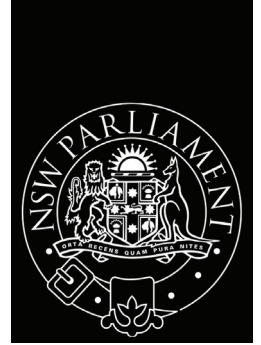


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

Review of the 2005-2006 Annual Report of the Inspector of
the Independent Commission Against Corruption

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and minutes of proceedings

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Terms of Reference

The Committee on the Independent Commission Against Corruption is required under section 64(1)(c) of the *Independent Commission Against Corruption Act 1988* to examine each annual and other report of the Inspector of the Independent Commission Against Corruption and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.

Chair's Foreword

One of the roles of the Committee on the ICAC under the provisions of the ICAC Act is to review the Inspector of the ICAC's annual reports to Parliament. This report is the result of the Committee's review of the Inspector's Annual Report for 2005-2006. Shortly before the Committee's review, which was delayed due to the March State election, the Inspector's Annual Report for 2006-2007 was tabled. The Committee, therefore, had the benefit during proceedings of the Inspector's most recent Annual Report, which it will examine in greater detail in 2008 along with the Inspector's recent audit reports.

Essentially, the matters on which the Committee focussed in the commentary to its report concern the administrative arrangements supporting the Inspector's capacity to perform his functions; the practices and procedures by which the Inspector carries out his functions; the ICAC's responses to recommendations and requests by the Inspector; and issues concerning the ambit of the ICAC's jurisdiction.

The Committee has examined the funding and administrative arrangements of the Inspector's Office, with a particular focus on the problems associated with the location of the Office in Redfern. The Inspector advised the Committee that the Office's isolated location and related safety concerns have made the recruitment of a permanent staff member difficult, while also resulting in temporary staff leaving the Office. The Committee feels that the relocation of the Office to a more centrally located office space would be cost-effective in the long-term with regard to the employment of staff and would improve the accessibility of the Office to complainants, while also allowing the Inspector's staff easier access to the ICAC. Consequently, the Committee has recommended that the Inspector discuss the feasibility of the relocation of his Office with the Premier as the relevant Minister.

Dealing with complaints alleging maladministration, abuse of power or misconduct by the ICAC or its officers is one of the Inspector's principal functions under the ICAC Act. During the 2005-2006 reporting year, the Inspector received 35 complaints, which increasingly related to allegations of ICAC maladministration. While the majority of complaints were found not to warrant investigation, the Inspector made certain recommendations to the ICAC regarding the latter's assessment of evidence. In the Inspector's view the management of complaints assessment by ICAC has since improved but the Committee noted that aspects of the Inspector's recommendations were not implemented. The Committee intends to monitor any further developments in relation to ICAC's assessment of evidence.

The Committee has made some preliminary observations on trends relating to complaints received by the Inspector over both the 2005-2006 and 2006-2007 reporting periods. The Committee is of the view that the Inspector's policies and procedures for dealing with complaints comply with the objectives of the relevant Australian Standard, which sets out guidelines for complaints handling. Trends in the Inspector's complaints handling and management will also be examined and assessed by the Committee in future reviews.

The Inspector experienced some difficulties in obtaining information from ICAC on two occasions due to the Commission's inability to locate relevant documents. While such problems are not unexpected given the large volume of complaints processed by the ICAC, the Committee believes that ICAC's provision of information to the Inspector is essential to the performance of his functions. The Committee will assess any further difficulties that arise in this area.

Chair's Foreword

During 2005-2006 the Inspector commenced an audit of the Commission's compliance with section 12A of the ICAC Act. This particular provision specifies that the Commission is to direct its attention to serious *and* systemic corrupt conduct. The report of the review was tabled in the 06-07 reporting year, and the Inspector advised the Committee that the interpretation of section 12A had been the subject of subsequent correspondence between him and the ICAC Commissioner. The Commissioner had confirmed that the Commission interprets the section flexibly as referring to conduct that was either serious or systemic, or possibly both. It did not take the interpretation that corrupt conduct must be both serious and systemic. While the Cabinet Office concurred with this interpretation, the Committee is concerned about the interpretation of the section and has recommended that consideration be given to amending section 12A to put the meaning of the provision beyond doubt.

