

RESPONSES TO QUESTIONS ON NOTICE FOR THE PUBLIC HEARING ON 3 JULY 2008

Location of the Inspector's Office

- 1. In a letter to the Committee dated 12 March 2008, the Premier noted the Committee's previous recommendation concerning the feasibility of relocating your office and indicated that he anticipated you would contact him in this regard. Have you pursued this matter with the Premier's administration and, if so, what were the outcome of the discussions?***

Yes. I am advised that there is available office space in the southern part of the CBD referred to as the McKell building.

Inspector's functions

- 2. The Inspector's function under s.57B(1)(a) of the ICAC Act is "to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State". To date the Inspector's two audits have concerned the ICAC's exercise of its functions and powers in relation to the assessment of complaints and the exercise of the ICAC's compulsory powers. What other areas of the ICAC's operations are you considering as subjects for audit?***

Given that the extension of the Inspector's term finishes on 30 September 2008 it would not be appropriate for the Inspector to respond to this question and this is a matter for the new Inspector.

- 3. Under s.57B(1)(d) of the ICAC Act the Inspector is "to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities". At p.24 of your Annual Report for 2006-2007, you indicate that this function has been carried out as part of the Inspector's auditing function and that the audit of ICAC's compliance with s.12A of the ICAC Act did not appear to raise any issues of legality or propriety.***

- (a) Is it your intention to continue to utilise the audit function under s.57B(1)(a) of the Act to give effect to your functions under s.57B(1)(d), particularly as the s.12A audit was conducted in relation to the ICAC's assessment of complaints?***

Yes, where it is logical to do so. However, it will also be appropriate to undertake the conduct of this function as a separate exercise and this issue may well be considered in the next reporting year.

(b) Are there other areas of the ICAC’s operations where you envisage assessments of procedures pursuant to s.57B(1)(d) of the Act may be warranted, e.g. investigation procedures, procedures for the conduct of compulsory examinations and public inquiries, procedures surrounding the use of covert powers by the ICAC?

Yes, particularly where there are discrete procedures used by the ICAC which are not relevant to an audit, for example, investigation procedures.

Complaint statistics

4. In terms of the complaint statistics provided at p.12 of your annual report, can you please provide the Committee with a breakdown of the statistics that includes an indication for each year of operation, of the number of complaints:

- (a) received in each year;**
- (b) finalised in each year; and**
- (c) the number that were ongoing from one year to the next?**

	2005–06	2006–07	2007-08
(a) Complaints received	35	37	
(b) Complaints finalised	24	26	
(c) Complaints ongoing from one year to the next	1 (Breen)	1	

5. The complaint statistics given for 2006-2007 in respect of complaints received by mail, e-mail, facsimile, telephone and from a third party total 52, whereas the number of complaints received for that year total 37. What is the reason for this discrepancy?

The “discrepancy” is due to the following complaints being reported for 2006–07:

- 37 complaints (received in the current year)
- 11 complaints (carried over from previous year)
- 4 complaints (not assessed)

These complaints should have been reported as a total of 41 in the “Complaints Received” category for the current year. To avoid confusion in next year’s Annual Report, all complaints, whether assessed or not, will be correctly reported as “Complaints Received”.

6. In the Answers to Questions on Notice for the public hearing on 1 November 2007¹ a figure of 39 is given for the number of complaints received by the Inspector during 2006-2007. Can you please explain the difference between this statistic and those contained in your Annual Report for 2006-2007?

The number 39 was a typographical error and should have been reported as 37. This correction will be highlighted in the Inspector's 2007-08 Annual Report.

This discrepancy is to be corrected in the 2007-08 Annual Report.

7. The Annual Report for 2006-2007 records a complaint about the off-duty conduct of an ICAC officer, received by the Inspector in May 2006, in the complaint statistics for that year but it does not appear to be included in the complaint statistics for 2005-2006. Is there any particular reason why this is the case? Is the complaint counted within the number of complaints received for 2005-2006 or 2006-2007?

