

REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION

At Parliament House, Sydney, on Wednesday, 22 March 2017

The Committee met at 3:00 pm

PRESENT

Mr D. Tudehope (Chair)

Mr R. Hoenig

Mr P. Lynch

Ms T. Mihailuk

Mr M. Taylor

Reverend the Hon. F. Nile

The Hon. L. Voltz

The CHAIR: Thank you for attending this public hearing of the Joint Committee on the Independent Commission Against Corruption [ICAC]. Today's hearing is to review the 2014-15 and 2015-16 annual reports of the ICAC Inspector. It will review the Acting Inspector's report regarding Operation Dewar. My name is Damien Tudehope and I am the Chair of the Committee and the member for Epping. With me today are my colleagues from the Legislative Assembly: Mr Mark Taylor, the member for Seven Hills; Mr Ron Hoenig, the member for Heffron; Ms Tania Mihailuk, the member for Bankstown; and Mr Paul Lynch, the member for Liverpool. The Committee members from the Legislative Council are: Reverend the Hon. Fred Nile and the Hon. Lynda Voltz.

Today the Committee will hear from witnesses from the Office of the Inspector of the Independent Commission Against Corruption; the Acting Inspector, John Nicholson, SC, and Ms Susan Raice, the principal legal adviser. I thank the witnesses for making themselves available to appear today. I remind everyone to switch off their mobile phones, as they can interfere with the Hansard recording equipment. For the benefit of the gallery I note the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing coverage of proceedings are available. I declare the hearing open.

Mr RON HOENIG: I should indicate that I know Mr Nicholson well. When I was called to the bar and appointed a public defender I read with Mr Nicholson, I served with him as a public defender, and he was a senior defender whilst I was a public defender for a period of time before his appointment to the bench. If there are any credit issues involving Mr Nicholson I will have to withdraw from consideration of those matters.

JOHN CECIL NICHOLSON, SC, Acting Inspector, Office of the Inspector of the Independent Commission Against Corruption, and

SUSAN AUDREY RAICE, Principal Legal Adviser, Office of the Inspector of the Independent Commission Against Corruption, sworn and examined

The CHAIR: I thank you for appearing before the Committee today. Do you have any questions regarding the procedural information that was sent to you in relation to witnesses and the hearing process?

Mr NICHOLSON: No, I do not.

The CHAIR: Thank you for appearing before the Committee. Would either of you like to make an opening statement before we commence with questions?

Mr NICHOLSON: I would seek to make an opening statement. At the outset I welcome the opportunity to speak to the annual reports of 2014-15 and 2015-16 compiled by my predecessor Mr David Levine, AO, QC. I will speak to the report arising from Operation Dewar in respect of the complainant, who I might indicate is present in the gallery. Through the course of this statement I referred to him only as "the employee" or "complainant" in the hope that any reporting of the matters will refer to him only in those terms. I can indicate that I will be asking for the Committee to sit in camera when we come to that report because, as you are aware, the issue of privacy was crucial.

I know that the complainant is very keen to keep his name and any further publicity in respect of this matter out of the public eye. I note and thank the Chair for having organised to remind me that given the privacy issue I may have the hearing, or part of the hearing, in camera and I will seek to do that in respect of Operation Dewar. For that reason I divided my opening statement into two parts. The first part is in respect of the two reports and any questions that might arise. I would seek an opportunity to deal with the second part in camera and make an opening statement in respect of the other matter at that time.

The CHAIR: That is an appropriate course.

Mr NICHOLSON: I can indicate in respect of the in camera hearing I would not object to transcripts of the in camera portion being made available to the ICAC. It seems to me proper and sensible to do so. When I previously appeared as part of the Inspectorate in support of my predecessor Mr Hoenig indicated, as he has today, our past relationship. I can only add two things to that: first, I sought to be his mentor; and, secondly, I did support his campaign for election by way of a donation, which has been registered. I am hoping that will not make any difference.

The CHAIR: It probably shows a lack of judgement!

Reverend the Hon. FRED NILE: It depends how big it was.

