

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION

REVIEW OF THE 2009-2010 AND 2010-2011 ANNUAL REPORTS OF
THE INSPECTOR OF THE INDEPENDENT COMMISSION AGAINST
CORRUPTION

At Sydney on 17 February 2012

The Committee met at 9.45 a.m.

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

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

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

CHAIR: It is the function of the Committee on the Independent Commission Against Corruption to examine each annual and other reports of the Commission and of the Inspector of the Independent Commission Against Corruption, and to report to both Houses of Parliament, in accordance with section 64 (1) (c) of the Independent Commission Against Corruption Act 1988. This morning the Committee welcomes the Inspector of the Independent Commission Against Corruption for the purpose of giving evidence on matters relating to the Inspector's annual reports for 2009-2010 and 2010-2011. I convey the thanks of the Committee to you for your appearance today. Would you like to make an opening statement before the commencement of questions?

Mr COOPER: Not so much an opening statement but clarification of an answer I gave on notice in the letter dated in January. I was asked the question:

The ICAC's investigative workload has increased substantially during the previous two reporting periods. What impact has this had on the Inspector's work?

I responded, "Thus far I have detected no such impact," and pointed out that the number of complaints was pretty well static. However, after that I got working on an audit of compulsory powers of the ICAC and I found that during the six-month period the number of uses they had made of these compulsory powers had almost doubled since the last time I did an audit of the exercise of those powers some two years beforehand. So, to that extent, yes, it has impacted because it meant more work for me in the audit. Apart from that there has been no other real impact so far.

CHAIR: Do you have copies of your 2009-2010 and 2010-2011 reports with you?

Mr COOPER: Yes.

CHAIR: Could I ask you to turn to page 7 of your 2010-2011 report, section 7.3, Budget and Finance. Am I correct in understanding that for the previous two financial years you significantly underspent your budget?

Mr COOPER: Yes.

CHAIR: Why is that?

Mr COOPER: We do not have a budget in the sense of an allocation by the Government or the Parliament to us. There is not a set appropriation. We come under, for administrative purposes, the Department of Premier and Cabinet and they have a notional amount which they notionally allocate to us. That notional amount for that year was \$600,000. If I recall correctly, we had Ms Srivastava on leave for a major part of that year so consequently the costs were down during that year.

CHAIR: What notional amount has been allocated to your office for 2011-2012?

Mr COOPER: We have not had any written allocation as yet but we have been told it will be the same as last year.

CHAIR: Do you expect your total expenditure to be roughly in line with the last two years?

Mr COOPER: It will be slightly greater but I think it will be within the notional budget.

Mr ANDREW GEE: I have a question to ask the Inspector. One of the aims stated in the 2010-2011 report was to improve the timeliness of your investigations and I notice that in the answers to the questions you have referred to the centralisation of the complaints handling system. Page 31 of the 2010-2011 report outlines the statistics with respect to completion of investigations. I was wondering how you are going with your goal of improving the timeliness of your investigations. Beyond the centralisation of handling of complaints are there any other steps that you have been taking to improve the timeliness of those investigations?

Mr COOPER: No, because I think that we have done everything that we can within the office. It does not mean that things will necessarily speed up during the current year or future years; it depends on the nature of the complaints we get. For example, recently, in the last few weeks, I received one complaint which involves investigating conduct over a period of 10 years. The documents are in boxes—there are some 18 or 19 folders in all. That is going to take some time; that will not be done in a couple of weeks. Another one we have similarly involves going into events over a period of time—in this case about 18 months—and this takes time. In other words, the time that is taken is not based on a pure numerical amount; it is what is involved in each individual investigation or complaint.

Mr ANDREW GEE: A related issue perhaps: In the same area of your 2010-2011 report you mention that a considerable number of matters investigated over 2010-2011 have required detailed computer forensic analysis. The report states that a review was conducted of the computer forensic analysis capability and a business case was provided and then an upgrade was approved. What is the status of the upgrade and has it made a difference to—

Mr COOPER: Sorry, where is this?

Mr ANDREW GEE: On page 31 of the report.

Mr COOPER: I am sorry, my copy of the 2010-11 report only goes up to page 21.

