

**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE INDEPENDENT COMMISSION**  
**AGAINST CORRUPTION**

**REVIEW OF THE 2011-2012 ANNUAL REPORT OF THE INSPECTOR**  
**OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Friday 21 June 2013**

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**The Committee met at 10.15 a.m.**

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**PRESENT**

Mr M. R. Speakman (Chair)

**Legislative Council**

The Hon. N. Blair  
Reverend the Hon. F. J. Nile  
The Hon. L. Voltz

**Legislative Assembly**

The Hon. R. S. Amery  
Mr M. J. Coure  
Mr A. R. Gee (Deputy Chair)  
The Hon. T. George  
Ms T. Mihailuk  
The Hon. N. Rees

**HARVEY LESLIE COOPER**, Inspector, Office of the Inspector of the Independent Commission Against Corruption, sworn and examined, and

**SEEMA SRIVASTAVA**, Executive Officer, Office of the Independent Commission Against Corruption, affirmed and examined:

**CHAIR:** I declare open the Committee on the Independent Commission Against Corruption public hearing. It is a function of the Committee on the Independent Commission Against Corruption to examine each annual and other report of the Commission and the Inspector of the Independent Commission Against Corruption and report to both Houses of Parliament in accordance with section 64 (1) (c) of the Independent Commission Against Corruption Act 1988. The Committee welcomes the Inspector of the Independent Commission Against Corruption to the table for the purpose of giving evidence on matters relating to the Inspector's annual report for 2011-12. Inspector, I convey the thanks of the Committee for your appearance today. I understand that this will be your final visit to Parliament in your capacity as the Inspector of the Independent Commission Against Corruption.

I understand that you appear today in your capacity as the Inspector of the Independent Commission Against Corruption?

**Mr COOPER:** Correct.

**CHAIR:** In what capacity do you appear before the Committee today?

**Ms SRIVASTAVA:** As the executive officer.

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

**Mr COOPER:** As you have mentioned, this is my final appearance as the Inspector. I would like to place on record my appreciation for the cooperation I have had during the past almost five years from the Committee and from the Commission itself and its officers. It has made my job a lot easier and I hope has resulted in a much smoother, prompt administration of the office. Otherwise, I have nothing further to add.

**CHAIR:** Do you have any advice for your successor, whoever that might be?

**Mr COOPER:** Yes. My advice is to appreciate that the Office of the Inspector and the Office of the Commissioner are not in opposition to each other but to work together for a common goal, namely the goals as set out in the early sections of the Independent Commission Against Corruption Act. That is my main advice. That means that you do not try to second-guess what a person has said; you do not openly criticise publicly, unless it is necessary, what the Commission says; and you deal with it, pointing out to the Commission in a proper way, respectful of the office, what has to be done if you disagree with something. That is my main advice.

**Mr ANDREW GEE:** Given that your term is expiring, do you have any views or suggestions as to how the roles or functions of the office could be improved?

**Mr COOPER:** This may sound rather strange but no. I think the system has worked. It has worked primarily because I have been fortunate in that the two Commissioners I have had to deal with have been people who have sat down, listened to what has been said, and generally have been prepared to discuss matters, and they have operated very efficiently and very well. My main problem has been perhaps with understanding the definition of "corruption" in the Act, but that is probably due to deficiencies in my intellectual capacities. I certainly do not have views sufficiently strong to make any suggestions for alterations.

**Mr MARK COURE:** Thank you for your years of service. Has the considerable activity of the Independent Commission Against Corruption impacted on any other aspect of your work?

**Mr COOPER:** No, it has not, really. When I have audits, because of the extra work that the Independent Commission Against Corruption has done, it has meant that an auditor has had to look at more activity, but it has not increased the rate of complaints made to me. In fact, probably over the last 12 months the

rate of complaints has dropped somewhat from the previous years. So the actual workload has not materially altered.

**Mr MARK COURE:** In addition to that, how many complaints—I do not have the report in front of me; I did read it—did you have over the past 12 months?

**Mr COOPER:** During 2011-12 there were 32 complaints considered. That was down from 42 in 2010-11, and in 2009-10 it was 40. I think the current year to date we are round about 28 to 30. I do not have the precise figure.

**Mr THOMAS GEORGE :** Thank you for your years of service. I do not have any questions.

**The Hon. LYNDIA VOLTZ:** You relocated from Redfern into the city. Are you co-located with the Independent Commission Against Corruption or is it in separate premises?

