract with Dialog Information Technology to develop and implement the system based on this technical design. Stage II of the project commenced in October 2008. A project team comprising representatives from various business units and Information Technology was formed to work with Dialog IT. The development work was completed in May 2009. User acceptance testing has taken longer than initially predicted and it is anticipated that it will be completed by mid August 2009. Initial training for all Commission staff on the new system has been completed. It is envisaged that the new system will go live by the end of August 2009.

b. In what way is MOCCA expected to improve the performance of the Commission's operational areas?

MOCCA will have many features and functionalities which will directly and indirectly improve the performance of the Commission operations. In the long term there will be improvement in processing time for cases to be assessed, escalated and closed. This benefit would be in line with reporting targets required by s.76(2)(ba) of the ICAC Act. The system will provide automated task-handling and the ability to track tasks, eradication of redundant data, and validation of entered data (thereby ensuring data integrity). Some of the key features of MOCCA which will improve the performance of operational areas include:

- Seamless interface with Microsoft Outlook which will allow operational staff to maintain one single diary and to-do list.
- Extensive search and reporting capability.
- Improved corruption prevention, project management and handling of seized property capabilities.
- Brief preparation functionality of the system will assist in the preparation of briefs of evidence for the DPP.
- Increased intelligence and investigative analytics capabilities e.g., linking common or related data/information, which will improve investigation and reporting of more complex cases.
- As MOCCA is based on Microsoft Dynamics CRM, it will provide a standard Microsoft look, feel and navigation which will make it easy to learn and use.



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- Increased capability to implement user-driven, legislative-driven or process-driven changes which will provide a flexible platform to meet the Commission's changing needs.
- Extensive audit trails for both system accesses and data modification which will provide secure management of protected and highly protected matters.
- Robust security based on Active Directory users, security roles and teams.

**21. In answers to questions on notice during the Committee's 2006-2007 Annual Report review, the Commission indicated that the ICAC Inspector would be briefed on MOCCA's features during the design and system configuration phase of the project, and that Inspectorate staff would also be given training on the new system at this time.<sup>5</sup> Have the staff of the Inspectorate been briefed and given training on MOCCA's features?**

All Inspectorate staff will be provided with training on the new system before the new system goes live or immediately after that depending upon availability of Inspectorate staff for the training. Any additional training requirements identified during the briefing and training will be accommodated by ICAC.

**22. The Commission states that in the year ahead it plans to finalise a redesign of its internet and intranet websites (p 98).**

**a. When is the redesign expected to be completed?**

The new Internet website is in the final stages of development which is expected to be completed by mid-August 2009. The user acceptance testing (UAT) will commence thereafter which is expected to be completed by end of August. Content upload and editing is underway. It is envisaged that the new site will go live by the end of September 2009.

Work on redesign and development of the Intranet website will commence following the completion of Internet website.

**b. What specific enhancements to processes for users will the new website feature?**

It will be similar to the NSW Government Website Style Directive. The website will incorporate a new design and simplified information architecture that takes into account user feedback and improvements identified by usability testing. One key enhancement will be that all information for any particular investigation will be accessed from a single page, enabling users to track the development a matter that has been made public. Other enhancements include:

- Principal Officer log-on to provide information to Principal Officers and allow secure electronic submission of reports
- On line subscription to publications and content uploads

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<sup>5</sup> ICAC, Answers to questions on notice, 30 June 2008, question 16b, p. 12.

- Electronic registration for training and events.

The corruption prevention section of the site will provide information to users to apply in organisational corruption risk assessments and to use to develop their corruption prevention policies and plans.

An issue has been raised with the Commission regarding people being concerned that their names were remaining on the website in investigation reports, and hence appearing in internet searches several years after an investigation. The Commission considered it to be appropriate to make a policy that investigation reports older than ten years would be taken down from the site when the new site goes live but abstracts would remain and reports made available on request.

## PROSECUTIONS AND OTHER ACTION ARISING FROM ICAC INVESTIGATIONS

### Questions 23-31

In order to ensure that information provided about prosecution action is up to date, answers to questions 23-31, including a detailed prosecutions timescale table, will be provided separately on 3 August 2009.

## REFERRALS TO NSW CRIME COMMISSION

32. The Annual Report states (p 4) that the Commission intends to focus on identifying matters for referral to the NSW Crime Commission, for consideration of action to seize illegally obtained assets.

a. What criteria has the Commission used to identify matters for referral to the NSW Crime Commission?

The NSW Crime Commission will only take action when:

- it believes there is sufficient evidence to prove a serious crime related activity against a person based on the civil standard
- it is clear that the person has derived proceeds of crime and
- there are sufficient assets to indicate it is worthwhile to commence action.

ICAC applies these criteria and will advise the NSW Crime Commission of the potential for asset seizure when, in the course of an investigation, it becomes apparent tainted property exists.

**b. At what stage of an investigation does the Commission identify the matter for referral to the NSW Crime Commission?**

This depends on the nature of the assets, the potential for disposal and other relevant issues.

**33.**

**a. How many matters has the Commission referred to the NSW Crime Commission in the past five years?**

The ICAC has formally advised the NSW Crime Commission in relation to six operations. This resulted in the referral of 24 persons where advice was sought as to whether it would be appropriate to commence proceedings.

**b. How many forfeiture and proceeds assessment orders have been made in the past five years as a result of the Commission's referral of matters to the NSW Crime Commission and how much money did the orders involve?**

Information from the NSW Crime Commission indicates it has commenced action in relation to four persons and finalised action against two persons in the previous five years. The two finalised matters resulted in the collection of \$1,130,000.

In the four pending matters, assets have been restrained or forfeiture orders made to a total value of \$2,634,000, although it is not known at this stage how much of this amount will actually be collected when the matters are finalised.

**c. How many matters have been referred to the NSW Crime Commission to date in 2008-2009 and what is the current status of the matter/s?**

Only one matter was referred in the previous financial year – no action was taken as there were issues regarding the potential offence, the calculation of the proceeds of crime derived from the offence and the linking of the property to the person referred.

**34. According to the Annual Report (pp 36 & 49), eight people have been referred to the NSW Crime Commission for consideration of assets forfeiture as a result of the recent RailCorp investigations, with forfeiture orders having been made against one person for \$584,000. Have any other orders been made as a result of these referrals?**

Orders are being sought for two other persons in relation to the RailCorp investigation. The value of the restrained property in respect of those two persons is approximately \$1.8 million.

**35. The Annual Report states (p 41) that the Commission has Memoranda of Understanding with various agencies including the DPP, the ATO, the PIC and the NSW Police Force.**

**a. Has the Commission entered into a Memorandum of Understanding with the NSW Crime Commission?**

There is no Memorandum of Understanding with the Crime Commission relating to the referral of matters to them for asset confiscation. The dissemination is made under s.16(3) of the ICAC Act.

**b. If so, please provide the Committee with a copy of the Memorandum of Understanding.**

Not applicable – see above

## MEMORANDUM OF UNDERSTANDING WITH THE DIRECTOR OF PUBLIC PROSECUTIONS

**36. The Memorandum of Understanding (MoU) signed by the DPP and the Commission in 2007 provides for agreed timetables in relation to the issuing of, and response to, further requisitions. During the Committee's previous Annual Report review, the Commissioner noted that time limits had been specified in the previous MoU, but the limits had not been enforced by either party.<sup>6</sup>**

**a. Have the timeframes specified in the current MoU been observed by the DPP and ICAC during 2007-2008?**

The timeframes have generally been observed, although the pressure of other work, including court commitments, investigations and public inquiries, has meant that there have still been occasional delays in providing and responding to requisitions.

The timeframes for contact to be made between ICAC officers and ODPP officers after receipt of a brief are generally being complied with, at least as far as telephone contact being made within 2 weeks of receipt of the brief. It has not always been possible to arrange meetings within that timeframe but meetings are held as soon as reasonably possible.