This was reported incorrectly in the 2006-07 Annual Report. This particular complaint was already recorded and reported in the 2005-06 Annual Report (page 17). The table which appears on page 12 of the 2006-07 Annual Report should have showed this complaint as having been received in the column for 2005-06.

The complaint was not counted in the number of complaints received during the 2006-07 reporting period. It was counted in the number of complaints received in the 2005-06 reporting period.

The incorrect reporting of the complaint in the table on page 12 of the 2006-07 Annual Report will be corrected in the 2007-08 Annual Report.

Report of an audit of ICAC's Compliance with section 12A of the ICAC Act 1988

8. Who conducted the Section 12A audit and what are their qualifications and experience?

The audit was conducted by Mr Michael Gleeson, Senior Project Officer, who was on secondment to my office for a three month period from the NSW Ombudsman's Office. Mr Gleeson's secondment was personally recommended by Mr Simon Cohen, Assistant Ombudsman, NSW Ombudsman's Office. Mr Gleeson's qualifications are a Bachelor of Arts in 1990 from the University of Sydney with a Major in History and a Double Major in Public Policy and Administration. Mr Gleeson has over 15 years experience in the public sector. He has been employed in the NSW Ombudsman's Office since 1993 undertaking assessment and investigation

¹ See Answer to Question on Notice no. 7, Review of the 2005-2006 Annual report of the Inspector of the Independent Commission Against Corruption, December 2007, p.34.

duties. From 1993 to the present time he has progressed in seniority within the NSW Ombudsman's Office to hold his current position of Senior Project Officer.

Mr Gleeson's secondment to the office concluded after he wrote a draft report. The draft report was then finalised for the Inspector by Ms Seema Srivastava, Executive Officer, Office of the Inspector of the ICAC. Her qualifications are:

Bachelor of Arts (Honours)
Bachelor of Laws
Master of Communications (Distinction)
Master of Laws (continuing)

Prior to commencing employment in my office Ms Srivastava has worked in the private sector, public sector and the community sector in a variety of legal and policy positions.

Scope

9. The stated objective of the audit was "to assess whether the ICAC is complying with its obligations under section 12A of the ICAC Act in relation to the assessment of complaints received by the ICAC" (emphasis added).² Section 12A of the ICAC Act provides that:

In exercising its functions, the Commission is, as far as practicable, to divert its attention to serious and systemic corrupt conduct and is to take into account the responsibility and role of other public authorities and public officials have in the prevention of corrupt conduct.

Section 12A applies to the ICAC's exercise of all of its functions and is not confined to the work of the assessments section. Are there other areas of the ICAC's operations for which s.12A would have particular significance? For instance, in respect of the investigative priorities set by the ICAC when determining own motion investigations.

Yes, there are other areas of the Commission's operations to which s12A is significant including investigative priorities when determining own motion investigations.

² Office of the Inspector of the ICAC Report of an audit of the ICAC's compliance with s.12A of the ICAC Act, 28 June 2007, p.5

10. The ICAC Act 1988 was amended in 2005 to include section 12A on the basis of a recommendation in the McClintock report. The rationale provided by McClintock for s12A was founded on concerns that some of the matters that ICAC was investigating did not concern serious or systemic corruption and could be adequately dealt with by other means or agencies:

“As ICAC complements, rather than replaces, the role performed by criminal justice institutions, oversight bodies, and agencies, its particular focus should be the matters for which there is no other remedy – where there are serious allegations of corruption that may not be amenable to ordinary policing methods, where there are systemic corruption risks, or where public officials or bodies are unwilling or unable to investigate corruption allegations or implement anti-corruption strategies.”³

(a) What matters did you take into consideration when evaluating the extent to which the ICAC “complied” with this aspect of s.12A of the Act?

The matters taken into account were:

- the definition of both serious and systemic corruption as defined by the ICAC;
- the skills and resources which were assessed by the ICAC as being required to undertake the investigation by itself and by other public sector agencies and officials.