**Mr COOPER:** We happen to be next door but they are totally separate.

**Ms SRIVASTAVA:** We are next door to the Police Integrity Commission, not the Independent Commission Against Corruption.

**Mr COOPER:** I beg your pardon. We are not co-located with the Independent Commission Against Corruption. The Independent Commission Against Corruption is in the Imperial Arcade building in Castlereagh Street. We are down at No. 4-6 Bligh Street.

**The Hon. LYNDIA VOLTZ:** So it was not a move that was predicated on co-location.

**Mr COOPER:** No. The move was predicated on saving the State money. Instead of paying rent out at Redfern, we are in a building that was owned by the State.

**The Hon. LYNDIA VOLTZ:** So you will go back to now having to pay rent.

**Mr COOPER:** I do not know. All I know is that on the monthly accounts we get from the Department of Premier and Cabinet since we moved there has been no mention made of rent and we are keeping our fingers crossed.

**Mr RICHARD AMERY:** First, I wish you all the best. Even in my time as chair of this Committee, I found the relationship between you and the Committee and the members very cooperative. I think we learned a lot from our association and our visits to your previous premises. It is not within the time frame of this review that the April 2013 audit report is commented on, but I found it a very informative document. I thank you and the office of the Inspector for that.

**Mr COOPER:** Incidentally, there is another one I just presented yesterday.

**Mr RICHARD AMERY:** They are coming quicker than I thought. You made a point that the number of complaints had reduced despite the well-publicised increased activity down at the ICAC. Some of my parliamentary colleagues might find my interest in the website hits to be quite novel, but you will notice on page 15 it talks about the number of people—I assume they are members of the public and other interested bodies—making inquiries of the Inspector's office through the website. Generally speaking, they are less than about 1,000 a month. However, there is a spike in May and June of 2012 of 14,608 in May and 7,208 in June.

So over two months the number of hits dramatically increased. Was that in relation to a lot of people appearing before the Commission? Is there any explanation as to why there was such a bounce in the activity? In relation to the complaints that are listed, is there any indication that the complaints to the Inspector are from the people who are being brought before the Commission for corruption allegations and so on, or are they employee-related complaints in relation to employees of the Commission disgruntled, if you like, or not disgruntled? Basically, what is the source of those complaints?

**Mr COOPER:** Dealing first with the hits, I must confess we were just as surprised about the spike in May and June as anybody else would be, and we have no way of knowing the cause of it. All we could say was during those months we were engaged in a major update of our website and that would have had some effect.

But whether it had a major effect, demonstrated by the figures, I honestly do not know. Dealing with the type of complaints we have had, people who have had dealings with the Commission, because they or their associates are being investigated, have formed a very, very small proportion of the complaints we get. They have probably amounted to perhaps one, two, maybe three a year. The vast majority of the complaints have come from people who had lodged a complaint with the Commission, the Commission has said we are not going to investigate it because there is just no evidence of corruption. A lot of those relate to people who have been dissatisfied with decisions of local government bodies.

**Mr RICHARD AMERY:** Understandable.

**Mr COOPER:** It is purely my guess—I have no factual or evidentiary reason for saying this—but after the local government elections last year the number of complaints regarding local government bodies dropped. That may be a case of coincidence; it may not. But I am just saying it is a fact.

**Mr NATHAN REES:** Firstly, congratulations on your period of work and best of luck for what may lie ahead for you, and thank you to the organisation for the work you do. In terms of reputational risk for the Independent Commission Against Corruption, what do you see on the horizon, if anything?

**Mr COOPER:** It depends on what is going on in a given period of time.

**Mr NATHAN REES:** Let me crystallise it for you. We have had any number of people dragged through the Independent Commission Against Corruption over the last 12 months. Their presence there diminishes their public reputation, whether they are guilty of anything or not. The community now expects particular findings around individuals. What happens if those findings do not emerge, or the individuals who have been front and centre of these inquiries are not charged?

**Mr COOPER:** As Mr Amery knows, I belong to a bowling club and over the course of afternoon tea at the bowling club this type of question is raised with me. I get people who say, "This is just a sham; those people won't be charged." When you explain to them, "They don't have to be charged, that is not ICAC's function; the Commission's function is to determine the facts and then it is up to other people to decide whether there is the evidence", they understand. They also understand that the Independent Commission Against Corruption can make findings on evidence that would not be admissible at a criminal trial. I think generally the reputational effect on the Independent Commission Against Corruption would not be so bad—if at all bad—because really the Commission tries to make it clear that it is just an investigatory body and it is there to disclose corruption, not to punish corruption.