I am grateful to the Inspector and his staff for their co-operation throughout the Committee's review. I also wish to thank my fellow Committee members for their contribution to this review, and for the commitment and bipartisanship they demonstrated in approaching the work of the Committee in 2007. Finally, I want to express the Committee's appreciation to the staff of the Secretariat for their support and assistance during the year.

Frank Terenzini
Committee Chair

List of Recommendations

RECOMMENDATION 1

It is recommended that the Inspector discuss with the Premier, as the relevant Minister, the feasibility of funding the relocation of the Office of the Inspector of the Independent Commission Against Corruption to a more appropriate, centrally located office space.

RECOMMENDATION 2

It is recommended that the Premier, as Minister with responsibility for the administration of the *Independent Commission Against Corruption Act 1988*, consider bringing forward an amendment to the Act to put beyond doubt that the reference to “serious and systemic corrupt conduct” in s.12A is to be interpreted as a reference to either serious and/or systemic corrupt conduct.

Chapter One - Commentary

INTRODUCTION

- 1.1 The Annual Report of the Inspector of the ICAC for 2005-2006 was tabled in the NSW Legislative Assembly on 26 October 2006. This is the Inspector's first Annual Report to Parliament on the operations of his office and the Committee examined the Inspector on the contents of the report at a public hearing on 1 November 2007. By that date, the Inspector had also tabled his second Annual Report to Parliament for the 2006-2007 reporting period (tabled in the NSW Legislative Assembly on 24 October 2007). The Committee, therefore, conducted its examination of the Inspector's first Annual Report having the benefit of the information contained in the latest report. However, while some recent matters were the subject of evidence, the focus of the public hearing remained the operation of the Inspector's Office for 2005-2006.
- 1.2 The subjects included by the Committee in its written and oral examination of the Inspector traverse several key management and operational areas, for example, funding and resources, policies regarding complaint handling and investigation, management of the Inspector's Office, staff training and development, ICAC's response to the Inspector's recommendations, and jurisdictional issues. This commentary deals with a wide range of inter-related matters, which the Committee regards as significant to the effective functioning of the Inspector's Office and the performance of his statutory functions. Given that the Inspector's Office is still in a relatively early stage of development, the Committee has made a number of observations on areas that it will continue to monitor and have an active interest in, rather than reaching major findings and conclusions based on a limited period of operations.
- 1.3 It is the Committee's intention to conduct further public hearings early in 2008 to formally examine the Inspector on his Annual Report for 2006-2007 and two other recent publications, namely:
- Report of an audit of the ICAC's compliance with section 12A of the ICAC Act 1988 (28 June 2007); and the
 - Report of an audit of the ICAC's compliance with sections 21, 22, 23, 35 and 54 of the ICAC Act 1988 (28 June 2007).

SECTION 1: FUNDING AND ADMINISTRATIVE ARRANGEMENTS

Funding arrangements for the Office of the Inspector of ICAC

- 1.4 The Department of Premier and Cabinet provides administrative support to the Inspector under a program entitled "State Administration Services".¹ That program makes specific reference to the provision of administrative support for his Office. Funding for this purpose is paid from the allocation made from the Consolidated Fund

¹ NSW Treasury, *Budget Paper No 3 2007-8, Volume 3 Budget Estimates*, pp 2-14 at http://www.treasury.nsw.gov.au/__data/assets/file/0003/7383/bp3_02prem.rtf

to the Department of Premier and Cabinet. Funding for the Inspector's Office is not separately itemised within this program in the Budget Estimates. Nor does the Inspector's Annual Report provide a detailed breakdown of expenditure by the Office. Consequently, the information provided by the Inspector in an annual report, or in response to questions from the Committee in regard to financial matters, is the sole published source of information on the subject. This adds to the importance of ensuring adequate financial details are available for scrutiny and strategic reviews. The Committee is of the view that such information should be available publicly in order that the Committee is able to oversight the Inspector in the performance of his functions. The public hearings on the Inspector's Annual Report will continue to be used by the Committee to seek information about the financial management of the Inspector's Office.