(b) Your report indicates that the audit included “the handling of matters under s.53 of the Act”. What conclusions did you draw about this aspect of the audit, particularly given that the main recommendations in the audit report (p.15) relate to the ICAC’s referral of matters pursuant to s.19, as distinct from referrals pursuant to s.53, which are referrals for investigation or other action?

The sample of complaint files audited did not show any referrals pursuant to s.53 of the ICAC Act. It was therefore difficult to draw any conclusions from the audit on the ICAC’s use of s.53 and s.54.

11. You have noted in your report that the term “serious and systemic corrupt conduct” is open to interpretation: it may be construed as meaning that the ICAC must direct its attention to corrupt conduct that is both “serious and systemic” in nature; or that the ICAC has two priorities “serious corruption” and “systemic corruption”^[4]. You

³ Bruce McClintock SC, Independent Review of the Independent Commission Against Corruption Act 1988 – Final Report, January 2005, p.29.

⁴ *ibid*, pp.2-3.

indicate that the ICAC prefers the latter interpretation, which would cover a wider range of matters, and that your audit has been conducted against this construction. As you would be aware, this Committee previously recommended that:

RECOMMENDATION 2

It is recommended that the Premier, as Minister with responsibility for the administration of the Independent Commission Against Corruption Act 1988, consider bringing forward an amendment to the Act to put beyond doubt that the reference to “serious and systemic corrupt conduct” in s.12A is to be interpreted as a reference to either serious and/or systemic corrupt conduct.

Would the construction recommended by the Committee have any implications for the audit methodology used on this occasion and your findings?

No, the audit methodology and the findings made were on the basis of using the ICAC’s statutory construction of the phrase. The ICAC advised the Inspector that it interprets the phrase as being a reference to “serious and/or systemic corrupt conduct”. The Inspector’s use of the ICAC’s statutory construction as a methodology for the audit was indicated in the first full paragraph of page 3 of the Audit Report.

Methodology

- 12. Please provide a copy of the draft terms of the audit plan (referred to on p. 4) and details of the audit methodology. What criteria were used to determine compliance with s12A?***

The Inspector does not believe that it is profitable to examine the draft terms of an audit plan; draft terms may be modified for various reasons including feedback from the Commission as to practicality and relevance. Nevertheless, the draft terms of the audit plan are attached at Annexure A. Details of the audit methodology are attached at Annexure B. The draft terms of the audit and the details of the audit methodology can be found on page 5 and 6 of the “Report of an audit of the ICAC’s compliance with section 12A of the ICAC Act 1988” produced by the Office of the Inspector of the ICAC.

- 13. The methodology of the audit provided that,***

The Inspector will provide a confidential preliminary report to the Commission at the conclusion of the audit including draft findings and recommendations.

This preliminary report was provided to ICAC in September 2006. Details of the draft audit report were included in the 2005-2006 Annual Report of the Inspector, which was tabled in Parliament in October 2006. ICAC first responded to the preliminary audit report on 23 November 2006.

- (a) Had the ICAC made a preliminary response, either formally or informally, to the draft audit report before the Inspector's Annual Report was tabled in Parliament?***

Yes, the Inspector had discussed the findings of the audit report with the Commissioner in a monthly meeting prior to the tabling of the Inspector's Annual Report.

- (b) What consultation occurred with the ICAC prior to the publication of details of the draft audit report in the Inspector's Annual Report for 2005-06?***

The ICAC was not consulted.

- (c) What factors did the Inspector take into consideration when deciding to publish details of the draft report, including draft key findings and draft recommendations, particularly in view of the methodological requirement to keep the preliminary report confidential?***

The decision to publish details of the draft Audit Report in the Inspector's Annual Report for 2005-06 was based on the fact that the audit showing an overwhelmingly positive result. The Inspector took the view that this finding should be shared publicly as early as possible in order to affirm public confidence in the ICAC's administration of its resources to achieve its statutory objective. This finding could now however, be provided without some context and therefore a summary of the findings overall were published in the Annual Report.