Mr NICHOLSON: In respect of the two annual reports I do not intend to occupy the Committee for any length of time. My predecessor in his 2014-15 report noted in his first sentence that concomitant with the powers and functions allocated to him he would take steps to ensure that the institution of the ICAC, as best he could see it, would enjoy respect and high standing in the community. In other words, he did not see himself as working against the ICAC but rather working for it. To that I add that the clear purpose of the legislation in introducing an Inspector to ICAC was to identify and minimise such unsatisfactory practice that may have crept into the ICAC by way of reports and recommendations. The concept being that in so doing the ICAC would be and remain a world class corruption investigator.

The former Inspector also noted in both reports that the years reported on could not have been said to be ones that reflected well on the relationship between the Inspector and the Independent Commission Against Corruption. However, it is worth noting that the overwhelming percentage of complaints submitted during that two year period to the Inspector had been resolved and were normally resolved in favour of the ICAC methodology, practice and procedure. The second feature that is worth noting in that context is that the legislative provisions granting functions to the Inspector found in 57B and 57C of the Independent Commission Against Corruption Act are such that an element of competing tensions might be seen to be an ingredient of any honest working relationship between the Inspector and the ICAC. To confine the work of the Inspector simply to audit, as is provided in section 57B (1) (a), is to limit the scrutiny of the ICAC to non-contentious, semi-contentious or esoterically contentious matters. Limiting the scrutiny of the ICAC in that way would avoid discovery of any abuse of power, impropriety, misconduct, maladministration, unreasonable invasion of privacy and like matters from the role of Inspector. That is not to say they may not be discovered by the Supreme Court,

as may be instanced in one of the recent cases. On the other hand, one can hardly expect the ICAC to accept unquestioningly reports of an Inspector critical to the ICAC in the terms granted by section 57B of the ICAC Act. My immediate predecessor and I have found cause to be critical of one aspect or another of ICAC conduct. That criticism seems to be confined particularly to two recent reports. I have in mind particularly the report on Hale and the one we are looking at later, and some general remarks in the annual reports.

This depends on the criticism of the decisions made at ICAC that was a feature of his and my terms but that differs from terms of others who have held the position of Inspector, as best I can see. That is to say: Since the creation in 1988 there have been only two occasions—and those recently—where an Inspector of the ICAC has been seriously critical of it. It may be the rarity of that event and the difference between the view between ICAC and the Inspector, and indeed the very nature of the difference, which has caused an absence of a "settled" relationship that my predecessor called for. Personalities also play some role in the tone of the relationship. I choose not to look back or be critical of past players but to focus on the present. The acting ICAC Commissioner and I have, at least from my perspective and I trust also from his, a relationship which permits us to disagree when we need to, to speak frankly and professionally without being personal or pejorative. I have worked under him for many years, but that does not interfere with my own independence in the role of Acting Inspector.

Another feature of the early reports I wish to comment on pertains to subject matter developed by my predecessor in paragraph 5.5 of his 2014-15 report. There he made comment regarding the nature, dimensions and thoroughness of complaints being made to him in respect of Operation Jasper and Arcadia. As a consequence of those matters, Inspector Levine commented that: "It would require the expenditure of time and increase in resources almost to the point where the Inspector of ICAC would have to mirror the resources and time spent by the ICAC in coming to findings in these matters." There is a bit of an editorial contribution from me in that.

An analysis of the two annual reports prepared by Inspector Levine would appear to indicate that work done on the bulk of complaints can be reviewed and finalised within a relatively short period of time, but there is also a growing number of complaints demanding extensive time and extensive review of a myriad of ICAC documents, transcripts and exhibits—all of which result in extensive time taken preparing a report. For example, the report done by me on Operation Dewar took more than six months to complete from the time his file first landed on my desk. While supply of resources is a departmental matter, I think it useful for the joint Committee to understand the next Inspector, I believe, would be looking for increased means of being able to answer the challenges.

A review of complaints made to the Inspector in the two years shows that seven of 33 in the years 2014-15 and 11 of 60 in 2015-16 focused on a failure of ICAC to investigate a complaint made to it. These complaints to ICAC invariably focused on conduct that the relevant complainant considered as either corrupt conduct or a public interest disclosure requiring its attention. An early matter to be determined in any complaint made to the Inspector is whether the complaint falls within the scope of corrupt conduct as provided by part 3 of the ICAC Act. It would seem from these complaints that the discretion and the public interest imperatives contained within the ICAC Act and relied upon by the Commission in determining whether or not a matter will be picked up are poorly understood by complainants and, I suspect, the general public. Putting that in another way, many of the people who make complaints to ICAC come to the Inspector saying, "I've made a complaint, and I expect each and every complaint made to ICAC to be the subject of a major investigation". Clearly somehow or other we have got to get the message out that ICAC has a discretion as to which complaint it will pick up and the extent to which it will pick them up.