Mr ANDREW GEE: I am sorry; I was looking at the annual report of the Commission.

Mr COOPER: Of the Commission? What the Commission is doing is not within my jurisdiction. I am aware that they have spent a lot of money and effort in upgrading their computer system but the details I really do not know.

The Hon. NIALL BLAIR: In terms of your suggested amendments to the Telecommunications (Interception and Access Act) 1979 do you plan to pursue this matter further?

Mr COOPER: I have gone as far as I can go. I have asked the Federal Attorney General, I have asked the State Attorney General, and it seems that they take the view that whilst the Inspector can get the information for a targeted investigation it would be inappropriate to give me the information for an audit. I do not agree, because if you have got a targeted investigation it means someone has already complained that they have been hurt. The purpose of an audit is to see whether there is conduct which is likely to lead to someone being hurt, and that is where we have a difference of opinion at the moment.

The Hon. NIALL BLAIR: Would you like to comment on the importance of this matter in terms of the work that you wish to undertake in the future?

Mr COOPER: I think it is important because when it comes to matters of telephone intercepts the person whose phone is being intercepted does not know about it and it is something which can be abused for personal purposes—the potential is there. The Federal Attorney General responds that the Ombudsman has to handle an investigation of the use of telephone intercepts. But the Ombudsman merely looks to see the numbers and whether the formal requirements have been complied with; it does not look to see whether the use of those intercepts is appropriate. In my audits I perhaps spend more time on looking at the appropriateness than the mere formalities.

The Hon. LYNDA VOLTZ: Just following up on that: When you say the Ombudsman, is that the telecommunications Ombudsman?

Mr COOPER: No, it is the Federal Ombudsman.

The Hon. LYNDA VOLTZ: So they do a straightforward audit of all agencies, all police and investigation agencies, as far as telecommunications?

Mr COOPER: All agencies that use telephone intercepts under the Federal telecommunications interception legislation.

The Hon. LYNDA VOLTZ: You have no access to that Ombudsman in terms of asking him to widen his ability to review those at your request?

Mr COOPER: I can always make requests. He says, "I am doing all I am required to do. I have a budget to work with and I have other work to do", and that is as far as it can go.

Reverend the Hon. FRED NILE: In your report you highlighted that the method you used concerning complaints was to centralise the complaint handling process. Do you recommend that this centralised complaint handling process be used as best practice in the future?

Mr COOPER: May I say I hate that term "best practice" because what is best in some circumstances can be a disaster in others. All I can say is that for the type of complaints we get it is the best practice at this particular stage. I certainly would not be so bold as to say that it would be best practice, for example, for the Inspector of the Police Integrity Commission. He has different sorts of problems. But for our purposes, yes, it is the best practice.

Reverend the Hon. FRED NILE: Does it increase your own personal workload?

Mr COOPER: Yes, it does, but that is all right; that is what I am supposed to do.

Reverend the Hon. FRED NILE: You can handle it with only the two days that you normally allocate?

Mr COOPER: Sometimes I have to go to three.

Reverend the Hon. FRED NILE: How often would that happen?

Mr COOPER: I suppose three or four times a year. It is not a major problem.

Reverend the Hon. FRED NILE: Does it have any effect on other functions that you carry out with regard particularly to audits?

Mr COOPER: Yes. For example, I am working at the moment on two complaints and, as a result, audits have sort of been put into the background, but that does not mean that they are not being dealt with; it means that they are not being dealt with as quickly as would otherwise be the case.

Reverend the Hon. FRED NILE: Would you allocate some time during the year to do the audits so that you spend so many days on audits, or do you not divide up the days?

Mr COOPER: I do not divide it up that way because, with complaints, you never know when you are going to get them and you never know in advance what is involved. For example, from about the beginning of December until about two weeks ago, we did not get a complaint. Then in they come. I do not like the idea of having a set program, such as for the first two weeks of the month I will deal with audits and the next two weeks complaints. I try to deal with complaints as quickly as possible and in between time deal with audits.

Reverend the Hon. FRED NILE: You said there was a sudden increase in complaints.

Mr COOPER: Yes.

