



14 March 2016

MEDIA RELEASE

Publication of material relating to Operation Hale presented to the Committee on the Independent Commission Against Corruption (ICAC) by the ICAC Commissioner

The ICAC Committee has received advice from the NSW Crown Solicitor concerning material relating to Operation Hale, presented by the ICAC Commissioner at the Committee's public hearing on 11 February 2016, including audio of telephone intercept material disseminated to the ICAC by the Australian Crime Commission.

The Crown Solicitor has advised that the Committee's disclosure or publication of evidence is limited by the extent of its jurisdiction under the *Independent Commission Against Corruption Act 1988* (ICAC Act). The Crown Solicitor disagrees with the position put by the ICAC Commissioner that the Committee can use the telephone intercept material to assess the reasonableness of the findings and recommendations made by the Inspector in his report regarding Operation Hale, provided that the Committee does not otherwise engage in an investigation or reconsideration of matters prohibited by section 64(2) of the ICAC Act.

The Crown Solicitor considers that to assess whether the Inspector's findings were erroneous or unreasonable, the Committee would have to reconsider the reasonableness or the merits of ICAC's conduct: the very exercise that section 64(2) was intended to prevent.

In addition, the Inspector did not have the audio of the telephone intercept material before him in making the findings and recommendations contained in his report. In these circumstances, the Crown Solicitor is of the view that the proposed use of the telephone intercept material by the Committee would involve the Committee in its own reconsideration or investigation of a matter relating to particular conduct, which is prohibited by section 64(2).

The Crown Solicitor has also advised that the Committee cannot disclose the material. The Committee's power to disclose or publish evidence that relates to a secret or confidential matter must be considered in light of the scope of its functions as prescribed by section 64 of the ICAC Act. This discretionary power is incidental to, and must be exercised in support of the Committee's statutory functions, which are subject to the limitations found in section 64(2). It follows that it is not open to the Committee to use its discretion to disclose or publish the telephone intercept material under section 70(5) of the ICAC Act in circumstances where section 64(2) prohibits using the telephone intercept material in the Committee's own substantive deliberations.

As a result of the Crown Solicitor's advice, the Committee will not be disclosing or publishing the material presented by the ICAC Commissioner. For media comment, please contact Mr Damien Tudehope MP on (02) 9877 0266.