Another aspect of the two reports is the carryover of a large number of matters. In the 2014-15 report, 38 matters remained outstanding. In the 2015-16 report, only 10 of those matters were closed, leaving a further 28 from that year still outstanding—in other words, the clock is ticking and the quality of service the Inspector is offering would appear on the surface to be slow. I will come to a reason why that may be. In the 2016 report, a further 15 matters were carried over to the 2016-17 reporting period, making a total of 43 matters carried over into the 2016-17 reporting year. I can say this: Since July 2016, of those 43 matters, 21 have now been closed, leaving 22 of the old matters still unresolved. A major reason for delays centres around ongoing litigation, usually by an "affected" person—I use that term in quotes, and you would understand that means somebody who is targeted by ICAC. It is likely the vast majority of those matters—the 22 matters that are still unresolved and others—will demand significant resources and time for each of them to be satisfactorily resolved by the incoming Inspector or Inspectors. However, a problem arising from the delay that I understand the current Commissioner and I are aware of is that there may be individuals involved within those reports who are awaiting a declaration of whether they are impacted in an adverse way or not. Not surprisingly, number of them hold very significant positions within the community.

I have not turned my mind to it, and I do not know whether the Commissioner has, but there must be some consideration given to a mechanism of, if I can use this term, disabusing those who fall into that category of any concern that they may have while waiting for the report. In other words, there should be some mechanism that we have to allow them to get along with their lives in the face of no adverse finding ever going to be made about them. I just point that out to the Committee as a problem that is occurring not just in my organisation but, it seems to me, also with the Commission, of allowing people who are subject to press speculation, unwarranted, to get on with their lives.

The final matter I wish to raise arising out of the report of 2015-16 is that the then Inspector noted that his term of office would expire on 31 January 2017, as it was anticipated would my own. For the record I make it clear that, in the event, Mr Levine resigned for reasons of health well after his doctors had advised him to do so, and his resignation was dated 23 November 2016. In my own case, my term has been extended until 30 June or until such time as a new Inspector is appointed, whichever is the sooner, and I indicate that I am not a candidate for any office—I am retiring. That completes the report I want to make in that area.

The CHAIR: Any questions for the Inspector?

Mr PAUL LYNCH: Picking up on the last point, has anyone given you any indication of when they are going to get around to appointing a new Inspector?

Mr NICHOLSON: The only matter that I am aware of is that I have been sent from a headhunting group the relevant material for both the Commissioner and the Inspector, so I imagine that some steps are being taken to finalise the matter.

Mr PAUL LYNCH: And you have had no advice or there has been no suggestion about who the new Inspector might be?

Mr NICHOLSON: If I did I would not say so publicly. Incidentally, I should disclose that Mr Lynch once instructed me in Liverpool years and years ago.

Mr PAUL LYNCH: And it was such a memorable event that I have completely forgotten about it. Whilst we are also trying to explore interesting aspects of the history of this matter, have you been given any advice or any indication about when the amending legislation that went through in November is actually going to come into operation?

Mr NICHOLSON: I do not know when it is going to be promulgated, no.

Mr PAUL LYNCH: I guess the other speculative question that I am inclined to ask is have you got any indication of the identity of the new Chief Commissioner or the other two Commissioners for the ICAC?

Mr NICHOLSON: I have had some discussion with a person in respect of an offer made to him or her which I am not at liberty to disclose, as I understand it, and, all things being equal, which is not likely to be taken up by him or her unless "duty requires it".

Mr PAUL LYNCH: I might leave it there, I think.

Mr RON HOENIG: Do you think that the amendments to the Act enacted by Parliament, which seem to have been in a mad rush towards the end of last year but still having not been proclaimed, would go some way to rectifying some of the causes of complaints that the Inspector has received from the recent inquiry?