**b. Is the Commission satisfied with the operation of this aspect of the 2007 MoU?**

The Commission is satisfied that the timeframes within the MOU are generally being complied with and that this has resulted in a reduction in turnaround times for current briefs, especially when compared with turnaround times in past years.

**37. The 2007 MoU also provides for more frequent meetings between DPP lawyers and relevant ICAC officers to discuss briefs of evidence that have been submitted to the DPP by the Commission, in addition to regular meetings between the Deputy Commissioner and the managing lawyer of Group 6 at the DPP.**

**a. Have Commission officers and DPP lawyers met regularly to discuss briefs of evidence during 2007-2008?**

<sup>6</sup> Quoted in Committee on the ICAC, Review of the 2006-2007 Annual Report of the Independent Commission Against Corruption, no 3/54, October 2008, p. 3.

Commission officers and DPP lawyers have met regularly to discuss briefs during 2007-2008, and the Deputy Commissioner and the managing lawyer of Group 6 at the DPP meet every two months to discuss the progress of all outstanding matters.

**b. Is the Commission satisfied with the operation of this aspect of the 2007 MoU?**

The Commission is satisfied that regular liaison meetings have assisted in reducing the turnaround times for current briefs. They have also resulted in a better understanding between the ICAC and the ODPP about the problems encountered in prioritising preparation and consideration of ICAC briefs because of competing work commitments in both offices.

**38. In the Commission's view, have the terms of the 2007 MoU led to ongoing improvements in the handling of prosecutions arising from ICAC investigations during 2007-2008?**

As detailed above, the Commission is satisfied that the terms of the current MOU have led to improvements in the handling of prosecutions arising from ICAC investigations during 2007-2008.

A new MOU is currently being settled, and the only change that is considered necessary is that the ICAC will incorporate into the MOU its current internal target of providing briefs of evidence to the ODPP within three months of the final submissions being received at the public inquiry.

## DEFINITION OF CORRUPT CONDUCT

**39. In his final Annual Report as Inspector of the ICAC, Mr Graham Kelly stated that he believed the definition of corrupt conduct in s.8 of the Act should be revisited, as it generates too many trivial complaints.<sup>7</sup> A previous Committee also considered the definition and recommended a simplification of ss.8 and 9 of the Act, to combine the current two-part definition of corrupt conduct into a single, more streamlined section.<sup>8</sup>**

**a. In the Commission's view, does the current definition of corrupt conduct generate too many trivial complaints?**

The Commission does not consider any amendment to the definition of corrupt conduct is necessary. The Commission is not of the view that the current definition generates more trivial complaints than would otherwise be the case. The definition of corrupt conduct needs to be sufficiently broad to cover all aspects of corrupt conduct.

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<sup>7</sup> Office of the Inspector of the ICAC, *Annual Report 2007-2008*, p.2.

<sup>8</sup> Committee on the ICAC, *Review of the ICAC Stage II – Jurisdictional Issues*, November 2001, pp. 64-65.

b. Would changes to the definition of corrupt conduct assist the Commission to perform its functions more effectively? If so, what amendments to the definition would the Commission propose?

N/A. See response above.

## REPORTING PROVISIONS

40. The Committee notes that the general provisions relating to reports in Division 3 of the Act are relevant to the Commission's reports.<sup>9</sup> Has the Commission experienced any delays or problems with furnishing reports to Parliament?

The Commission has not experienced any delays or problems with furnishing reports to Parliament.

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<sup>9</sup> The Committee discusses the former ICAC Inspector's views on the reporting provisions in ICAC Committee, *Review of the 2007-2008 Annual Report of the Inspector of the Independent Commission Against Corruption*, report 6/54, March 2009, p. 10.

**TABLE OF REVISED CATEGORIES FOR THE CLASSIFICATION OF CONDUCT AND FUNCTION**

<b>General Function</b>	<b>Specific Function</b>
<b>Human resources and staff administration</b>	<ol style="list-style-type: none"> <li>1. Allocation of work or hours</li> <li>2. Recording of hours, work performed or leave</li> <li>3. Recruitment, promotion and acting up</li> <li>4. Use of benefits</li> <li>5. Secondary employment</li> <li>6. Post-separation employment</li> <li>7. Activities performed at work that are not role-related</li> <li>8. Other human resource and staff administration functions</li> </ol>
<b>Development applications and land rezoning</b>	<ol style="list-style-type: none"> <li>1. Assessment of development applications</li> <li>2. Land zoning or rezoning</li> <li>3. Other development application or land rezoning functions</li> </ol>
<b>Procurement, disposal and partnerships</b>	<ol style="list-style-type: none"> <li>1. Tender/quotation process prior to evaluation</li> <li>2. Evaluation of tenders or quotations</li> <li>3. Contract management</li> <li>4. Direct negotiations</li> <li>5. Disposal</li> <li>6. Joint venture and partnerships</li> <li>7. Other procurement, disposal and partnership functions</li> </ol>
<b>Reporting, investigation, sentencing and enforcement</b>	<ol style="list-style-type: none"> <li>1. Inspections</li> <li>2. Internal reporting</li> <li>3. Investigation of allegations or complaints</li> <li>4. Legal or tribunal proceedings</li> <li>5. Issue or review of fines, custodial sentences or other sanctions</li> </ol>

	<ol style="list-style-type: none"> <li>6. Enforcement of fines, custodial sentences or other sanctions</li> <li>7. Other reporting, investigation or enforcement functions</li> </ol>
<b>Allocation of funds, materials and services</b>	<ol style="list-style-type: none"> <li>1. Allocation of funds to clients</li> <li>2. Allocation of materials</li> <li>3. Allocation of services</li> <li>4. Grants and sponsorship</li> <li>5. Other functions related to resource or service delivery</li> </ol>
<b>Issue of licences or qualifications</b>	<ol style="list-style-type: none"> <li>1. Assessment of applicants for licences or qualifications</li> <li>2. Actual generation of licences or qualifications</li> <li>3. Other functions related to the issuing of licences or qualifications</li> </ol>
<b>Policy development and information processing</b>	<ol style="list-style-type: none"> <li>1. Policy formulation or decisions</li> <li>2. Strategic planning and other analysis of agency information</li> <li>3. Other policy development and information processing functions</li> </ol>
<b>Electoral and political activities</b>	<ol style="list-style-type: none"> <li>1. Fund-raising and declaration of donors</li> <li>2. Lobbying and caucusing</li> <li>3. Voting and vote counting</li> <li>4. Other electoral or political functions</li> </ol>
<b>Processing of electronic and cash payments</b>	<ol style="list-style-type: none"> <li>1. Contractor or client payments</li> <li>2. Receipt of payments</li> <li>3. Other payment processing functions</li> </ol>
<b>Other</b>	<ol style="list-style-type: none"> <li>1. Functions not listed elsewhere</li> </ol>



General Conduct	Specific Conduct
<b>Partiality</b>	<ol style="list-style-type: none"> <li>1. Discrimination</li> <li>2. Favouritism</li> <li>3. Other partiality</li> </ol>
<b>Personal interests</b>	<ol style="list-style-type: none"> <li>1. Improper management of a pecuniary conflict of interest</li> <li>2. Improper management of a non-pecuniary conflict of interest</li> <li>3. Unauthorised secondary employment</li> <li>4. Other conduct related to personal interests</li> </ol>
<b>Intimidating or violent conduct</b>	<ol style="list-style-type: none"> <li>1. Bullying, harassment, victimisation</li> <li>2. Extortion or blackmail</li> <li>3. Assault (physical)</li> <li>4. Other intimidating or violent conduct</li> </ol>
<b>Improper use or acquisition of funds or resources</b>	<ol style="list-style-type: none"> <li>1. Misappropriation of funds</li> <li>2. Misappropriation of goods</li> <li>3. Misuse of resources other than IT</li> <li>4. Misuse of IT</li> <li>5. Other improper use of funds or resources</li> </ol>
<b>Improper use of records or information</b>	<ol style="list-style-type: none"> <li>1. Forgery or fabrication of records</li> <li>2. Destruction of records</li> <li>3. Use of confidential information for private purposes</li> <li>4. Unauthorised release of confidential information</li> <li>5. Failure to provide information</li> <li>6. Providing misleading information</li> <li>7. Plagiarism</li> </ol>