The concerns raised by the Inspector in the draft Audit Report were of a minor nature in comparison to the overall positive findings of the audit.

14. The audit methodology indicated that:

The Inspector will invite and consider comments and submissions from ICAC before completing a final report (p.6).

The Inspector and ICAC corresponded on the content of the Final Report from September 2006 until mid December 2006. The Audit Report was finalised "taking into account the ICAC's responses" (p.6).

- (a) What modifications were made to the report in response to the submissions from the ICAC?***

The modifications made concerned the number of complaints which raised concerns. In the draft report it was indicated to five, in the final report, this number was modified to four as the ICAC provided a satisfactory explanation with respect to one of the complaints.

(b) Were there any recommendations made by the ICAC for changes to the report that were not taken up by the Inspector?

Yes. The Inspector maintained concern over the use of s.19 as a referral power instead of s.53 and 54.

The Inspector also maintained concern in the final report about four out of the five complaints which had been identified as raising issues of concern in the draft audit report.

(c) The Final Report of the audit was not tabled until Thursday 28 June 2007. Were there any particular problems that contributed to the six-month period taken to finalise and publish the report?

Yes. There were staffing problems including turnover of professional staff hired to assist with, amongst other duties, the finalisation of the audit report. Ms Srivastava commenced maternity leave on 1 March 2007 and returned in late April 2007 on a part-time basis to assist with the finalisation of the Audit Report.

Scope

15. The scope of the project included, "Decisions to commence an investigation under the Act" (p.5). However, the Final Report states that the sample considered was "chosen at random from a larger group of complaints that the Commission had assessed as not warranting investigation" (p.6). Was the sample limited to allegations where ICAC refused to investigate, or did it include allegations where ICAC decided to commence an investigation?

The sample was limited to allegations where the ICAC refused to investigate, as it was felt that within the resources available, this approach would best highlight whether or not the objectives of s.12A were being achieved.

16. The scope of the audit included reviewing the "actions taken by the Corruption Prevention, Education and Research Division."

(a) In what way was it necessary to review the actions taken by the Corruption Prevention, Education and Research Division as part of the audit?

It was felt that review of the Corruption Prevention, Education and Research Division (CPER) would be effective in showing what, if any, educative action was being taken by the ICAC to support achievement of

the action of s.12A, particularly with encouraging public sector agencies and officials to:

- create a culture which prevented serious and corrupt conduct from occurring;
- effectively detect, and investigate any instances of serious and systemic corrupt conduct in accordance with s.12A.

(b) If so, what particular aspects of this Division's actions were reviewed and what did the review reveal?

CPER actions were not reviewed outside that of any comments which it made in respect of the sample of 215 complaints audited.

Samples of Complaints Audited

17. How was the sample size of 215 complaints decided and what methodology was used to select the sample?

The sample size of 215 complaints was decided on the basis of:

- a review of the total number of complaints received by the ICAC in the current reporting period which at the time the audit was due to commence was from 1 July 2005 to 30 April 2006;
- taking a strategic approach to the audit process in light of available resources, i.e. a full-time project officer available on secondment for 3 months to undertake the audit. It was decided on an assessment of the total number of complaints received by the ICAC in the most recent year prior to the audit that a sample of approximately 10% of all complaints should provide a sufficient 'snapshot' of the ICAC's compliance with s.12A of the ICAC Act.

The methodology used to select the sample was:

- reviewing the number of complaints dealt with by the ICAC for each classification between 1 July 2005 and 30 April 2006;
- hold discussions with the ICAC about complaints and the assessment process;
- identify where the bulk of the complaints were;
- to defer a formal review of complaints which were referred by the ICAC to another agency pursuant to s.53 and 54;
- to focus on those complaints which the ICAC determined as requiring no further action, or which it referred to another agency and determined as requiring no further follow-up.

18. Was the sample representative of the range of complaints that ICAC receives?

Yes.