- 1.5 The arrangements for supplementation of the Inspector's budget also highlights evidence he gave to the Committee on potential concerns about this facet of the operations of his Office.
- 1.6 The Department of Premier and Cabinet is a budget dependant agency and any enhancement of the cost of administrative support to the Inspector's Office would have to be found from within the Department's allocation, in the event that Treasury did not agree to the provision of additional funding. This issue is discussed further in the next section.

Arrangements for additional funding

Funding for employment of staff and special projects

- 1.7 The Inspector advised the Committee that he is satisfied with the current level of funding for his Office's running costs and that requirements for additional staff have been met either through secondments or temporary placements. In addition, a budget enhancement was granted to the Inspector in June 2006 to enable the employment of a staff member 'to assist with the management of the Office's day to day workload'². In terms of his auditing role, the Inspector advised that he did not foresee any need to employ additional staff to assist with the next stage of his audit program:

CHAIR: Is it the case that it will be necessary to continue to employ additional temporary staff to fulfil roles like auditing, special needs, opinions of counsel ... and those kinds of services?

Mr KELLY: The answer is yes, from time to time. As I sit here, can I predict particular things? No. But in the very nature of the work we do, there will be a need from time to time; particularly, ... I foresee that from time to time we will have to get external legal advice. Equally, in relation to any bigger audits that we undertake, quite clearly we would need additional human resources to assist with that. The audits that we have as the possible focus of the next phase of our auditing program will not, in all probability, require us to employ others; the ones we have been talking about are relatively narrow and focused in scope. For example, the one that really took up the greatest degree of input was the one on the section 12A compliance, where we examined a very large

² Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 3

number of complaints ... to ensure compliance, and that required three or four months of secondment by a person from the Ombudsman's Office, for which we paid.³

- 1.8 The Inspector went on to express concern that any special projects or costs that may arise in his Office would, under the current funding arrangements with the Department of Premier and Cabinet, require separate funding to be sought and approved. While the Inspector was confident that approval would be given he held reservations about this requirement:

CHAIR: Does that limit you in your predictability as to how much money you will need in any particular year? Does it mean that there is a certain ad hoc nature about the money you will need? Does it vary?

Mr KELLY: It could vary, and it could vary quite dramatically. I suppose if I had a concern on the money side, it is that my arrangement with the Premier's Department is that any special project would have to be separately funded. If, for example, there were an occasion for me formally to seek counsel assisting ... then I would have to go to the Premier's Department to seek special funding for that. I should emphasise that I have no reason to believe that that would not be forthcoming ... But I guess that is the one area of vulnerability that I see ...⁴

Location of the Inspector's Office

- 1.9 The location of the Inspector's Office, which is in Redfern in the same building as the Redfern Police station, was raised as an issue during the Committee's examination of the Inspector. The Inspector identified several problems with the location of the Office, including difficulties with obtaining and retaining staff, security issues and its isolated location.