Mr NICHOLSON: It would certainly ease some concerns that I have about the operation of the present Act. One of the things that has been of concern to me—and this probably moves beyond the reports, Mr Chairman—during my short time is the way in which the determination of whether or not a public inquiry should be called for may suffer some impediment in the sense that the requirements of subsection (2) of section 31, which are whether or not it is in the public interest, are probably tick-a-box considered rather than considered in reality, and the focus being on why it is in the public interest as distinct from whether it is in the public interest. If I may say so, the reason I feel more comfortable, I think, with the new legislation is that there is going to have to be a discussion among more than one person about whether it is in the public interest.

The second is that it seems to me, as I have read material coming to me—and, again, I stress I have only been there a short time—from the Commission is that there has been no focus upon any reasons other than those set out in 31 (2) as to why something would not be in the public interest or why it would be in the public interest, particularly having regard to the second reading speech of Premier Greiner, as he then was, in introducing the legislation. There were a whole host of things that he was concerned about that do not appear to me to be reflected in the existing 31 (2) and that are of value in considering whether the public interest is or is not served by calling a public inquiry. I do not know whether that answers your question.

Mr RON HOENIG: Your predecessor, in some of his reports criticises—and certainly in evidence—how the Commission went about a particular task or investigation. Parliament creates these statutory organs of the executive; it authorises them to do certain things; it enables them to obtain their information from any source, whether it be hearsay or whether it be rumour or whether it be from any source; the legislation enables it to effectively produce material that is untested, say, for credit. The fault that results in these things of which the Inspector is being critical is actually the fault of Parliament and not the office holders, is it not?

Mr NICHOLSON: There may be some fault lying with Parliament in terms of the lack of guidance through the legislation, but my own view is that it may be a culture that arises from continual practice of the powers, and my predecessor spoke of an arrogance that might be attached to that. I do not like a pejorative term like that but there is a sort of customisation of oneself to the arrogance. A good example is the example I just gave in respect of public interest. The legislation sets out in fairly wide terms what is required before the Commission determines to have a public inquiry. But there is no procedure that is set out anywhere that I can see that requires a sitting down and, as it were, a contest being organised—these are the reasons for, these are the reasons against. The legislation should not have to do that, in my view. That should be something that is managed within the organisation. It may be that the pressure of work just does not give them time to do that. I do not know.

Mr RON HOENIG: In terms of public hearings I will use a different example. There have recently been complaints about an Ombudsman's private hearing in relation to some police matters where varieties of contentions of unfairness occurred as a result of an Ombudsman's inquiry. Isn't a public inquiry a better way in which you can judge the fairness or otherwise of the conduct of someone conducting an investigation? Having said that, I am not sure those who may well have been affected by the Ombudsman's inquiry, for example, would have really wanted it to be public anyway, because asking what might have been your reasonable belief to obtain a warrant could cause irreparable reputational damage. Apart from that, doesn't a public inquiry have some sort of way in which to keep the functioning of the Commission at least open to public criticism as it has been in recent times?

Mr NICHOLSON: The problem with the public inquiry and the extensive powers is you are indicating the ways in which evidence—I prefer the word "testimony"—can be gathered. In a sense it is not really evidence because it is not covered by the Evidence Act but the Independent Commission Against Corruption Act uses the word "evidence" and so I acknowledge it as being evidence but really it is testimony. But some of that testimony is garnered through superb bullying cross-examination. That cannot be relied upon as evidence or testimony, but it advances the investigation in the sense that it advances the goals, if the goals of the investigation are predetermined, as I sense they are in an ICAC investigation, otherwise they could not have the public inquiry. If the goals are predetermined and the bullying of the questioning heads towards the designated goals they have got their corrupt finding. Just to complete my concern about it all, that corrupt finding will last almost every challenge once it is made—a proposition that does not even occur after the Court of Criminal Appeal or the High Court has made a determination of guilt. Look at, for instance, Lindy Chamberlain or look at McLeod-Lindsay. There were mechanisms for having those convictions quashed with what they called in my and your day a 475 inquiry. There is no way to deal with a finding of corruption.