Reverend the Hon. FRED NILE: Did anything trigger that off?

Mr COOPER: No, it just happens, probably people being away, some of them preparing the material to give to me. It just happens that way.

Mr RICHARD AMERY: I think in one of your reports you say there was an increase in the number of complaints received from 12 to 20. Is that right?

Mr COOPER: No, it was not an increase in the number, it was an increase in the investigations or the matters I investigated.

Mr RICHARD AMERY: Has there been a change in the case mix or the type of complaints? I do not expect you to name people, but can you give the Committee an example of the type of complaints and indicate whether the types of complaints have changed during your role? My second question is this: Have there been any complaints ever sustained by the complainant? Has anything ever been regarded as justified and, as a result, action was taken against the person or organisation complained of? There are just those two points—the results of complaints and any change in the type of complaints received by your office?

Mr COOPER: No, I do not think there has been any basic change. The types of complaints, or the majority of them, relate to the decision by the Independent Commission Against Corruption not to investigate particular matters. That is most of the complaints. We have had complaints where the Independent Commission Against Corruption has taken action on a complaint and that is the complaint from the persons who have been dealt with by the Commission. On the second aspect, which is whether any complaints were sustained, yes, there were, if I recall correctly, and I think I may have referred to it in the report. There were three instances where I felt that the Independent Commission Against Corruption could have taken further action or different action. Their failure to do so did not amount to misconduct within the meaning of the Act, but I did make suggestions to the Commissioner regarding those matters and he did act on my suggestions.

CHAIR: You have dealt with audits at pages 11 and 12 of the last annual report. What audits have you been undertaking, if any, this financial year?

Mr COOPER: This financial year I have completed the draft of a report on the use of compulsory powers. My practice is to send a copy of that draft to the Independent Commission Against Corruption for their perusal before publishing it. That is not because there is any adverse finding against the Independent Commission Against Corruption in respect of anything, but sometimes they do not want certain material published because it could prejudice ongoing operations, and I respect their views on that. Secondly, it could be that they can point out that there is an error in something that I have said and if they point that out to me I am only too happy to correct it. At the moment that particular report is with the Independent Commission Against Corruption and I am waiting on their response.

CHAIR: Do you have any other audits planned this year?

Mr COOPER: Not at the moment. I will make a decision on which particular line I will take probably within the next couple of weeks.

The Hon. NIALL BLAIR: In addition to putting your reports on your website, do you communicate the release of your reports to the media or any other areas of the public?

Mr COOPER: Not to the media. If this Committee feels that I should do that, I will comply with it, but my view is that I do not see the need to, particularly when I do not make any adverse findings, but that is a matter on which I would be happy to accept the guidance of the Committee. We send it to the Independent Commission Against Corruption, the Police Integrity Commission, the various Inspectors, the Ombudsman, the Department of Premier and Cabinet and various libraries—the National Library and the State library. I know that there is quite a list that we send them to.

The Hon. NIALL BLAIR: How do you assess the public's awareness of the work that you do and the role that you play?

Mr COOPER: My assessment is that the public—the ordinary man and woman in the street—would be quite surprised to know that the Office of the Inspector of the Independent Commission Against Corruption [ICAC] exists. Whether that is a good thing or a bad thing I am quite prepared to debate. I really do not know. But all I know is if I tell people I am the Inspector of ICAC they seem to think that I have some position as an inspector within ICAC sort of above the rank of sergeant.

The Hon. LYNDA VOLTZ: Following up from that, do people who are under investigation by ICAC know of your existence?

Mr COOPER: Yes. There is a system under which ICAC does tell them of us.

The Hon. LYNDA VOLTZ: Going back to the telecommunications issue and the interception—maybe you can tell me this or maybe you cannot—have you ever received complaints about warrants being issued under that Act for interception of telecommunications?

Mr COOPER: No, I have not received any alleging an abuse of warrants under the Telecommunications Interception Act.

The Hon. LYNDA VOLTZ: Do you know what people who are under investigation are actually told when they are informed about you?