19. How did ICAC assist in identifying a list of the files to be audited? What input, if any, did ICAC have in the decision of which files would be audited?

The ICAC assisted by providing numbers of complaints received across the different categories. The ICAC did not have any input into the decision as to which files would be audited.

20. The annual report states that “2% of the sample audited (a total of 5 complaints) involved the following other issues...” However, the Final Report states that “...four complaints audited exposed some issues with respect to achieving the objectives of s12A” (page 8). It appears that an additional complaint raising an issue was included in the draft but not the final report. Is this the case and, if so, what is the reason for this anomaly?

The reason for this difference was that the Inspector accepted the explanation given by the ICAC about the concerns raised in one of the files queried in the draft audit report.

21. The Assessment and Procedures Manual sets out the categories for the classification of complaints, including: s.10 complaints; protected disclosures, s.11 reports; information; outside jurisdiction; inquiry; intelligence reports; dissemination; own initiative (s.20 matters) and s.13 referrals (pp.7-8). The 215 complaints that were audited were classified as: outside jurisdiction (9.3%); information (9.3%); s.10 (34.9%); protected disclosure (23.3%); s.11 (23.3%) (p. 8).

(a) Why were some classifications omitted from the sample?

Firstly, it is noted that the reference to s.13 should be s.73. The classifications that were omitted from the sample were:

- **Enquiry**
A request for advice from the ICAC, by either a member of the public or a NSW public sector employee, about whether a particular situation might indicate corrupt conduct.
- **Intelligence report**
General intelligence information provided by government agencies.
- **Dissemination**
Information from government agencies, usually non-NSW agencies, such as the Australian Federal Police, the Australian

Crime Commission or the Commonwealth Ombudsman, about corrupt conduct that may be occurring.

- **s.20 (Own initiative)**
Matters initiated by the ICAC without an external complaint or referral. They may arise from other matters already being investigated or from media reports.
- **s.73 referrals (Referrals from Parliament)**
Matters referred to the ICAC by resolution of both Houses of the NSW Parliament (under section 73 of the ICAC Act).

The reason for these classifications being omitted was that a review of these classifications indicated that for the period between 1 July 2005 to 30 April 2006 the bulk of complaints assessed by the ICAC were in the following categories:

- Outside jurisdiction – over 8%
- Information – over 13%
- Section 10 – over 30%
- Protected Disclosure – over 10%
- Section 11 – over 20%

The above categories constituted approximately 92% of the total number of complaints assessed by the ICAC. In comparison, the classifications omitted individually constituted between 7% to 8% of complaints assessed by the ICAC and collectively constituted approximately 7% of the total number of complaints assessed by the ICAC. It therefore appeared to be appropriate to focus available resources and attention on complaints within these categories. In some of the classifications omitted, namely, intelligence reports, referrals from Parliament, own initiative (s.20) and dissemination, the ICAC advised it had no complaints in those categories.

(b) Why were some classifications omitted from the sample?

The classifications omitted were ones where there had been little to no complaints for the reporting periods being examined.

(c) Did the sample proportion reflect the proportion of each classification as part of the total number of matters handled by the ICAC?

Yes.

22. For an ICAC assessment report recommendation to be accepted it must be endorsed by at least two panel members (p.4).

(a) In the course of the audit did you check how frequently panel members diverge in their views on assessment recommendations and how often were recommendations accepted on the endorsement of only two panel members?

Yes.

(b) How often were alternative courses of action recommended by panel members?

None in the sample audited.

(c) If an assessment panel cannot reach consensus on a matter it is referred to the Commissioner for resolution. How often did this occur?

None in the sample audited.

23. Paragraph 5 of the Inspector's audit report states that the "215 complaints audited were chosen at random from a larger group of complaints that the Commission had assessed as not warranting investigation."

(a) Why was the audit limited to complaints that were not investigated, when the rationale behind the inclusion of section 12A in the ICAC Act is to ensure that ICAC limits its investigations of corrupt conduct to corrupt conduct that is serious and systemic?

