

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**INQUIRY INTO REVIEW OF THE 2008-2009 ANNUAL REPORT OF
THE INSPECTOR OF THE INDEPENDENT COMMISSION AGAINST
CORRUPTION**

At Sydney on 27 August 2010

The Committee met at 12.35 p.m.

PRESENT

Mr R. S. Amery (Chair)

Legislative Council

The Hon. G. J. Donnelly
The Hon. T. J. Khan
Reverend the Hon. F. J. Nile

Legislative Assembly

Mr V. M. Dominello
Mr N. Khoshaba
Mr J. R. O'Dea
Mr P. R. Pearce
Mr G. J. West

CHAIR: The Committee welcomes the Inspector of the Independent Commission Against Corruption, who is present to give evidence relating to the Inspector's annual report 2008-09. In conveying the thanks of the Committee for the Inspector attending, I mention it was a pleasure to meet you not long ago. I intend to keep the promise that the Committee will visit your Redfern facilities in the not-too-distant future. The Committee has received a submission from the Office of the Inspector in response to a number of questions on notice relating to the annual report. Inspector, do you wish to have that submission form part of the evidence given today?

Mr COOPER: Yes, please.

HARVEY LESLIE COOPER, Inspector, Office of the Inspector of the Independent Commission Against Corruption, Suite 702, Tower 1, Lawson Square, Redfern, 2016, sworn and examined:

CHAIR: Would you like to make an opening statement before the commencement of questions?

Mr COOPER: Not so much an opening statement, but an appreciation of some guidance. In my annual report I refer to complaints I have received, indicated various categories, and gave one or two examples of each. That was a departure from the practice of the prior Inspector, who included a summary of all of the complaints received. I would appreciate some guidance as to whether my abbreviated form is satisfactory.

On the question of reports of audits, I was wondering whether, when I have done an audit and I find nothing untoward, I should give a report in relation to that, or should I include a reference to that within the annual report? It does not matter to me. I am quite happy to do anything, but I would like to abide by the guidance of the Committee.

CHAIR: In relation to that, I will have those points discussed at an indicative meeting next week. I will make an observation based on the Commissioner's and the executive's former submission to the Committee. Issues in relation to the amount of time and effort put into a lot of cases and the complaints lodged is very important. The Commission is making a submission for increased resources, increased funding, et cetera. We will discuss them in more detail at a meeting of the Committee and I will respond to you in writing on that particular point.

Mr COOPER: Thank you very much. Otherwise, I have nothing further to add.

CHAIR: I will commence questions by indicating that the Office of the Inspector's website now provides for online lodgement of complaints. Has the new format of receiving complaints resulted in a change in the number of complaints received? The Committee would be interested to see the online complaints included in the annual report statistics on the method of receipt of those complaints. Has that new format changed the volume and the type of complaint you have received?

Mr COOPER: From what I can see, no. It has made no difference whatsoever. I think I am correct: I do not think we have had one online complaint; otherwise, the complaints come by email or letter or phone call or fax.

CHAIR: You have sought an amendment to the Commonwealth Telecommunications (Interceptions and Access) Act to enable you to audit the appropriateness of the ICAC's applications for, and use of, warrants granted under the Act. You state that as a result of this particular situation, you will continue to be prevented from performing your role of auditing and monitoring the Commission's use of its power to obtain telecommunications interception warrants. Do you have any further comments in relation to this particular matter? The issue with State authorities and dealing with the Federal Telecommunications (Interception and Access) Act has been an issue with a number of agencies.

Mr COOPER: Yes. In my letter to the Committee of 29 July, I referred to the fact that last January the Australian Government Attorney-General's Department wrote to us and said that they are not going to make the amendments I sought because they regard access to the information, purely for the purpose of an audit as distinct from a targeted investigation, as something that they do not want. I have quoted the relevant passage in my letter.

Reverend the Hon. FRED NILE: In regard to your power to publish reports, what progress has been made? You note that you have two options: that you be given a general discretion to publish to anyone, or that the Inspector, in his discretion, provide a report about a complaint to Parliament with a recommendation that the

report be made public forthwith. It has been considered by the Premier and Cabinet. Have you had any reports of progress on steps that have been taken?

Mr COOPER: I received a request for our views on those matters and I sent an email to the Committee quite recently, on 24 August. I will deal with the specific questions I have been asked. The first one was: What is my practice in respect of the publication of reports relating to my functions under section 57B? I have stated that when performing an audit under section 57A, I have looked to see you whether there is any conduct amounting to maladministration under clause (c) and whether the procedures are effective and appropriate in accordance with paragraph (d) of section 57A (1). The findings of the audit include within it a special report to the Parliament in accordance with section 77A.

When I am dealing with a complaint that is a specific complaint against an ICAC officer, my practice has been to make a report to the parties concerned. Obviously one party concerned is the Commissioner. Then the other party, who is the person against whom the allegations are made, is entitled to know what I feel. In this regard the Commissioner has raised the point that I must be careful not to give any information to a layperson which could prejudice investigations or procedures of the Commission. I agree entirely with that and indeed I think the Commissioner, in his statement to you a little while ago, covered that very point. We are, at the moment, working on probably an amendment to the memorandum of understanding so that in my report to him—that is my report to the individual layperson—I would not say anything that would affect the workings of the Commission.

Now, with regard to reporting provisions, so far in my little over 12 months or 18 months I have not encountered any particular problems. There are, however, always the potential for problems. Here again I think it is important to divide this question of reporting into two separate categories. First of all, there is the question of the subject matter of the report: on what matters am I authorised to report? When you look at the Act it appears that the reports occur only in paragraphs (b) and (c) of section 57B (1) where I can deal with certain matters by report. When you go to look at how I can report, the only other point where the word "report" is used is in relation to a special report under section 77A.