Mr COOPER: Yes, they are given, if I recall correctly, a little pamphlet which tells them about us. I have had complainants say, "When I told the investigator down there that I was unhappy with what they are doing he said, 'Well, you have the right to contact the Inspector'," and they were given details of where to contact me.

The Hon. LYNDA VOLTZ: So they are only informed of your presence when they complain about the actions of ICAC?

Mr COOPER: My functions only come into existence when there is a complaint about ICAC.

The Hon. LYNDA VOLTZ: I am only thinking of the fact that since I have been in Parliament I have become aware of processes that I would not have been aware of out on the street and I may not have felt there was an avenue to complain through. Particularly if you are a person with not a great deal of education or who does not have a good experience with authority anyway, and therefore usually feel disenfranchised from the system, you may not feel that even though you have been pulled in for questioning by ICAC there is anywhere that you can complain to and you may not ask the question. Is there a formal process by which people are informed from the beginning that there is always an avenue for them to go through?

Mr COOPER: My understanding is that ICAC does tell them of us. Perhaps that is something I should look into in more detail.

Reverend the Hon. FRED NILE: On page 16 of your report you refer to some of the complaints you receive that are outside your jurisdiction. Obviously some people think you have the power to investigate anything and everything: these were complaints about police officers and so on. How do you handle those? Do you follow those through? In your report you said you refer them, for example, to the Police Integrity Commission [PIC]. Do you check to see whether they in fact followed it up or got the complaint after you told the person to complain to the PIC?

Mr COOPER: No, I do not follow that up because basically I have got no jurisdiction to do so. I think it is a matter of jurisdiction. But if someone comes in who we cannot handle I tell them or write to them or email them and say that we do not have jurisdiction to do this but perhaps they could contact X, Y or Z, and I give them the address and the details. That is as far as we can go.

Reverend the Hon. FRED NILE: So there is no way of knowing whether they did in fact complain to that other agency?

Mr COOPER: No, but I have sometimes had the response, "They are no darned good, I've already been there." You do get that.

Mr RICHARD AMERY: In answer to some earlier questions you said, "I do not make any adverse findings." Is that because in practice there has not been a case for an adverse finding, or are you restricted by legislation or the rules and regulations? Pardon my ignorance but I am not quite aware in this regard.

Mr COOPER: Are you talking about after an investigation?

Mr RICHARD AMERY: Yes, I think you said you do not make adverse findings. Is that right?

Mr COOPER: No, I think I probably said I did not make adverse findings because there was no evidence of any misconduct.

Mr RICHARD AMERY: But you can make adverse findings?

Mr COOPER: Yes, most definitely, both in the course of dealing with a complaint and in the course of an audit.

Mr MARK COURE: Inspector, other than writing or emailing do you have a system in place to handle matters outside your jurisdiction?

Mr COOPER: No, because when my jurisdiction limits me to doing certain things I have got to be careful not to exceed that jurisdiction because the various protections that the Act gives me probably would not apply if I did.

CHAIR: On page 14 of your 2010-2011 report at table 2 you refer to one complaint in 2009-2010 and two in 2010-2011 being referred back to ICAC. How and why were those complaints referred back to ICAC?

Mr COOPER: They were complaints that related to an allegation of misconduct on the part of employees of ICAC. I was given details of the allegations and I felt that they were in a better position to investigate those matters than I was, so I sent that to them and said, "But you have got to report back and let me know what is going on," which they did. They complied with that and I was quite happy with what they did at the end.

CHAIR: At question 10 in your answers to questions on notice you say that the current version of the memorandum of understanding [MOU] will need to be executed. Which is the current version of the MOU?

Mr COOPER: No, there I said, "However, a current version will have to be executed." That is, the most recent one of which we sent you a copy is two years old now. I think it was November 2009. We should really update it. That is what I meant there.

CHAIR: So you meant an updated version of the MOU when you draft it?

Mr COOPER: Yes.

Reverend the Hon. FRED NILE: You said that there are cases of complaints where ICAC will not investigate a matter. Have you always been satisfied with ICAC's explanation as to why they did not investigate that matter?

Mr COOPER: Yes.

CHAIR: Inspector, is there anything you would like to say in closing?

Mr COOPER: No. Thank you very much for your courtesy.