Recruitment of staff

- 1.10 The Inspector explained to the Committee that he had found it difficult to recruit and retain suitable staff, needed as a result of a higher than expected workload during 2005-2006, in part due to the location of the Office. He was granted a budget enhancement in June 2006, which was intended to be used to recruit an additional staff member.⁵ However, in answers to questions on notice the Inspector informed the Committee that:

It has not been possible to employ a person to undertake such duties on an ongoing basis due to various factors such as other employment opportunities, a lack of fit with the Office including, dissatisfaction with the nature of the work and the location of the Office.⁶

- 1.11 During the public hearing, the Inspector told the Committee that the location of the Office made recruiting staff difficult and had contributed to high staff turnover among temporary staff. The Inspector cited safety considerations and the isolated location of the Office as disadvantageous in terms of staffing:

³ Transcript of proceedings, 1 November 2007, p 2

⁴ *ibid*

⁵ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 3

⁶ Inspector of the ICAC, answers to question on notice, 26 October 2007, question 6, p 3

Commentary

CHAIR: I detect in the reports a certain amount of difficulty with staffing with regard to two issues: first, your location, and, second, factors you have mentioned that make it difficult to get staff, such as other opportunities to do with the office or the location. Would you like to be in a different location? The reason I ask that question is that when you are in a central part of the city it has to be, does it not, easier to access legal services because of the geographic location, given that most legal services are around the central part of the city? Would you like to comment on that? Are they two of the main issues?

Mr KELLY: Yes ... Whilst the premises themselves are perfectly fine ... it is not a great geographic location. In particular, simple things, like someone going for a walk at lunchtime just does not happen, and that makes it a pretty trying environment ... and people we have had on a couple of occasions working on a temporary basis, frankly have not felt comfortable in the environment and one person who we had engaged on a temporary basis left, and one of the things that I think contributed to his deciding to move on was that he says that he had been physically harassed on a couple of occasions ... it is a pretty odd environment for an office like this.

For those of you who do not know, it is right on the top of Redfern police station; so it has some challenges in it. But I think more than that, it is an isolated location so you do not get the ordinary interactions that a lot of the younger people would expect to get in a professional environment. My own view is that that has inhibited us recruiting and retaining people.

CHAIR: That was going to be my next question, but you have answered that. It is an impediment?

Mr KELLY: I think it is ...⁷

Committee comment

- 1.12 During the public hearing the Committee took evidence from the Inspector on whether or not he considered that his Office provided value for money as an oversight mechanism through which the ICAC accounts for the exercise of its extraordinary covert and coercive powers. The Committee fully supports the role performed by the Inspector and places considerable value on an effective and efficient accountability regime for the ICAC. The Committee also notes that the work performed by the Inspector should be conducted as cost-effectively as possible.
- 1.13 Based on the Inspector's evidence, the Committee believes that the location of his Office may detract significantly from the Inspector's capacity to carry out his functions in the most proficient and cost-effective way possible. The location of the Inspector's Office impedes the recruitment of staff, which in turn may place additional burdens on existing staff. The Committee is also concerned about the possible occupational health and safety issues raised by threats to the safety of staff who are accessing the Office as their place of work. Further, the Committee notes that the Office is inconvenient in terms of lack of proximity to the ICAC's offices. This is an important consideration given the need for the Inspector's staff to visit ICAC in order to interview or meet with ICAC staff and to access files. The location may also present difficulties in terms of access for complainants.
- 1.14 The Committee believes that relocating the Inspector's Office to a more appropriate and less isolated location would make the Office more attractive to prospective employees and accessible for complainants, as well as improving ease of access to ICAC's offices. While there may be some initial expense in relocating, the Committee

⁷ Transcript of proceedings, 1 November 2007, pp 2-3

anticipates that the move should deliver significant savings in the long-term by reducing staff-turnover and reducing the necessity for supplementation to fund additional staff places.

RECOMMENDATION 1

It is recommended that the Inspector discuss with the Premier, as the relevant Minister, the feasibility of funding the relocation of the Office of the Inspector of the Independent Commission Against Corruption to a more appropriate, centrally located office space.