I also get some complainants saying, "Well, ICAC wouldn't look at my complaints; they said there is no evidence of corruption" and "All that ICAC is interested in is the big names, not the events involving local councils and their misuse of their powers." That sort of thing I suppose does affect reputation, but I think we just have to look at the overall situation rather than the small, and realise that any government body or local government body that has to make decisions is going to be subject to criticism, and one can only hope that with proper education the criticism will be valid and balanced. That is the best answer I can really give.

**Ms TANIA MIHAILUK:** I do not have any questions, but I wish you the best in retirement. Congratulations on your efforts throughout the years.

**Mr COOPER:** Thank you.

**The Hon. NIAL BLAIR:** Congratulations on the work that you have done and all the best for the future. I am curious about the transitional arrangements that the office has put in place to ensure that there is a smooth transition to the next Inspector. Are there any particular arrangements to ensure that there is a smooth transition?

**Mr COOPER:** I would hope that the announcement of my successor will be made before 30 September. I would hope I will be able to get together with that person in the office and explain what is going on. The staff, which consists of Ms Srivastava as well as Felicity Cannon, will be continuing. Between the three of us, we should be able to achieve a reasonable transition to the next phase.

**Reverend the Hon. FRED NILE:** I add my thanks for your service as Inspector.

**Mr COOPER:** Thank you.

**Reverend the Hon. FRED NILE:** I note that under the memorandum of understanding you are to meet periodically with the Commissioner, at least once a month. How often did you meet with him in the last 12 months?

**Mr COOPER:** I am afraid that has been more honoured in the breach than the observance—not because of the Commissioner's fault or my fault, but the Commissioner since last November has been rather busy; he has been sitting every day and I have not felt that it was appropriate that I should say, "Give up doing the job you are doing and come and meet me." We have been able to communicate on the telephone or by email satisfactorily to meet all the necessary needs as they have arisen from time to time, but there has not been a formal meeting once a month because of that fact. I did have a formal meeting with him about three or four weeks ago, but that was the first one since about last November.

**Reverend the Hon. FRED NILE:** It is one or two meetings a year then.

**Mr COOPER:** It has worked out this year that way because of what I hope will be unusual demands upon the Commissioner's time.

**Reverend the Hon. FRED NILE:** One could argue, because of the Commissioner's heavy load and the very serious cases he is investigating, there is perhaps more need for you to keep in touch with him.

**Mr COOPER:** Yes, well, we have been in touch, but not had actual meetings, face-to-face meetings.

**CHAIR:** Leaving aside the Telecommunications (Interception and Access) Act that is referred to in your report and the evidence you gave a little while ago about your uncertainty about the definition of corrupt conduct, are there any areas in the Act that you think need reforming—

**Mr COOPER:** No.

**CHAIR:** —or any legislation that is relevant to your functions?

**Mr COOPER:** There was an amendment made to the Act on 25 May I think. It really authorised a number of agencies, including the Independent Commission Against Corruption and the Inspectorate, to vet candidates for employment. There was an overall provision that said, in effect, if the actions of those agencies in vetting prior to the amendments complied with the terms of these amendments, they are valid. I felt that was rather dangerous in that there might have been some failure to give some notice required under the new amendment and I felt it would probably be safer to just say that what they did beforehand, provided it was bona fide, for the purpose of vetting staff would be enough. I put that up to the State solicitor, but they disagreed with me and said that is okay, it is quite alright. I just felt I was under a duty to point out that there was a potential there for the State to be sued. If they do not agree with me, fair enough; I have done my duty and have told them, and that is the end of that chapter as far as I am concerned. I think I sent a letter to you, Mr Chairman, setting out those problems that I thought I had.

**CHAIR:** We do not think we have received that letter; would you mind sending it again?

**Mr COOPER:** Certainly.

**The Hon. LYNDIA VOLTZ:** What was the cost of the move from Redfern to Sydney, do you know?

**Ms SRIVASTAVA:** Mr Cooper has asked me to answer that question. We actually did not get a costing for that because the costing was absorbed by the Department of Premier and Cabinet. They footed the bill for everything, and we used all our own current furniture, so there was no cost allocated in the next month's transactions listing to us for that at all.