I construed those to mean that in the course of an audit I can make findings as to whether there is any conduct amounting to maladministration, whether the procedures are effective and appropriate—that is the Commission's procedures are—and to include those within the special report. But a contrary view is arguable that I do not have that power and to put the matter beyond doubt, I would suggest an amendment similar to recommendation 17 that the Act be amended to make express provision for the Inspector to report to Parliament as he considers necessary on any abuse of power, impropriety, maladministration and other forms of misconduct on the part of the ICAC or its officers, regardless of whether or not those matters arise from the making of a complaint to the Inspector.

Now the second consideration is to whom the report should be made and at the moment the only mention of a report is under section 77A to the Parliament. But that creates a problem when you are dealing with an allegation of misconduct on the part of an individual officer; for example, if it were alleged that an officer had punched someone in the course of performing a search—an unlawful assault. Here again, if I were to make a finding on the part of an officer which was of a very serious nature or involved some systemic matter—not just a mere assault of one on one—then in my view the appropriate procedure is you use section 77A.

If, however, the finding of misconduct was nowhere near that serious, then it is unreasonable, in my view, to make a special report which becomes public to everybody. The appropriate course then would be to report my findings to the Commissioner and to the officer concerned, but here again do I have power to give a report or publish a report to a mere officer? That is where a problem arises and it is not just that. If I were to make an adverse finding against that officer, I would be obliged out of procedural fairness to give him a draft of my report and invite his comment. So, it is for that reason that I think the Inspector should be given a general discretion to publish a report to the Commission and the person against whom the complaint has been made.

Initially I felt that we should also have the power to report to anyone. The Commissioner has drawn to my attention his problems with that and I have a lot of sympathy with his particular point of view. I note that the Commissioner submitted that the Inspector should be empowered to publish not only his report but, should he decide to do so, part of his report to the complainant. The Inspector will then be able to sanitise his report when publishing it to the complainant.

The Commissioner also advised me that he agrees with me that the Act be amended in the way proposed and that he and I will enter into a memorandum of understanding under which I will agree not to publish to a complainant the Commission's operational methods, source of information, names of witnesses and like information. I agree with that and indeed that has been my practice since I became Inspector. I have always been very careful to observe that. Sorry to go on for so long.

Mr PAUL PEARCE: In relation to the publishing of the report to the Commissioner or for basic procedural fairness to the person against whom the complaint has been made, that would be as well as publishing the report to Parliament, I would assume?

Mr COOPER: Well no. I try to distinguish two classes of situation. If I were dealing with a case of serious misconduct which involved an endemic problem; for example, if it came to my notice that Commission officers going out to search, habitually slap people across the face, that would be the type of report that I feel should be made public. It is a very serious endemic, systemic matter, but if it were just one isolated action of an officer, then at the moment I would not regard that as worthy of general publication but, rather, to be dealt with between the Commissioner and his employee.

Mr PAUL PEARCE: As I understand the role of the Inspector, the Inspector's role relative to the ICAC is acting on behalf of the Parliament and the oversight committee. How does that sit if you then move over to the other side, where you are dealing with the Commissioner rather than necessarily the committee or Parliament?

Mr COOPER: I think both are important.

Mr PAUL PEARCE: I can understand the practical nature of what you are suggesting in relation to one-off incidents. What I am concerned about is that if there is an amendment moved to the Act which moves that around, does that not then change the nature of your relationship to the Commissioner and change the nature of your relationship to the Committee and to the Parliament?

Mr COOPER: I do not know that it changes the relationship. The relationship is constant. What is done within that relationship varies in accordance with the circumstances of the individual case. That is the way I see it.

Reverend the Hon. FRED NILE: To clarify that, if there was an amendment, it should be worded in such a way that the Inspector has a discretion in the reporting process whether he reports to the Parliament and/or to the individual. It should somehow be worded to give you the discretion to make that decision based on the seriousness of the matter.

Mr COOPER: Yes, that is right.

CHAIR: Yours must be one of the few organisations that have had a substantial reduction in their expenses. You have gone from about \$454,000-odd to \$300,000. Has that saving in those two financial years come about because of the reduction in staff?

Mr COOPER: Yes, it came about because of the reduction in staff. In fairness, I think I was bragging perhaps a little too much in that letter. In previous years the Office of the Inspector was kept flat out basically with the Breen investigation, which was a massive investigation. Once that was out of the way and once the executive officer took leave, Ms Cannon and I found that we could run things ourselves. But if we get another massive investigation clearly we will have to get in extra help. It is as simple as that.

Reverend the Hon. FRED NILE: You have the power to do that. You have the power to co-opt additional staff within your budget.

Mr COOPER: I have the power to do it but it is a question of getting the money to do it. I can do it but I would have to make submissions to the office and the Department of Premier and Cabinet and say, "Please, can I have the money?"

CHAIR: Are you now satisfied with the facilities at Redfern and the accommodation you have there?

Mr COOPER: It is working well at the moment. I do not see any need to change it in the immediate future. If something else crops up, sure, I would be happy to look at it.

CHAIR: We have a number of questions on notice and we ask for your response to those. We will respond to your question on clarification of the content of your annual report when we meet next week. We will be in touch with your office to organise a visit to your premises and hopefully have a morning there similar to what we did with the Independent Commission Against Corruption. Thank you for appearing before the Committee.

(The witness withdrew)
(The Committee adjourned at 12.47 p.m.)