Mr RON HOENIG: With the amendments that were passed through Parliament there is a requirement, for example, of guidelines being formulated to provide for procedural fairness to apply at public inquiries. The ability to be able to cross-examine witnesses as to credit and to instil some sort of fairness in a public inquiry is what Parliament decided as a mechanism to provide some level of protection, and also to require corruption to be serious and systemic. Add to that the changes to the bar rules in 2015, which some of us call the Geoffrey Watson amendments, that might prevent the way council assisting conducted themselves in other inquiries. That should change the whole nature of public inquiries, should it not?

Mr NICHOLSON: It is going to make an impact. I do not know whether it will change. At the end of the day it is an inquiry. It has a useful purpose from the community's point of view. Where crime is sophisticated it has this useful purpose of advancing an investigation where the normal mechanisms of investigation might not. But it has to avoid the appearance of a show trial. One, because it is not a trial and yet a public hearing—I was reading a transcript the other day where experienced counsel was addressing the Commissioner as "your Honour". It is the wrong perception to give to the public and indeed to the Commissioner. I note the Commissioner is calling for documents. I do not know under what power under the Act he can do that in the course of running a matter. As a Supreme Court judge he could and a call can be made by the bar as though on subpoena. I do not know where he gets the power to do that, but he does it because he is presiding and he is an ex-judge. In fact, it is a requirement of the qualification that he be an ex-judge or capable of being an ex-Supreme Court justice, which incidentally I am not because I am prohibited by age. I point it out, age discrimination.

The CHAIR: In relation to that issue, on page 19 of the annual report for 2014-15 there is a reference made by your predecessor to the observation made by the previous Commissioner about the focus of ICAC which is generally not understood by the community. Paragraph 5.8 says:

I mention these matters as they point to the fact that it is not well known publicly but does in fact represent the position of the ICAC. Namely, the Commission's activities are focused on exposing corruption and doing something by way of addressing policies and procedures that prevent its furtherance in the public sector. We do not consider the number of successful prosecutions that arise from inquiries as any relevant indicator of our success. However, we accept that there is a public interest in it.

Mr NICHOLSON: I wonder if it he means public curiosity in it?

The CHAIR: Indeed. In relation to the manner in which the ICAC works and the observations made by the Commissioner, would it be your view that a finding of corruption by the Commissioner is probably a wrong finding; rather, that he or she refer the matter to the DPP is the appropriate finding rather than making a definitive finding of corruption?

Mr NICHOLSON: I support the proposition that there should not be a definitive finding of corruption. I think that there then needs to be perhaps a concern that there may have been corruption—a finding expressed in those terms—and that we would look to the DPP or that further investigation should be undertaken because the evidence we have relied upon is not evidence that would be admissible in court. In other words, options. One of the matters that I am currently looking at concerns a finding that was made—I think I have got this right—that they would not recommend the matter to the DPP because there was insufficient admissible evidence to establish it, but the aroma was left hanging in the air.

Mr RON HOENIG: When we heard from one of the architects of ICAC as to the purpose of its establishment that person told us in a private briefing that ICAC was enabled by them to tackle that serious corruption of which there would very rarely be any admissible evidence established or obtained. Therefore, it was to operate effectively as a deterrent for serious corruption for which you would never be able to collect admissible evidence. He saw the Commission then embarking upon areas that were generally criminal matters, such as \$100,000 university contracts and those sorts of things. If an act is criminal and there is the prospect through proper criminal investigation to be able to have a person charged and then bring them to justice then is that not a more preferable outcome that would enable the Commission to deal with that serious type of corruption that it is supposed to deal with?

I raise this because the evidence given by the Commission seems to be that it embarks upon a course to obtain material from any source simply at the end of the day to determine whether or not there is a corrupt finding. There is a technique to obtain evidence for a criminal prosecution. Bargaining in to obtain material just for a corruption finding invariably leaves the Office of the Director of Public Prosecutions in an almost impossible position if the matter is referred to it. It also leaves the police in a difficult position because they may well have alerted others to prevent them from obtaining admissible evidence. There seems to be a substantial crossover in what they are doing.

Mr NICHOLSON: In answer to your question—I think it will answer the question—has the Committee ever considered the model of the Coroner's Court?

Mr RON HOENIG: That has been my suggestion from the beginning, but it has not been taken up by the Government of the day.