Staffing arrangements

1.15 The Committee heard that, in addition to location, the lack of a career structure or path in a small office such as the Inspector's presented problems in terms of attracting staff:

Mr KELLY: ... Nowadays we are dealing with, to speak in current language, Gen Y and Gen X kind of people that would be fitting into the hierarchy ... and they are looking at their next job or the job after next, not the current job. When they look at the current job that we would have on offer there is really no career structure and no possibility of a career structure in a small office like this. And I guess they also say to themselves, "How will this look on my CV?" I guess, if you were a bright young lawyer—and we are probably primarily talking about bright young lawyers—it is probably not the most scintillating entry in your CV.⁸

1.16 The Committee raised the possibility of secondments as a way of alleviating these difficulties. Secondees could take on temporary roles at the Inspector's Office and gain valuable experience, without finding the lack of opportunities for advancement to be a hindrance in terms of their career. The Inspector advised the Committee that the Office had used secondees and expressed his support for such arrangements:

The Hon. JOHN AJAKA: ... I was most interested in what you were indicating about levels of advancement for employees, attracting the right candidates ... Is there any possibility of your office linking with other government departments, either on secondment, whether it be the Crown Solicitor's office, the Director of Public Prosecutions, where rather than you trying to hire someone from scratch, maybe someone from the Director of Public Prosecutions could be seconded to you for 12 months, ... where they might be seconded for 12 months, they then go back to where they started, having gained a wider range of experience and of course their career paths have not been hindered in any way.

Mr KELLY: We have done that to a certain extent. In fact, the person who provided the basic input into the 12A report came to us on secondment from the Office of the Ombudsman. We had an administrative assistant on secondment from the Industrial Relations Court, and we have looked at a couple of other possibilities on other occasions as well. So that is something we have done.

...

⁸ Transcript of proceedings, 1 November 2007, p 3

Mr KELLY: Philosophically, I am a great believer in secondments.⁹

- 1.17 The Committee recognises the challenge of attracting staff to a small office with limited potential for advancement for employees. However, the Committee also notes the wide range of opportunities that may arise for the staff of small organisations, which may not be available in larger organisations with more strictly defined roles for staff. For instance, the Executive Officer told the Committee of the management responsibilities and training opportunities she had gained in her position:

Ms SRIVASTAVA: I see the approach the Inspector is taking in terms of training has been one not just related to complaints or task focused work but a broad one. That has generally helped me in running the Inspectorate. It is a small agency. So, I have done training related to management as well as communication training and that has helped overall in making the job more interesting as well as to take a broad strategic approach to this non-complaints handling function.¹⁰

- 1.18 The Inspector confirmed his support for such training opportunities in the following evidence:

The Hon. GREG DONNELLY: ... My question is a bit more general, about the issue of training. Obviously the organisation is relatively small and to take someone offline for a period of time creates gaps that can be hard to fill. Notwithstanding that, is there any training you feel would be valuable to be provided to the staff which, at least to this point in time, you have not been able to provide?

Mr KELLY: I am a passionate believer in training ... I have certainly been as encouraging as possible to people to undertake a variety of training, including some, on the face of it, quite remote from Berwick immediate functions and including some reasonably expensive stuff.

One of the difficulties you can have with this kind of function is that people who have to perform become very narrowly focused on whatever the tasks are at hand and do not sufficiently see those tasks in a broader societal context. In my experience across a number of organisations one of the ways you overcome that is through training of one sort or another that takes them into other disciplines or other exposures ...¹¹

- 1.19 With respect to complaint handling and investigation, the Committee noted the extent of the training undertaken by staff of the Inspector's Office, as follows:

All staff will attend courses provided by complaint handling agencies such as the NSW Ombudsman's office.

In addition, the following literature is available to staff as training resources and staff are required to familiarise themselves with such literature as part of induction and ongoing on the job training:

- Effective Complaint Handling;
- Dealing with Difficult Complainants;
- The Rights Stuff: Tips for making complaints and solving problems;
- NSW Ombudsman Protected Disclosures Guidelines;
- NSW Ombudsman The Complaint Handler's Tool Kit 2nd edition; and

⁹ Transcript of proceedings, 1 November 2007, p 8

¹⁰ *ibid*, pp 12-13

¹¹ *ibid*, p 13

- NSW Ombudsman Investigating Complaints

Other training available to staff involved in complaint handling are:

- Software management including database management relating to complaints;
- Communication training.