	8. Other improper use of records or information
<b>Corrupt conduct related to investigations or proceedings</b>	<ol style="list-style-type: none"> <li>1. Breach of Protected Disclosure Act or internal reporting requirements</li> <li>2. Failure to submit a s11 report or offences under the ICAC Act</li> <li>3. Failure to investigate or investigate properly</li> <li>4. Perjury or other false evidence</li> <li>5. Destroying or tampering with evidence, or other means of perverting the course of justice or an investigation</li> <li>6. Other conduct related to investigations or proceedings</li> </ol>
<b>Bribery, secret commissions and gifts</b>	<ol style="list-style-type: none"> <li>1. Offering/ soliciting a bribe or secret commission</li> <li>2. Accepting a bribe or secret commission</li> <li>3. Corrupt conduct relating to gifts</li> <li>4. Other conduct involving gifts, bribes or secret commissions</li> </ol>
<b>Failure to perform required actions not already listed</b>	<ol style="list-style-type: none"> <li>1. Breach of legislative requirements</li> <li>2. Breach of policy requirements</li> <li>3. Failure to advertise appropriately</li> <li>4. Other failure to perform required actions</li> </ol>
<b>Other corrupt conduct</b>	<ol style="list-style-type: none"> <li>1. Miscellaneous corrupt conduct</li> </ol>
<b>No corrupt conduct alleged in matter</b>	<ol style="list-style-type: none"> <li>1. Maladministration</li> <li>2. Serious and substantial waste</li> <li>3. Other non-corrupt conduct</li> </ol>

QUESTIONS ON NOTICE

INSPECTORATE'S BREEN REPORT

ICAC INSPECTOR'S REPORT ON BREEN COMPLAINT<sup>10</sup> (BREEN REPORT)

PARLIAMENTARY PRIVILEGE

41. The Committee is concerned as to the level of awareness and understanding of parliamentary privilege within the ICAC prior to the execution of the search warrant on Mr Breen's office.<sup>11</sup> According to the report, the then Solicitor to the Commission, one of the principal sources of advice to the Commissioner in relation to whether the ICAC could execute the search warrant on Parliament House, indicated that he regarded *Crane v Gething* as supporting the position that executing the search warrant did not breach parliamentary privilege (p.39). However, in *Crane v Gething* Senator Crane's challenge to the validity of the AFP warrants was abandoned and the Court declined to decide whether or not certain documents were privileged, ordering the return of the documents to the Senate.

a. Is the assessment of relevant case law cited above indicative of an inadequate grasp of the concept of parliamentary privilege on the part of senior officers in the ICAC at the time of the Breen investigation?

The Commission is concerned that the Inspector's investigation did not thoroughly explore the issue of awareness and understanding of parliamentary privilege within the Commission at the time of the Breen search warrant. Although some officers were questioned on this issue others were either not questioned at all or not questioned in any depth. For example, although interviewed on two occasions, the then Principal Lawyer responsible for reviewing the search warrant application, was not asked any questions about his understanding of parliamentary privilege or what consideration he gave to that issue in reviewing the search warrant application.

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<sup>10</sup> Office of the Inspector of the Independent Commission Against Corruption, Special Report of the Inspector of the Independent Commission Against Corruption to the Parliament of New South Wales Pursuant to s.77A of the Independent Commission Against Corruption Act 1988 on Issues Relating to the Investigation by the Independent Commission Against Corruption of Certain Allegations Against the Honourable Peter Breen, MLC, September, 2008 (henceforth the Breen report).

<sup>11</sup> Section 122 of the ICAC Act section provides that:

Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

The issue of how parliamentary privilege affected the Commission's investigation was given consideration by senior Commission officers, including, among others, the Commissioner, Deputy Commissioner and Solicitor to the Commission. They arrived at the correct conclusion that, provided the warrant did not purport to authorise the seizure of material covered by parliamentary privilege, s.122 of the ICAC Act would not be infringed.

The Inspector's report includes two short excerpts from interviews with Mr Pritchard, the then Solicitor to the Commission, in which reference is made to the case of *Crane v Gething* (pp.38-40). These limited excerpts should not be taken as representing the full extent of Mr Pritchard's understanding of parliamentary privilege, or the extent of understanding of that issue by other Commission officers. The comments cited in the excerpts are limited to the issue of whether search warrants can be executed on parliamentary offices, rather than the issue of dealing with claims of privilege over specific documents which arise during the execution of a warrant.

Presumably, *Crane v Gething* was cited by Mr Pritchard as the only judicial case directly relating to the execution of a search warrant on parliamentary and electorate premises. Senator Crane initially challenged the validity of the warrants but subsequently withdrew that challenge. As stated in the Inspector's report, although the decision does not contain a judicial conclusion that search warrants can be executed on parliamentary offices, it gives some support to the argument that they can be so executed (p.40). Presumably, if French J was of the view that the execution of a search warrant on a parliamentary premises was a breach of parliamentary privilege he would have said so during the course of his judgment.

**b. Has the level of understanding of parliamentary privilege on the part of Senior ICAC officers improved since the Breen investigation?**

The Commission does not believe that the level of awareness of parliamentary privilege by Commission officers was fully explored by the ICAC Inspector and does not accept that the level of awareness was deficient at the time of the execution of the Breen search warrant. In any event it is impossible to answer this question given that the senior management of the Commission has completely changed since 2003, when this matter arose.

**c. What sort of advice or training do senior ICAC officers and team lawyers receive in relation to parliamentary privilege?**

All senior officers who are involved with investigations and team lawyers are cognisant of Procedure 9 of the Operations Manual which deals with the execution of search warrants and contains a specific section dealing with the execution of a search warrant on premises used or occupied by a Member of Parliament.

The Commissioner, Deputy Commissioner and Solicitor to the Commission are also available to provide advice to Commission officers if required.

**42. The Breen report concludes that there is nothing to suggest that the ICAC considered the question of what do in relation to claims of parliamentary privilege at the time that it made the decision to seek a warrant to search Mr Breen's parliamentary office (p. 88). The report concludes the investigating officers had not given consideration to the steps that needed to be taken to preserve parliamentary privilege and to deal with any such claims.**

**a. What steps has the ICAC taken to improve investigators' knowledge of parliamentary privilege issues?**

See response below.

**b. What sort of training or professional development do investigators currently undertake in the area of parliamentary privilege?**

The Commission believes that the evidence does not support the Inspector's statement at p88 of his report that the question of what to do about claims of parliamentary privilege was not considered by Commission officers.

It is the Commission's view that the issue of how parliamentary privilege affected the Commission's investigation was given proper consideration by Commission officers. It is noted in this regard that not all Commission officers who were interviewed by the Inspector's office were asked about what consideration was given to this issue.

Those Commission officers who executed the warrant were careful to ensure that parliamentary privilege was protected. This is supported by Ms Lynn Lovelock, the then Deputy Clerk of the Legislative Council, who stated in her interview of 22 August 2006 that the Commission officers executing the warrant had no intention of seizing material that was privileged and sought her advice on a number of occasions as to whether privilege was claimed over certain items.

The Commission also notes the following reference at paragraph 3.65 of the December 2003 report by the Legislative Standing Committee on Parliamentary Privilege and Ethics:

"In relation to the seizure of documents from Mr Breen's office, it does not appear that the ICAC acted with improper intent, or with reckless disregard as to the effect of its actions on the rights and immunities of the House and its members. Both immediately prior to and during the execution of the warrant, the ICAC was concerned to comply with its obligations to preserve parliamentary privilege, and expressed its intention not to take any documents which might fall within the scope of proceedings in Parliament."

All investigators are required to be cognisant of Procedure 9 of the Operations Manual which deals with the execution of search warrants and contains a specific section dealing with the execution of a search warrant on premises used or occupied by a Member of Parliament.