Mr NICHOLSON: Perhaps I can speak in support of it to some extent. The Coroner's Court does not perhaps have the coercive powers that the independent Commissioner has, but it has fairly wide powers to explore avenues of investigation. I am thinking particularly of cases of arson and criminal activity such as unlawful killings. It comes to a view at some point that there may well be a person who has a case to answer. It does not make that determination, but it adjourns the proceedings and refers the matter, I think to the Director of Public Prosecutions if memory serves me, who in turn can refer it on to the police for further investigation.

Where the power to conduct investigations is so vastly different from the powers of a criminal court conducting a trial, and given historically that we have always required proof beyond a reasonable doubt and that we have other safeguards in conduct of investigations and determinations of guilt because of the potential incredible consequences, it is true that when a finding of corruption is made that the consequence is not custody, but it is sometimes worse than custody. I am passionate about at least some avenue of review if findings of corruption are to be made. But better still would be some system of indicating—even publicly as is done in the Coroner's Court—that this is a matter that will be referred to someone.

The CHAIR: One of the things you alluded to in your opening statement, and it is consistent with what you are saying, is that persons who are the subject of an investigation ought be notified at an early time if there were going to be no adverse finding made against them.

Mr NICHOLSON: Yes.

The CHAIR: You may well recall that the Independent Commission Against Corruption adopted a process of advising people who were potentially the subject of an adverse finding—I think this happened in Operation Spicer—that they would not be the subject of a finding. Is that the process you had in mind?

Mr NICHOLSON: That is the process I had in mind. One of the problems with that kind of procedure is that people who are then not notified—

The CHAIR: That is right; they have sleepless nights.

Mr NICHOLSON: —have some real concerns. That may be the price we pay. Would they not have concerns with the other method—

The CHAIR: Yes.

Mr NICHOLSON: —saying, "I am referring this to the police"? They would still have the same concerns. It would wear a different label, but there would be the same concerns.

The CHAIR: It would be your position that that should be done at an early stage rather than just prior to releasing the report.

Mr NICHOLSON: There is the case of ongoing litigation. As a consequence of the litigation in the case of Mr Obeid, we cannot finalise the matter he has with us simply because to do so might not be contempt but it would be straying precariously close to it for me to make a report in circumstances where the contents of my report might be contradicted by a Supreme Court judge—usually a Supreme Court judge.

Reverend the Hon. FRED NILE: I would like to follow up that question. When you first raised it I wondered whether there was a system whereby if there were no adverse finding the Independent Commission Against Corruption would have some guidance that within a month, six months or 10 years you would do something. It would not be left hanging. Some issues have been left hanging for a number of years. In the case of politicians it has affected their careers.

Mr NICHOLSON: I agree. It is not only politicians, but they are an example of people holding important positions in the community to whom I was referring. In my view there must be some mechanism. While it may be appropriate for the Parliament to set a guideline, I think it should still be a discretionary matter available to the Commissioner because some of the cases may be borderline depending upon the quality of the evidence and whatever.

Reverend the Hon. FRED NILE: You mentioned that you spent six months on one report.

Mr NICHOLSON: Yes.

Reverend the Hon. FRED NILE: I wonder whether you are setting up an argument that the Inspector's position should be full time. I would agree with that; I do not think it should be a part-time position.

Mr NICHOLSON: I have spoken to my staff about it and it seems to me, if I can put it this way, that there is probably 2.6 weeks of work available every week. In other words, there could be either three part-time people working four days a week or one or two full-time people and another one working a bit. I have not done the sums, but if you added the figures you would see that the number of unresolved cases is still growing year by year.

The CHAIR: There was a reduction in the number of complaints last year.

Mr NICHOLSON: Because the Inspector left he was able to close a number of cases that were sitting on the pot quietly boiling. We are now left with the hard work cases.

Reverend the Hon. FRED NILE: The point I have observed, being on this Committee since it commenced, is the workload of the Inspector has changed from when it was first appointed.

Mr NICHOLSON: Yes.

Reverend the Hon. FRED NILE: It was almost a nominal position and we did not hear much from the Inspector.