The approach adopted was because auditing complaints the ICAC had decided not to investigate would be the best way to understand how the ICAC defined conduct considered not to be "serious and/or systemic" conduct and to assess any inconsistency in its approach. To audit complaints which the ICAC investigated would be to duplicate the ICAC's own internal review processes.

(b) Was consideration given to also including in the sample examples of complaints that led to an investigation?

Yes, but it was considered that this might not be the best use of available resources as there would be less probability of the non-compliance with the ICAC Act on this issue.

(c) Was there an assumption made that all of the complaints ICAC chose to investigate actually involved serious and systemic corruption?

No. It was assumed, however, that all complaints investigated by the ICAC potentially involved serious and systemic corrupt conduct, and that the investigation was subject to a high level of scrutiny by the ICAC's Investigation Management Group, which would have regularly checked the "serious and systemic" nature of the corrupt conduct alleged.

Results of the Audit

24. One of the issues of concern raised in the draft audit report, as detailed in the Inspector's Annual Report, was that,

The ICAC regards what would ordinarily be regarded as direct oral evidence as not constituting 'evidence'.

Would you please explain this issue further and why was it not included in the final audit report?

The ICAC's response to this statement was accepted by the Inspector, i.e. that the ICAC did accept direct oral evidence as evidence and that the example cited in the draft report by the Inspector was not part of its ordinary practice.

The final audit report was therefore modified to leave this comment out as it did not reflect on the ICAC's usual practice in respect of accepting oral evidence.

25. The recommendations contained in the draft report are broader and more numerous than those in the final report. Does this reflect a refinement of the audit findings arising from the consultation process with the ICAC? What other factors attributed to the change in findings between the preliminary and final audit reports?

Yes. The final audit report was based on taking into account comments made by the ICAC on the draft audit report.

26. Has ICAC indicated that it will implement the recommendation made on page 15 of the Final Report?

No, the ICAC has not indicated that it will implement the recommendation made on page 15 of the final audit report.

Report of an audit of the ICAC's compliance with sections 21, 22, 23, 35 and 54 of the ICAC Act 198

The Audit Plan and Process

27. The section of this Audit Report outlining the purpose of the audit states:

In the context of this audit, compliance with the laws of the state means compliance with the Act, other relevant laws, and the principles of natural justice and procedural fairness that apply in the circumstance. (p.4)

(a) Can you provide some elucidation for the Committee of the specific laws encompassed by the phrase 'other relevant laws' against which compliance was measured?

Ordinarily, the phrase "other relevant laws" means statutory or common laws. There were no other statutory or common laws against which compliance was measured in this audit as they were not relevant. The phrase was included in the terms of reference to allow an opportunity to measure compliance against any "other relevant laws" if required.

(b) What particular cases and judicial decisions, other guides, or statutory provisions are relied upon by the Inspector in elucidating the 'principles of natural justice and procedural fairness' against which compliance was measured?

There is no statutory requirement for the Inspector to be a lawyer; the Inspector understands that this was a policy decision reflecting a desire that the inspection function should be carried out practically and without a highly legally technical approach.

There is a large body of law and general principles relating to natural justice and procedural fairness that are applicable to administrative bodies, in various circumstances (often depending on quite precise details).

Accordingly it is neither appropriate, nor possible, to provide a specific answer to this question so far as it relates to the general law.

The audit took into account the following relevant documents:

- *The ICAC Operations Manual;*
- *Investigating complaints – A manual for investigators (2nd edition), NSW Ombudsman, June 2004.*

28. The scope of the audit included:

Identify and meet with selected persons or agencies that have been the subject of the ICAC's exercise of compulsory powers in order to identify the extent to which the ICAC has complied with the law in compelling co-operation. (p.5)

(a) How many 'selected persons' and how many agencies were contacted as part of the audit?

It was decided that it would not be useful to meet with any persons or agencies who/which had been subject to the ICAC's exercise of compulsory powers. Such persons or agencies would not be able to make useful observations on any substantive issues relevant to the issue of compliance with the law in the ICAC's exercise of its compulsory powers.