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

Investigators are not provided with specific training or professional development in relation to the issue of parliamentary privilege. In the event a search warrant was to be executed on premises used or occupied by a Member of Parliament then, apart from the requirements in Procedure 9, Commission officers executing the warrant would have available internal legal advice and guidance. The Commission considers this to be sufficient given the rarity of events likely to involve execution of a search warrant on premises used or occupied by a Member of Parliament.

**43. The ICAC now has a search warrant procedure in place for the execution of a search warrant on a parliamentary office, namely section 10 of Procedure no. 9 -Procedures for Obtaining and Executing Search Warrants.**

**a. To what extent is the procedure based on the Protocol recommended by the Legislative Council in 2005?**

The Legislative Council published a recommended protocol in February 2006 (Report 33). Section 10 of Procedure 9 of the Commission's Operations Manual essentially replicates the sections of the recommended protocol in relation to the execution of a search warrant on premises used or occupied by a Member of Parliament.

The Legislative Council recommended protocol also set out a procedure for resolving disputes as to whether documents are protected by parliamentary privilege which included a basis for classifying whether or not particular documents are subject to privilege. This provides that documents will be classified as privileged where the Clerk and member claim the documents were brought into existence, subsequently used or retained for the purposes of or incidental to the transacting of business in a House or Committee. The Commission has not adopted this classification as it does not accept that a claim that documents that were not brought into existence or actually used for the purposes of or incidental to the transacting of business, but merely retained for that purpose, unless supported by other material evidence, necessarily makes those documents privileged. This could potentially allow a member to claim any document was privileged by merely claiming he or she intended to use it at some future time for the purposes of or incidental to the transacting of business in a House or Committee.

In the event the issue of parliamentary privilege arises in any future operation the Commission would need to determine, on a case by case basis, whether it accepted such a determination and if not whether it should seek judicial review of any such decision.

**b. Does the term 'parliamentary office' in the abovementioned procedure include electorate offices?**

Procedure 9 applies to any premises used or occupied by a member.

**c. What changes were made on 7 August 2008 to the ICAC's procedures for executing search warrants on parliamentary offices? (see Breen report p.47).**

The change made to Procedure 9 in August 2008 removed the requirement to complete the "progressive checklist" and made it a guide. A new "authorisation checklist" was included. This

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

requires approval of any search warrant application by the Executive Directors of Investigations and Legal. No other changes were made affecting the execution of search warrants on parliamentary offices. Further details in relation to the "progressive checklist" are given in answer to question 47.

**44. How are the terms of the *Parliamentary Precincts Act 1997* accommodated within ICAC's procedures? What requirements are in place for prior notification of the Presiding Officers prior to the execution of a search warrant in the parliamentary precincts?**

The *Parliamentary Precincts Act 1997* (the Act) defines the parliamentary precincts and provides for the control, management and security of those precincts. The Commission does not consider the Act has direct relevance to the exercise of powers under a search warrant. In this regard the Commission notes that, at the time of the execution of the Breen search warrant, the then Deputy Clerk to the Legislative Council obtained legal advice from the Crown Solicitor that there was no power under the Act to prevent Commission officers entering Parliament House for the purpose of executing a search warrant (see p.113 of the ICAC Inspector's report).

The Deputy Clerk of the Legislative Council was given prior notification of the execution of the Breen search warrant (see pp. 112-5 of the ICAC Inspector's report).

The Commission notes the Act is not referred to in the Legislative Council recommended protocol from which the procedures in Operations Manual Procedure 9, relating to the execution of a search warrant on premises used or occupied by a Member of Parliament, are based. In accordance with the recommended protocol, Procedure 9 provides that if the premises to be searched are in Parliament House the Executive Director, Legal will contact the relevant Presiding Officer prior to execution and notify that officer of the proposed search.

### APPLICATION FOR AND EXECUTION OF THE SEARCH WARRANT

**45. The report found that incorrect information was included in the application for a search warrant in relation to Mr Breen's ownership of 3 Lucia Crescent, Lismore. What procedures does the ICAC currently have in place to check the veracity of information provided in witnesses' statements?**

The incorrect information provided in the application for a search warrant was the result of a misunderstanding by a Commission officer and was not based on incorrect information contained in any witness statement (see pp. 93-94 of the ICAC Inspector's report).

**46. The report states that after the search warrant was granted the ICAC became aware of the error in the application but did not inform the authorising justice, which the Inspector concludes would have been "a prudent and transparent thing to do", although not a legal requirement (p.169). Are there now procedures in place which would ensure that, if such a situation arose once more, the ICAC would inform the authorising justice?**

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

Procedure 9 does not address this issue. There is no legislative requirement to inform the authorising justice of errors discovered in the application after the execution of the warrant. Normally the Commission would inform the authorising justice of any error.

**47. The report indicates that the ICAC did in fact have a progressive checklist for search warrant applications as part of its written procedures in October 2003 but on this occasion did not use it, and also failed to observe the requirement that the report to the authorised justice be completed by the investigator in consultation with the team lawyer (p.170). What action has been taken since the Breen investigation to ensure that policies and procedures are adhered to?**

The purpose of the “progressive checklist” was to assist those involved in making search warrant applications by setting out each of the steps required by Procedure 9 and requiring sign-off at each step. Experience showed that completion of the “progressive checklist” was unnecessarily onerous and did not significantly assist Commission officers. What is important is that each of the tasks set out in the checklist is completed. Each nominated task was completed in the Breen search warrant application process. It is noted that the ICAC Inspector did not identify any task that was not completed.

Procedure 9 no longer requires completion of the progressive checklist, although it is still included in the Procedure as a guide. Procedure 9 now contains an “authorisation checklist” which requires the Executive Directors of Investigations and Legal to approve all applications. The Executive Director Legal does not give final approval to search warrant applications until the “authorisation checklist” is completed.

At the time of the Breen search warrant, Procedure 9 did not require the case officer to consult with the team lawyer when preparing the report to the authorised justice, although this was a step (as opposed to a “requirement”) identified in the “progressive checklist”. Procedure 9 was amended in May 2005 to require the case officer to consult with the team lawyer in preparing the report to the authorised officer. Training presentations have reminded staff of this requirement and earlier this year the Executive Director, Legal circulated an email reminder to relevant staff.

**48. The report indicates on p.170 that the ICAC has introduced a mandatory procedure for recording who makes the decision to obtain a search warrant and who approves the application, warrant and occupier’s notice; however, there is no mandatory procedure for recording who takes *responsibility* for ensuring the accuracy of factual assertions contained in such an application. Has the ICAC introduced, or does it plan to introduce, a mandatory procedure for recording who takes responsibility for the accuracy of factual information in an application for a search warrant?**

The person swearing or affirming in the application that there are reasonable grounds for believing the matters that justify the application for the issue of a search warrant is the person responsible for ensuring that any factual statements he or she makes in the application are correct. Operations Manual Procedure 9 requires the person making the application to have a thorough knowledge of the



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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

facts to support the information provided in the application and requires them to ensure the application is factually correct.

**49. Page 174 of the report notes that the search warrant checklist has now been downgraded to a guideline. What approach does the ICAC take to mitigate the risk that the mistakes made in relation to the application for the search warrant do not recur?**

The purpose of the “progressive checklist” was to assist those involved in making search warrant applications by setting out each of the steps required by Procedure 9 and requiring sign-off at each step. Its use would not have alerted anyone to the fact that the application contained incorrect information. Investigators are required to ensure that their affidavits are factually correct. Operations Manual Procedure 9 requires the person making the application to have a thorough knowledge of the facts to support the information provided in the application.