**The Hon. LYNDIA VOLTZ:** Is it possible to take that as a question on notice?

**Ms SRIVASTAVA:** Yes, I can do that and find out for you.

**Mr RICHARD AMERY:** You mentioned the number of complaints and broke up the type of complaints that you receive. Quite a lot of those complaints were from people who had put in a corruption allegation to the Independent Commission Against Corruption, which had resolved not to investigate, and those people then came to you and complained about the Commission's decision. In the period that we are now assessing, were any of those complaints upheld in that you went back to the Independent Commission Against Corruption and said that the complainant was justified in being disappointed with the Independent Commission Against Corruption decision not to investigate? The second part of the question is, and I hope this is hypothetical: Should that be the case and you were to find that the complaint was justified, would you have the authority to direct the Independent Commission Against Corruption to carry out the investigation that it had previously rejected?

**Mr COOPER:** The answer to the first question is no, there were none in which I felt that there should have been further investigation because there was just no evidence of corruption. Basically, the fault lay with inadequate supervision and education of the staff of the local government authority. My powers to direct the Commission to do something just do not exist. My power is only to make a recommendation. There was no case in the year under review that I did make such a recommendation; however, I have in the past and I must say that in every case where I have made a recommendation it has been acted upon.

**Mr NATHAN REES:** Are you comfortable with the approach of the Independent Commission Against Corruption with regard to the balance between public and private hearings?

**Mr COOPER:** I must confess that I have not studied that as a matter to examine closely, but I have conducted audits of the exercise of compulsory powers and one of the compulsory powers under section 35 is to call up for a compulsory conference. In the cases I have looked at, I felt they had been clearly justified. They, of course, are held in private. Were you referring to public examinations?

**Mr NATHAN REES:** Public and private. I will cut to the chase, and if people think that I am conflicted here, let me know and I will leave. I have been down there four times in the last 12 months—two privately and two publicly—to be asked precisely the same questions every time, even though I am a witness for the prosecution, so to speak. It is an unedifying exercise going through a media scrum each time, and your name is attached to a negative inquiry throughout. The clear impression I get is that it is an exercise in public relations rather than fact finding. I get asked the same questions each time. Do you have a view on that, or are we happy to have members of the public dragged through this exercise that may or may not result in charges, let alone a conviction?

**Mr COOPER:** I suppose it depends on how you frame it. You can frame it as members of the public being dragged through this exercise, or you can frame it as members of the public assisting a statutory authority to perform its statutory function and thereby disclose potential corruption on the part of the targets.

**Mr NATHAN REES:** My question is about the balance between public and private hearings, not whether someone should or should not go—no-one has an issue with that—but whether individuals, in the course of a case that has a high public profile, are required to attend public hearings for purposes other than, frankly, providing material which they have already provided.

**Mr COOPER:** I really cannot answer that question. It is a matter that really goes to the whole philosophy embodied in the Act itself. That is the Act prepared by Parliament and the Independent Commission Against Corruption is using that Act. I can understand why it is necessary to give evidence at a compulsory examination in private and then later to have that examination revealed to the public at large. Whether the scrum of media is appropriate or not is another matter. I can understand your concern but I can also see that it is really fulfilling the philosophy embodied in the Act itself. I cannot give you any further answer than that.

**Reverend the Hon. FRED NILE:** Following up Mr Rees' question, should there be some arrangement whereby witnesses could enter the Independent Commission Against Corruption by vehicle to an underground car park and then enter the courtroom for questioning without having to go through this media scrum at the front of the building? It is almost physical harassment.

**Mr COOPER:** That is a possibility. That is a matter for discussion with the Commissioner. The function of the Inspector is to determine whether the Commission in what it has done or not done has committed misconduct, as defined in the Act. I would not necessarily regard the absence of an underground approach or a backdoor approach to the hearing room as a matter of misconduct.

**CHAIR:** Any there any final questions? If not, thank you very much for giving evidence today and for your service to the State. The Committee resolved in a deliberative meeting before we commenced our public hearing that we would ask witnesses to respond to any questions on notice within two weeks. Is that satisfactory?

**Ms SRIVASTAVA:** Yes, that is fine.

**(The witnesses withdrew)**

**(The Committee adjourned at 10.46 a.m.)**