(b) To what extent were individuals and agencies the subject of ICAC's exercise of its compulsory powers in a position to make observations on compliance issues?

See answer to (a) above.

(c) What was the nature of the feedback they gave?

Not applicable. See answer to (a) above.

Sample of Files Attached

29. The Audit Report provides,

The notices and summonses inspected were contained in investigation files provided by the Commission to the Office of the Inspector." (p.6)

(a) Please explain the process by which the files to be audited were nominated

Files were audited on the basis of taking a percentage of files from the total number of compulsory powers exercised by the ICAC over the last three reporting periods. The files audited were selected on a random basis by the officer employed by the OIICAC who conducted the audit.

(b) Please explain why there was a difference between the number of files nominated for inspection, and the actual number inspected.

The ICAC was not able to locate all of its files.

30. Six percent of s.22 notices, and five percent of s.35 notices were included in the audit sample. (p.6) Does this sample size pose any limitations when drawing general conclusions from the audit about the ICAC's compliance with the law in relation to these compulsory powers?

The sample size in the two above mentioned categories were relatively small. However, the documents audited in relation to the two above categories, i.e.

- a s.22 Notice: by which to exercise a power to obtain documents; and
- a s.35 Notice: a power to summons witnesses and take evidence;

were of a procedural nature. It would not have assisted the objective of the audit, i.e. testing compliance with the ICAC Act, to audit a larger sample. Had there been any evidence of non-compliance or the nature of the documents themselves been contentious in any way a larger sample would have been audited.

31. Reference is made to "Procedure No. 6B – the 1999 Procedures" and "Procedure No.2 – the 2005 Procedures" (pp.6-7) as sections of the ICAC's Operations Manual that were relevant to the audit. Can you provide the Committee with a copy of these sections of the Manual?

It would be more appropriate for copies of these sections of the Manual to be obtained from the ICAC.

32. The audit report notes that both the 1999 and 2005 Procedures require ICAC officers to consider whether or not a coercive power needs to be exercised and that such powers should be used with restraint. Both Procedures also require that the reason for the exercise of a formal power as well as the actual exercise of that power be soundly based and recorded (p.7). To what extent did the audit involve examining the circumstances surrounding the exercise of ICAC's compulsory powers in each instance, and the reasoning behind the decision to use the power, or was the nature of the audit more of a checklist type of exercise to ascertain that the requisite record keeping had been undertaken by the ICAC?

The audit involved examining documentation which provided a justification for the exercise of the powers, such as Minutes attached to Notices submitted to senior management for approval. This enabled the Inspector to assess whether or not any consideration had been given by the ICAC to factors such as natural justice and to pursuing alternative options to the exercise of coercive powers.

33. At p.8 the audit report notes,

Minutes and other documentation attached to the notices and summonses audited showed that the ICAC had considered issues of natural justice and procedural fairness and complied with the law as far as these legal considerations were concerned.

(a) Is the ICAC's consideration of natural justice and procedural fairness issues at this point the only indicator available of the ICAC's observance of these common law principles in respect to the exercise of its powers?

Yes.

(b) How do ICAC officers evaluate procedural fairness and natural justice questions when deciding to exercise a compulsory power – what does this process usually involve?

A written assessment of these issues and other relevant considerations is submitted to senior management for review in a Minute attached to a draft Notice.

(c) Did the auditor have certain criteria against ICAC's consideration of these issues was measured?

General legal principles relevant to procedural fairness and natural justice were applied to assess the ICAC's compliance on this issue.

34. You have indicated that it was not possible to examine the records concerning the ICAC's exercise of compulsory powers due to the distribution of documents across various management systems following a database upgrade in 2004. Is this a factor that may pose difficulties in future audits by the Inspector of the type undertaken in relation to ICAC's use of its compulsory powers?

This is an administrative issue which would be more appropriately answered by the ICAC.