**50. It would appear from the report that during the Breen investigation senior officers of the ICAC, including the Commissioner, relied on the use of oral briefings to be kept informed as to the preparation of the application for the search warrant (see for example pages, 57, 81, 84, 87, 88 of the report). In the Committee’s view, reliance on oral briefings can be problematic because it does not establish a clear line of responsibility for the preparation of search warrant applications. When preparing applications for search warrants, does the ICAC now use formal, written briefings as an accountability measure?**

The question appears to confuse the issue of oral briefings with that of the decision to apply for a search warrant and the preparation of the warrant documentation in the Breen matter. In the Breen matter there was no doubt that the decision to approve the application was made by executive management. The application for the warrant, which set out the basis for the issue of the warrant, was prepared by a Commission investigator, reviewed by a Principal Lawyer and the Executive Director, Legal. In reviewing the written application the latter two in particular satisfied themselves that there was a proper factual and legal basis for the application to be made.

The Commission does not accept the premise that oral briefings are “problematic”. Urgent matters may often require oral as opposed to written briefings. The Commission does not regard it as appropriate to require all briefings on the need for a search warrant or progress of a search warrant application to be in writing.

In investigations where the need for the execution of search warrants at some time in the future can be reasonably anticipated it is the usual practice to include reference to this in the investigation report considered by the Commission’s Strategic Investigations Group at one of its regular meetings. The Commission also notes that the Procedure 9 “Authorisation Checklist” requires the Executive Directors, Investigations and Legal to sign their approval to all search warrant applications.

**51. The report concludes that “it was at least arguably imprudent” of the ICAC to serve the notice on the person who had been assisting its investigation and was the primary source of the information on which the warrant was obtained. Does the ICAC now have such considerations included as part of its guidelines in this area?**

As indicated in the ICAC Inspector’s report (pp. 116 - 118), Mr Breen was contacted about the search but did not attend. s.15(3) of the *Search Warrants Act 1985* required an “occupiers notice” to be served on “a person who appears to be an occupier of the premises and to be of or above the age of 18 years”. Ms Sammartano was a member of Mr Breen’s parliamentary staff with access to and use of the relevant office. It was reasonable in the circumstances for the Commission officer executing the warrant to view her as an occupier. Her involvement in the Commission’s investigation was not relevant to this decision.

The Commission does not regard it as inappropriate, or unlawful to have served the occupier’s notice on Ms Sammartano in the circumstances and notes that the Inspector did not conclude that the notice was not properly served.

**52. The since repealed *Search Warrants Act 1985* (NSW) provided for application for a search warrant to be made to an “authorised justice”, defined in s.3 as:**

- a. Magistrate, or
- b. a registrar of a Local Court or the registrar of the Drug Court, or
- c. a person who is employed in the Attorney General’s Department and who is declared (whether by name or by reference to the holder of a particular office, by the Minister administering this Act by instrument in writing or by order published in the Gazette, to be an authorised justice for the purposes of this Act.

The Inspector’s report (p.107) indicates that the search warrant application was authorised by Mr Paul Morgan JP at the Downing Centre court complex, Sydney; presumably, an employee working in the local courts administration, functioning as an “authorised justice” under the *Search Warrants Act 1985*.

- a. Should those search warrant applications that have the potential to infringe the privileges of parliament, be made a separate class of application under statute, requiring a higher level of authorisation than is presently required?
- b. For example, should an application for a warrant to search a member’s parliamentary office be considered by a judge of the District Court or the Supreme Court?

This is a matter for the Parliament to determine. The Commission however does not see any demonstrable need for applications for search warrants to search parliamentary offices to be required to be made to a judge of the District Court or Supreme Court.

**53. What external legal advice does the ICAC consider necessary when obtaining a warrant to conduct a search that may raise issues of parliamentary privilege? Would the ICAC obtain advice from the DPP or the Solicitor General, as is the case in other jurisdictions where law enforcement bodies seek to obtain search warrants relating to members of Parliament?**

The Commission would generally rely on its own internal legal advice in determining whether or not to apply to a search warrant on a parliamentary office. The Commission would seek external advice if it considered it appropriate to do so.

**54. Documents and records that may be subject to parliamentary privilege and perhaps relevant to an ICAC investigation are not confined to material stored in a member's parliamentary office. Do the ICAC's current search warrant procedures make provision for situations where warrants may be sought to conduct searches and seize material located outside the parliamentary precincts, which may be subject to parliamentary privilege?**

Procedure 9 applies to any premises used or occupied by a member.

## **THE ICAC'S ORGANISATIONAL STRUCTURE**

**55. The report indicates that the application for, and execution of, the search warrant by the ICAC in the Breen investigation raises issues in relation to the Commission's structure and the impact this has upon its investigations and operational decision-making. The Breen report comments that the matrix management (including multi-disciplinary team management) of the ICAC is "no substitute for clear accountability in an agency with as extensive compulsory powers as the Commission has" (p.168).**

**a. How does the ICAC maintain clear lines of authority and accountability, including senior managerial oversight of ICAC investigations, within the context of a matrix management structure and multi-disciplinary team management?**

The Commission is satisfied that it maintains clear lines of authority and accountability, including senior management oversight, for all investigations.

The Commission's Assessment Panel, which consists of the Deputy Commissioner, Executive Director, Investigation Division, Executive Director, Legal, and the Executive Director, Corruption Prevention, Education and Research, determines which matters will be investigated by the Commission.

Once the Assessment Panel has determined a matter should be investigated the Executive Director, Investigation Division assigns the matter to an investigation team and case officer. This is done in consultation with the relevant Chief Investigator and takes into account the level of expertise required to undertake the necessary investigative enquiries. The case officer is

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

accountable to the team leader and through that position to the team Chief Investigator and Executive Director, Investigation Division, for the general conduct of the investigation.

The Commission's Operations Manual contains a number of procedures for the exercise of statutory powers. These procedures clearly define levels of responsibilities between case officers, team lawyers and others. For example, Procedure 9, which deals with obtaining and executing search warrants, provides that all applications for search warrants must first be approved by the Executive Director, Investigations, drafted by the Case officer, reviewed by the case Lawyer and finally approved by the Executive Director, Legal. Other responsibilities are also clearly delineated.

The Commission has an internal committee to oversee all investigations. The Strategic Investigations Group (SIG) comprises:

- The Commissioner.
- The Deputy Commissioner.
- The Executive Director, Legal and Solicitor to the Commission.
- The Executive Director, Investigation Division.
- The Executive Director, Corruption Prevention Education and Research.
- The SIG usually meets fortnightly and considers reports on progress and developments for each investigation and generally sets strategic directions for investigations.

**b. How does the ICAC overcome any risks associated with such a structure, as highlighted by the Inspector's report in relation to the Breen investigation?**

The way in which the Commission addresses possible structural risk is outlined in answer 55a above.

**c. What changes have been made to the ICAC's matrix management structure in light of the Breen investigation and report to ensure:**

**i. that senior personnel conversant with parliamentary privilege and procedures for dealing with claims of parliamentary privilege have a key role in ensuring that the issue of privilege is fully and carefully considered before any search warrant is sought or executed?**

No changes have been made to the Commission's management structure in light of the Breen matter.

The issue of how parliamentary privilege affected the Commission's investigation in the Breen matter was given proper consideration by Commission officers, including, among others, the Commissioner, Deputy Commissioner and Solicitor to the Commission. As

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

indicated in answer 41a above, the evidence also demonstrates that those Commission officers who executed the warrant were careful to ensure that parliamentary privilege was protected.

The Commission notes that Procedure 9 of the Operations Manual, which relates to search warrants, has a specific section dealing with execution on a Member's office. Procedure 9 also requires all applications for a search warrant to be considered by the Team Lawyer and finally approved by the Executive Director, Legal.

**ii. the accuracy of factual information used in the application for a search warrant?**

No specific changes have been made to the Commission's management structure to ensure accuracy of information used in applications for search warrants. The incorrect information provided in the application for the Breen search warrant was the result of a misunderstanding by a Commission officer and was not related to the Commission's management structure.

Operations Manual Procedure 9 requires investigators to have a thorough knowledge of the facts to support the information provided in their applications and requires them to ensure that the applications are factually correct.