1.20 In previous positions, the Executive Officer, who principally deals with complaints and complainants, had undertaken extensive complaint handling training including: investigation management, interviewing skills and conflict resolution.¹²

Committee comment

1.21 The apparent staffing challenges facing the Inspector's Office, which were identified by the Inspector in his evidence to the Committee, are to some extent counterbalanced by the wide range of experience and training opportunities on offer to staff working in a small organisation. The Committee supports the Inspector's use of secondees as a cost-effective solution to some of the staffing challenges facing his office.

1.22 The Committee will continue to monitor the Inspector's efforts to attract secondees and staff with appropriate skills and experience.

SECTION 2: HOW THE INSPECTOR PERFORMS HIS ROLE

Introduction

1.23 The Inspector's principal functions under s. 57B(1) of the ICAC Act are to:

- a) audit the operations of the Commission for the purpose of monitoring compliance with the law of the State; and
- b) deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commissioner or officers of the Commission; and
- c) deal with (by reports and recommendations) conduct amounting to maladministration (including without limitation, delay in the conduct of an investigation and unreasonable invasions of privacy) by the Commission or officers of the Commission; and
- d) assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality and propriety of its activities.

1.24 In his answers to questions on notice from the Committee, Mr Kelly indicated that his approach to the role of Inspector 'is to ensure that my statutory functions are carried out effectively to ensure the ICAC's accountability'. He also '[took] an interest in general management issues affecting the ICAC's performance', which he considered to be 'consistent with the general legislative intention that the Inspector's role should improve the ICAC's performance'.¹³

1.25 To date the Inspector has given effect to his statutory functions by:

- investigating complaints against the ICAC;

¹² Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 14c, pp 7-8

¹³ *ibid*, question 1, p 1

Commentary

- conducting and reporting on an audit of ICAC's compliance with sections 21, 22, 23, 35 and 54 of the ICAC Act 1988;¹⁴ and
- conducting and reporting on an audit of the ICAC's compliance with s12A of the ICAC Act 1988.¹⁵

1.26 With regard to his function at s 57B(1)(d) of the Act, the Inspector confirmed that he had taken an indirect approach:

CHAIR: In relation to your role, I notice that your functions are contained in section 57B of the Act, and it sets out four sub-paragraphs. In your report you obviously indicate your audit power, which is in paragraph (a), and then you group paragraphs (b) and (c) for the general complaints, and we will get to those a bit later. Then you come to paragraph (d), which talks about general procedures. What kind of activity would you envisage would fall into that function? Paragraph (d) states:

To assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

And you have stated there that you have done nothing in that process.

Mr KELLY: That is exactly right. It is a question of how you apply the resources and the way in which you, in a sense, approach the task. We have gathered together pretty much all the policies and processes that are written down by ICAC and we have generally familiarised ourselves with them. We have not come across anything that has rung alarm bells to the point where we thought, "Gee, we had better go in and, in a sense, re-engineer that process", and that is what we mean in saying that we have not done that. What we have concentrated on though, in particular, in the 12A audit is to see how they behave in fact and often when we look at complaints we have a look at the handling of the complaint against what they have said as being the procedures. So, I guess we come at this indirectly in a pragmatic way rather than in a—

CHAIR: Formal way?

Mr KELLY: Yes.¹⁶

1.27 Such an approach places additional significance on the Inspector's auditing activities. The Inspector's Annual report for 2006-2007 indicates that during the audit of the ICAC's compliance with s.12A of the ICAC Act, the ICAC's revised assessment procedures were provided to the Inspector's Office. Although the procedures have not been formally reviewed pursuant to s.57B(1)(d), the Annual Report states that they do not appear to raise any issues of legality or propriety¹⁷. The Committee intends to examine the Inspector's recent audit reports and this particular statutory function in greater detail during 2008.