Mr NICHOLSON: For two reasons: the earlier work was confined to auditing, possibly because there were no complaints received. The second reason, particularly in respect of the decision in Margaret Cunneen's case, people became aware of the Office of the Inspector and that there was an avenue to appeal—appeal is not the right word—to complain. There is another aspect which I should have mentioned when I was reviewing the reports, at least the ones I have seen, many people are coming to us to "clear my name". We cannot do that. Even where there is merit in the proposition we cannot do it.

Mr RON HOENIG: Maybe the workload will be reduced with amendments to the Act—when the Government gets around to proclaiming it. On a different subject, the tension that existed between the former Inspector and the former Commissioner: I got the impression from what you said in your opening statement because it is the former Chief Judge of the District Court, whom you worked with for 10 or 11 years and you have known for 40, that has had an impact in reducing the tension between the two offices.

Mr NICHOLSON: We have made a point to meet and have a cup of tea that my predecessor mentioned when he was here. I do not know if we will get to [REDACTED] today and I do not mind if we do not. I have a long opening for that matter. He has sent me a number of documents since, some of which have caused me to shift my position slightly, not a lot but slightly. That all needs to be explained. There is no rancour and there is no haughtiness from either me or him. I accept that personalities will play a part but I think, as I said earlier, that the selection of people for the offices is going to have to bear in mind the inherent competing tensions that are set out in the Act for the Commission on the one hand and the Inspector on the other.

The CHAIR: There was reference in the report to an investigation of a leak to the media. Can you give me some idea how you would investigate that matter?

Mr PAUL LYNCH: Declare your interest.

The CHAIR: I have no interest.

Mr NICHOLSON: There was today a report in the *Australian* that appears to me to be a leak to the media. The way in which we have explained it is that as a consequence of communicating the progress of that matter to those who had made the complaint that may have gone further than the office of those who received that notification. I think that is probably how leaking occurs: not from the ICAC, not from us, but from some communication that is made by the Independent Commission Against Corruption or us to some third party.

The CHAIR: And that is then provided to the media.

Mr NICHOLSON: I have no control over that.

The CHAIR: I am not being facetious, if someone complains about the ICAC who have provided material to the media and a complaint was made to your office about it, what would you do? What does the Office of the Inspector do to investigate that complaint?

Mr NICHOLSON: That is something I will address in the complaint I am examining now. That complaint was made as a complaint. I do not have any powers other than those set out in 57C and the power to make a report in 77A.

The CHAIR: You cannot investigate email chains?

Mr NICHOLSON: If an ICAC officer does it I can, but absent an ICAC officer or the ICAC in some way being involved, I cannot. I have royal commission powers so far as the Independent Commission Against Corruption staff are concerned, but not so far as anyone else is concerned.

The CHAIR: At the risk of being tortuous about this: Is it merely a matter of you ringing the ICAC or calling for a file on a particular matter and looking at the file and satisfying yourself?

Mr NICHOLSON: That the ICAC was not responsible, yes, that is the best I can do.

Reverend the Hon. FRED NILE: We had a number of questions about the [REDACTED] matter. Mr Nicholson said he had a statement.

The CHAIR: Committee members must be careful not to use the name.

Mr NICHOLSON: The "employee's" name. I have a fairly lengthy statement. I have some embarrassment as I have handwritten notes but no typed notes.

The CHAIR: One of the issues raised by the Acting Inspector was an issue relating to privacy. To the extent any names are mentioned, I request they be redacted from the transcript.

Mr NICHOLSON: I am indebted to you, Chair.

The CHAIR: Are there any questions in relation to the annual reports?

Mr NICHOLSON: Assuming I can access it, I have two pages and handwritten notes. It was more than an hour of typing, it will be a substantial time.

The CHAIR: Has anyone any further questions to ask in relation to the annual reports? Mr Taylor?

Mr MARK TAYLOR: No, I do not think it is overwhelmingly important.

The Hon. LYNDIA VOLTZ: I am happy with Mr Lynch's questions.

The CHAIR: For the benefit of members of the gallery we are now going to consider an application to hold the next part of this inquiry in camera.

Mr NICHOLSON: Can I ask [REDACTED] remain?

The Hon. LYNDIA VOLTZ: No.

The CHAIR: Would you be comfortable if a person was provided with a copy of the transcript?

Mr NICHOLSON: Yes, I would.

(The Committee deliberated)

(The Committee adjourned at 16:22)