**iii. that the leaders of ICAC's investigative teams assume responsibility for critical phases of an investigation, particularly where there are legal questions surrounding authorisation for the exercise of coercive and covert powers?**

Investigation team leaders are responsible for the day to day management of their teams and supervision of the investigative matters assigned to their teams. They are oversighted by Chief Investigators and the Executive Director, Investigations. The conduct of all investigations is oversighted by the Commission's Strategic Investigations Group.

Any legal questions concerning the exercise of coercive and covert powers in a particular investigation are, at first instance, referred to the case lawyer for advice. Complex legal questions and those involving contentious or policy issues are referred to the Executive Director, Legal. Depending on the nature of the matter, the advice of the Deputy Commissioner and Commissioner may also be sought.

In addition, Operations Manual procedures require all applications for the exercise of coercive powers are considered by the case lawyer and reviewed by the Executive Director, Legal. This ensures that relevant legal issues are identified and addressed.

## MALADMINISTRATION

**56. Evidence given by the former Inspector of the ICAC, Mr Graham Kelly, when examined on the Breen report and the Inspectorate's 2007-2008 Annual Report, suggests that the definition of maladministration at s.57B of the ICAC Act is difficult to apply in practice due to its technical nature.<sup>12</sup> Does the ICAC have a view on the whether the definition is difficult to interpret or apply in practice and, consequently, in need of amendment?**

The current definition in s.57B(4) of the ICAC Act provides that "conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

- contrary to law, or
- unreasonable, unjust, oppressive or improperly discriminatory, or
- based wholly or partly on improper motives."

The concepts of unlawful conduct and intentionally improper conduct are not difficult to comprehend. The definition however includes unreasonable and unjust conduct. Whether conduct comes within the definition will depend on the particular facts of each matter and the way in which the words of the section are interpreted. For example, it is the Commission's view that the word "unreasonable" bears its administrative law meaning, namely, conduct so unreasonable that no reasonable person could have so exercised the power. In the context of s.57B(4) it must also be "serious". The meaning of "unjust" is less clear, although presumably it involves at least an element of unfairness. However conduct, honestly engaged in, may lead to what may be perceived to be an unfair result without any impropriety being involved and which should not otherwise attract condemnation or an adverse finding of maladministration.

These uncertainties may lead to difficulties in interpreting and applying parts of s.57B(4). It would be appropriate to canvass the view of the current Inspector on this issue.

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<sup>12</sup> Mr Graham Kelly, former Inspector of the ICAC, *Transcript of evidence*, 1 December 2008, pp. 1-2.

## ICAC'S RESPONSE TO MR BREEN'S COMPLAINT

57. Prior the Inspector's inquiry, Mr Breen made a complaint to the ICAC in relation to the conduct of its investigation into matters relating to him. The Commissioner acknowledged that a mistake had been made in relation to the search warrant but proposed to take no further action and instead suggested that Mr Breen to write to the NSW Police Force if he was of the view that criminal offences were associated with the application for the search warrant. The Police Commissioner, in turn, suggested Mr Breen refer the matter to the ICAC Committee, which then referred Mr Breen's complaint onto the Inspector (see Breen report, pp. 161-164).

If faced with a similar complaint, would the ICAC now, as a matter of course, advise the complainant to take the issue up with the Inspector?

The ICAC's Memorandum of Understanding with the Inspector provides in paragraph 5.1 that the Commission "will notify the Inspector of matters which come to its attention which involve conduct of an officer of the Commission that comes within the principal functions of the Inspector". A complaint similar to Mr Breen's which was received today would be referred to the Inspector in accordance with this MOU.

## ICAC RESPONSE TO THE INSPECTOR'S INVESTIGATION

58. Have there been any recommendations made by the Inspector's Office in relation to the Breen investigation which the ICAC has not acted upon? If so, why has the ICAC chosen not to implement these recommendations?

The Inspector's principal recommendations are set out at pp. 173-174 of the report.

The first recommendation is that "at least key personnel at the ICAC are fully conversant with this issue (parliamentary privilege) and with those procedures (Operations Manual Procedure 9). It also follows, in the Inspector's view, that the ICAC should ensure that these issues are fully and carefully considered before any search warrant is sought or executed on Parliamentary premises." The Commission is satisfied that it complies with this recommendation.

The second recommendation is that "a part of the decision-making record should include a suitably senior person who takes responsibility for ensuring that factual information is accurate."

As advised in answer to question 48, the person swearing or affirming in the application that there are reasonable grounds for believing the matters that justify the application for the issue of a search warrant, is the person responsible for ensuring that all statements he or she makes in the application are correct. The person making the application is the person best placed to ensure the factual information is correct.

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## COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - INSPECTORATE'S BREEN REPORT

Applications are made by trained and experienced investigators and senior investigators. They are keenly aware of the need to ensure that information contained in their applications is accurate and that they are responsible for ensuring the information is accurate.

While those in a more senior position may have a general understanding of the factual background they are unlikely to have the comprehensive understanding needed to ensure the degree of accuracy required. It would be operationally difficult and onerous to require more senior officers to have the requisite detailed knowledge required to ensure the factual information is accurate.

A recommendation was also made at p.127 (paragraph 7.7.1) that the Commission give consideration to reviewing its practice in relation to the service of occupiers notices. For the reason given in answer 51, the Commission is not of the opinion there was anything unreasonable in the service of the occupiers notice in the Breen matter and therefore does not consider its practices need to be reviewed.

**59. The Breen report indicates that a draft of the report was provided to the ICAC and certain individuals for their review and to enable them to make submissions in response (p.12). Written submissions were received from the ICAC and a number of individuals and the report took into account, to the extent considered appropriate, matters that were raised in these submissions. When giving evidence on 1 December 2008, Mr Kelly indicated that the tabling of the report was held up due to 'threats of litigation' and 'continuous pressures' for the Inspector's office to confine its findings 'strictly according to the provisions of the Act'.<sup>13</sup> Did the ICAC, or to the best of the Commission's knowledge, any current employees of the ICAC, raise questions with the Inspector in relation to whether the draft report was within jurisdiction? If so, what form did such questioning take, for example was it via formal submissions and/or legal advices questioning the jurisdictional basis of parts of the draft report?**

The Commission cannot comment on the Inspector's claim the Tabling of his report was held up by threats of litigation or other "continuous pressures". Neither the Commission nor any current Commission employee raised the issue of whether the draft report was within the Inspector's jurisdiction.

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<sup>13</sup> Mr Graham Kelly, former Inspector of the ICAC, *Transcript of evidence*, 1 December 2008, p.+2.



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# COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

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## QUESTIONS ON NOTICE

### ANNUAL REPORT 2007-2008

#### PROSECUTIONS AND OTHER ACTION ARISING FROM ICAC INVESTIGATIONS

**23. Please provide a table, similar to that provided to the Committee during its previous review<sup>1</sup>, detailing the period of time that has elapsed between ICAC's provision of briefs of evidence to the DPP and the DPP's decision on each matter, for matters current during the 2008-2009 reporting period (to date). Please include the date of all requisitions received from the DPP with respect to each matter.**

A table for the period 1 July 2008 to 31 July 2009 is attached.

The Commission has been advised that reports from the DPP lawyers reviewing the briefs in Monto 2 (Hughes) and the remaining brief in Cadmus (Barhy) are likely to go to the Director for his consideration in the week commencing 3 August 2009.

**24. The Annual Report indicates (p 145) that the Commission is preparing briefs of evidence in relation to the prosecution of individuals for various criminal offences as a result of two investigations. Please provide an update on the status of briefs of evidence for:**

- Operation Berna (December 2007)
- Operation Greenway (January 2008)

The brief of evidence in Operation Berna was provided to the DPP on 30 October 2008. On 31 July 2009 the DPP advised that there is sufficient admissible evidence to prosecute Mr Tasich with one offence under section 249B(2) of the *Crimes Act 1900* and three offences under section 87 of the *ICAC Act 1988*. However, the DPP directed that the issuing of Court Attendance Notices should only occur after the Commission obtained statements from three people. The Commission is in the process of obtaining the required statements.

The briefs of evidence in Operation Greenway were provided to the DPP on 30 September 2008. The Commission received DPP requisitions on 6 February 2009. These have been attended to and the Commission is currently awaiting advice from the DPP. The Commission has been advised that a report from the DPP lawyer reviewing the briefs is likely to go to the Director for his consideration in the week commencing 3 August 2009.

#### OPERATION AGNELLI – AUGUST 2003

**25. In answers to questions on notice for the Committee's review of ICAC's 2006-2007 Annual Report, the Commission indicated that:**

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<sup>1</sup> ICAC, Answers to questions on notice, 30 June 2008, question 28, p. 17.

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.<sup>2</sup>

However, the 2007-2008 Annual Report states (p 140) that the Commission is obtaining additional material in response to DPP requisitions received on 11 February 2008 in relation to the prosecution of Graham Lawrence and John Fitzgerald.

a. Has the DPP provided final advice in relation to the prosecution of Lawrence and Fitzgerald? If so, what was the advice?

b. What is the current status of these matters - have proceedings against Lawrence and Fitzgerald commenced?

Based on advice received from the DPP Court Attendance Notices were served on Mr Lawrence and Mr Fitzgerald on 21 October 2008 for offences under section 176 of the *Crimes Act 1900* (director or officer publishing fraudulent statements) or, in the alternative, section 176A of the *Crimes Act 1900* (directors cheating or defrauding). Both matters have been adjourned to 29 July 2009.

The DPP sought four additional witness statements. The Commission was able to obtain and provide three of these statements. The DPP was advised that the Commission was unable to locate the fourth witness. The DPP subsequently advised that it will require some additional statements from witnesses who gave evidence at the public hearing. The Commission is awaiting advice from the DPP identifying which witnesses are needed to provide statements.

#### OPERATION UNICORN – APRIL 2005

26. In answers to questions on notice for the Committee's review of ICAC's 2006-2007 Annual Report, the Commission indicated that final advice had been received from the DPP in relation to the prosecution of Bill Smith and Stephen Griffen on 2 June 2008.<sup>3</sup> However, the 2007-2008 Annual Report (p 141) states that the Commission is obtaining additional information in response to DPP requisitions received on 13 June 2008. What is the current status of the prosecution of Smith and Griffen?

Court Attendance Notices were served on Mr Bill Smith, Mr Stephen Griffen, Mr Malcolm Smith and Ms Debbie Barwick in October 2008 for offences under section 178BB of the *Crimes Act 1900*

<sup>2</sup> ICAC, Answers to questions on notice, 30 June 2008, question 20, pp. 13-14.

<sup>3</sup> ICAC, Answers to questions on notice, 30 June 2008, question 28, p. 18.

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**COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - ICAC ANNUAL REPORT  
2007-2008**

(making a false statement with intent to obtain a valuable thing). These offences relate to the transfer of Koombahtoo Local Aboriginal Land Council (KLALC) land to two KLALC members in 2001. A hearing in relation to these matters took place at Newcastle Local Court from 24 to 26 June 2009. The Magistrate ruled no case to answer for Mr Malcolm Smith and Ms Debbie Barwick. The matters involving Mr Bill Smith and Mr Stephen Griffen have been adjourned for further hearing to 21 August 2009.

Ms Veronika Bailey could not be located to be served with a Court Attendance Notice.

**27. The 2007-2008 Annual Report indicated that the Commission is obtaining additional information for the DPP, in response to further requisitions relating to Adam Perkins, Bob Scott, Kim Wilson and Dale Holt. What is the current status of the briefs of evidence in relation to these prosecutions?**

This matter relates to the receiving of a corrupt reward by Mr Bill Smith in return for improperly issuing a KLALC letter of consent for the laying of pipes through KLALC land for the benefit of Villa World Pty Ltd. All requisitions have been responded to and the Commission is currently awaiting advice from the DPP. The Commission has been advised that a report from the DPP lawyer reviewing the briefs is likely to go to the Director for his consideration in the week commencing 3 August 2009.

**OPERATION CASSOWARY – DECEMBER 2005**

**28. The Annual Report indicates (p 142) that recommendations were made in relation to the prosecution of 18 persons as a result of this investigation, with the briefs of evidence having been provided to the DPP in December 2007. What is the status of the 18 briefs of evidence?**

The Commission is awaiting advice from the DPP. The Commission has been advised that a report from the DPP lawyer reviewing the briefs is likely to go to the Director for his consideration in the week commencing 3 August 2009.

**OPERATION AMBROSIA – DECEMBER 2005**

**29. The Annual Report indicates (p 142) that recommendations were made in relation to the prosecution of 36 persons as a result of this investigation. The Report states that three of the matters have been finalised, briefs of evidence in relation to two persons are in the process of being finalised and briefs in relation to 30 persons are with the DPP awaiting advice.**

**a. Please provide an update in relation to the briefs of evidence that are being prepared in relation to the two persons.**

The two briefs (Sabra and Boumelhem) were sent to the DPP on 5 September 2008. On 5 June 2009 the DPP advised the Commission there was sufficient evidence to prosecute each of Messrs Sabra and Boumelhem for an offence of obtaining a financial advantage (a licence) by deception contrary to section 178BA of the *Crimes Act 1900* and an offence of using a false instrument contrary to section 300(2) of the *Crimes Act 1900*. The Commission has been awaiting provision of particulars of the charges from the DPP before issuing court attendance notices, and these particulars were received on 3 August 2009.

**b. What is the status of the 30 matters in which the Commission is awaiting the DPP's advice?**

The Commission received advice on 5 June 2009 that there is sufficient evidence to prosecute eight of the 30 matters. The Commission has been awaiting provision of particulars of the charges from the DPP before issuing court attendance notices, and these particulars were received on 3 August 2009.

The Commission is awaiting the advice of the DPP with respect to the remaining 22 matters. The Commission has been advised that a report from the DPP lawyer reviewing the briefs is likely to go to the Director for his consideration in the week commencing 3 August 2009.

**c. What is the status of the matter relating to the remaining person?**

The remaining matter is that of Mr Yousseff Nehme (see p 142 of the 2007-08 Annual Report). Mr Nehme pleaded guilty and was sentenced to three years periodic detention.

### **OPERATION INCA – JUNE 2006**

**30. The 2006-2007 (p 115) and 2007-2008 (p 143) Annual Reports stated that proceedings are current in the prosecution of Jeffrey Strange for offences under the ICAC Act. What is the current status of these proceedings?**

This matter was finalised on 27 October 2008. The two offences under section 80(c) of the ICAC Act (make false statement to an ICAC officer) were found proven but no conviction was recorded. He was placed on a 2 year good behaviour bond and ordered to pay court costs of \$73. The two offences under section 87 of the ICAC Act (give false evidence) were dismissed.

### ***Operation Aztec – October 2006***

**31. The Annual Report indicates (pp 145) that recommendations were made in relation to the prosecution of three persons as a result of this investigation, with the briefs of evidence having been provided to the DPP in August 2007. What is the status of the three briefs of evidence?**

Advice on all three matters was received from the DPP on 5 November 2008. On 27 November 2008, as a result of that advice, Court Attendance Notices were served on Mr Wade for seven offences under section 249B of the *Crimes Act 1900* (corrupt commissions or rewards), Mr Ashe for four offences under section 178BB of the *Crimes Act 1900* (obtaining money by false statement) and Mr Williams for two offences under section 249B of the *Crimes Act 1900*. They pleaded guilty to all offences. The matters have been stood over to 7 August 2009.

**COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST  
CORRUPTION**

**APPENDIX**

**PROSECUTION TIMESCALES FOR MATTERS**

**CURRENT FROM 1 JULY 2008 TO 31 JULY 2009**

<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>AGNELLI</b> 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, & 6/7/08	Various.	11/2/08 11/2/08	<b>1442</b> <b>1442</b>
<b>UNICORN</b> Smith (1) Smith (2) Perkins Scott Wilson Holt Griffen Bailey M. Smith Barwick	1/4/05 1/4/05 1/4/05 1/4/05 1/4/05 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 3/11/05 3/11/05 No brief No brief No brief	<b>216</b> <b>216</b> <b>216</b> <b>216</b> <b>216</b> <b>216</b> <b>216</b> <b>N/A</b> <b>N/A</b> <b>N/A</b>	29/8/06, 3/11/06, 13/6/08, 18/7/08, 12/3/08, 31/3/09, & 27/5/09	10/7/07, 7/11/07, 13/3/08, 21/10/08, 10/2/08, 19/3/09, & 10/7/09	13/6/08      13/6/08 13/6/08 13/6/08 13/6/08	<b>953</b>        <b>953</b> <b>953</b> <b>953</b> <b>953</b>
<b>CASSOWARY</b> 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>				

**COMMITTEE ON THE ICAC: QUESTIONS ON NOTICE - PROSECUTION  
TIMESCALES**

<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>AMBROSIA</b>							
Williams	21/12/05	16/3/07	450				
More	21/12/05	16/3/07	450				
Younis	21/12/05	16/3/07	450				
Kayrouz	21/12/05	16/3/07	450				
Aboulhosn	21/12/05	16/3/07	450				
Sleiman	21/12/05	16/3/07	450				
Karam	21/12/05	16/3/07	450				
Bazouni	21/12/05	16/3/07	450				
Tannous	21/12/05	16/3/07	450				
Makdessi	21/12/05	16/3/07	450				
Nader	21/12/05	16/3/07	450				
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, B	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				
Massoud	21/12/05	22/5/08	883	Nil	N/A	5/6/09	379
Zaiter	21/12/05	24/5/06	154	Nil	N/A	5/6/09	1108
Barrakat	21/12/05	17/3/08	817				
Sabra	21/12/05	5/9/08	989	Nil	N/A	5/6/09	273
Nguyen							
Boumelhem	21/12/05	17/3/08	817	Nil	N/A	5/6/09	445
Nehme, N	21/12/05	5/9/08	989	Nil	N/A	5/6/09	272
Nakhoul	21/12/05	28/4/08	859	Nil	N/A	5/6/09	403
Daoud	21/12/05	22/4/08	853	Nil	N/A	5/6/09	409
Haidar	21/12/05	22/4/08	853	Nil	N/A	5/6/09	409
Mouwad	21/12/05	14/4/08	845	Nil	N/A	5/6/09	417
	21/12/05	17/3/08	817	Nil	N/A	5/6/09	445
<b>CADMUS</b>							
Bullen	20/9/06	18/7/07	301	Nil	N/A	8/7/09	721
Barhy	20/9/06	18/7/07	301				
<b>AZTEC</b>							
Wade	26/10/06	10/8/07	288	Nil	N/A	5/11/08	453
Williams	26/10/06	10/8/07	288	Nil	N/A	5/11/08	453
Ashe	26/10/06	10/8/07	288	Nil	N/A	5/11/08	453
<b>QUILLA</b>							
Stepto	21/12/06	21/4/08	487	Nil	N/A	19/6/09	424
Job	21/12/06	21/4/08	487	Nil	N/A	19/6/09	424
<b>PERSIS</b>							
S. Marcos	18/06/07	31/4/08	290	Nil	N/A	5/3/09	309
B. Marcos	18/06/07	31/4/08	290	Nil	N/A	5/3/09	309
Mourched	18/06/07	31/4/08	290	Nil	N/A	5/3/09	309
Mikhail	18/06/07	31/4/08	290	Nil	N/A	5/3/09	309

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<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>PELION</b>							
Fryar	22/08/07	13/6/08	<b>295</b>	Nil	N/A	18/11/08	<b>158</b>
Lu	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Srijan	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Innes	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Kuang	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Tina	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Song	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Shan	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Xu	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
Huang	22/08/07	13/6/08	<b>295</b>	Nil	N/A	18/11/08	<b>158</b>
Carle	22/08/07	13/6/08	<b>295</b>	Nil	N/A	19/5/09	<b>340</b>
<b>SIRONA</b>							
McPherson	20/09/07	7/5/08	<b>230</b>	Nil	N/A	16/3/09	<b>313</b>
Phomsavanh	20/09/07	7/5/08	<b>230</b>	Nil	N/A	16/3/09	<b>313</b>
Jaturawong	20/09/07	7/5/08	<b>230</b>	Nil	N/A	16/3/09	<b>313</b>
<b>BERNA</b>							
Tasich	20/12/07	30/10/08	<b>315</b>	31/07/09	Underway	31/07/09	<b>274</b>
<b>GREENWAY</b>							
Norris	31/1/08	30/9/08	<b>243</b>				
Hogan	31/1/08	30/9/08	<b>243</b>				
Murray	31/1/08	30/9/08	<b>243</b>	6/2/09	29/6/09		
Peters	31/1/08	30/9/08	<b>243</b>	6/2/09	29/6/09		
Nolan	31/1/08	30/9/08	<b>243</b>				
<b>MONTO 1</b>							
Blackstock	13/8/08	14/10/08	<b>62</b>	12/3/09			
Madrajat	13/8/08	14/10/08	<b>62</b>	12/3/09			
Ward	13/8/08	14/10/08	<b>62</b>	12/3/09			
Chambers	13/8/08	14/10/08	<b>62</b>				
Clarke	13/8/08	14/10/08	<b>62</b>				
<b>MONTO 2</b>							
Hughes	13/8/08	31/10/08	<b>79</b>	28/5/09	15/6/09		
W Kuipers	13/8/08	31/10/08	<b>79</b>	28/5/09	15/6/09		
K Kuipers	13/8/08	31/10/08	<b>79</b>	28/5/09	15/6/09		
<b>MONTO 3</b>							
Stanic	8/9/08	7/7/09	<b>302</b>				
Szoboszlay	8/9/08	7/7/09	<b>302</b>				
Kouraos	8/9/08	7/7/09	<b>302</b>				
Palombo	8/9/08	7/7/09	<b>302</b>				
<b>MONTO 4</b>							
Walker	8/9/08	22/4/09	<b>226</b>				
Azzopardi	8/9/08	22/4/09	<b>226</b>				
W Kuipers	8/9/08	22/4/09	<b>226</b>				
Michael	8/9/08	22/4/09	<b>226</b>				
Napier	8/9/08	22/4/09	<b>226</b>				
Matt Napier							

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<b>MONTO 5</b> G Hetman D Murdocca S Murdocca P Murdocca	25/9/08 25/9/08 25/9/08 25/9/08						
<b>MONTO 6</b> Akkawi	25/9/08	23/4/09	210				
<b>ATLAS</b> Morgan Vellar Zanotto Gigliotti(1) Younan Carroll Tasich Tabak Scimone Gigliotti(2) Jonovski Esen	8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08 8/10/08	17/7/09 6/7/09 6/7/09 13/7/09 13/7/09 13/7/09 13/7/09 29/04/09 7/04/09 31/3/09 31/3/09 31/3/09	292 281 281 288 288 288 288 203 181 174 174 174				
<b>MONTO 7</b> Laidlaw Kotevski Hansen Araldi Hili Schliebs Severino Petrovski Affleck Penny Skinner Dulhunty	19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08						
		8/7/09	233				
<b>MIRNA</b> Sanhueza C Taylor A Taylor Gurguis Xuereb	18/12/08 18/12/08 18/12/08 18/12/08 18/12/08	8/1/09 8/1/09 8/1/09 8/1/09 8/1/09	21 21 21 21 21				
<b>BELLIN</b> Pei Lu	12/2/09 12/2/09	16/02/09 16/02/09	4 4	Nil Nil	N/A N/A	22/5/09 22/5/09	95 95
<b>CAPELLA</b> Huang	26/2/09	10/03/09	12	8/5/09	8/7/09		
<b>BAUER</b> Chen Sun	30/6/09 30/6/09	14/7/09 14/7/09	14 14				