1.28 The goals of the Inspector's Office as identified in the Business Plan for 2006-2007, are to:

- Finalise outstanding complaints received in 2005-2006;
- Handle all new complaints as effectively as possible to ensure that complaints without merit do not disproportionately absorb the Office's resources;

¹⁴ These sections provide for the ICAC to obtain information and documents, enter public premises, summons witnesses and take evidence, and require relevant authorities to submit reports to the Commission.

¹⁵ Section 12A provides for the ICAC to direct its attention to serious and systemic conduct.

¹⁶ Transcript of proceedings, 1 November 2007, pp 3-4

¹⁷ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 24

- Undertake all other work as required under the ICAC Act 1988 (for example the Annual Report);
- Prioritise the undertaking of audits pursuant to s. 57B (1) (a) of the *ICAC Act 1988* (the Act) in order to monitor compliance with the laws of the State and to identify any systemic issues affecting the accountability and performance of the Independent Commission Against Corruption;

resulting in the following deliverables:

- Finalise the audit report on the ICAC's compliance with s. 12A of the ICAC Act;
- New audit on ICAC's exercise of compulsory powers undertaken; and
- Follow up on recommendations from the Joint Parliamentary Committee Report 5/53, December 2005.

1.29 The Inspector has indicated that his Office will not require additional funds or resources to achieve its business plan goals, and that the business plan does not involve significant changes to ongoing priorities.¹⁸

Nature of complaints made to the Inspector

1.30 The Inspector received 35 complaints in 2005-2006. Of these complaints 21 were determined by the Inspector's Office as not warranting further investigation and three complaints were referred back to the ICAC, while 11 were still being investigated at the conclusion of the reporting period.¹⁹ The Inspector advised the Committee that 'most of the complaints when we analyse their basis involve maladministration.'²⁰

1.31 In 2006-2007, the Inspector received 37 complaints. The proportion of complaints relating to alleged ICAC maladministration had increased from the levels in the previous year. The Committee also noted that ICAC's assessment of evidence was the focus of many of the complaints received in 2006-2007 that alleged maladministration by ICAC.

¹⁸ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 19, p 10

¹⁹ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 20

²⁰ Transcript of proceedings, 1 November 2007, p 5

Table 1: Nature of complaints²¹

Complaint regarding	Number of complaints 2006-2007	Number of complaints 2005-2006
ICAC maladministration	17	12
Conduct of current or former ICAC officer	0	9
Conduct of off-duty ICAC officer	0	1*
Conduct of ICAC inquiry or investigation	1	2
ICAC management of complaint and/or decision not to investigate	7	5
Total	25	30
Complaints not proceeded with		
Complaint withdrawn	**	1
Complaint outside jurisdiction	8	4
Complaint unclear due to lack of particulars	0	1
Complaint not assessed	4	***
Grand total	37	35

Notes:

* This complaint was received by the Inspector's Office in May 2006 and is noted as an 05-06 complaint.

** 1 withdrawn complaint is noted under complaint not assessed.

*** Not reported on in the reporting period.

Table 2: Results at a glance - complaints²²

Complaints	2006-07	2005-06
Complaints received	37	35
Complaints not warranting investigation	29	21
Complaints referred back to the ICAC	8	3
Complaints concerning off-duty conduct by ICAC officers	1	0
Complaints still active as at 30 June 2007	7	11
Complaints not assessed	4	*
Complaints finalised within 6 months	31	19
Average time taken to finalise complaint (months)	2.3	4.6
Complaints received by mail	21	6
Complaints received by email	9	14
Complaints received by facsimile	3	1
Complaints received by telephone	16	9
Complaints referred to the Inspector by a third party	3	5
General enquiries received	12	7

* This category was not reported on in the previous Annual Report.

²¹ These statistics are interpretations of case studies from pp 13-19 of the Inspector's 2005-2006 Annual Report and pp 17-24 of the Inspector's 2006-2007 Annual Report and are not a direct replication of any figures published by the Inspector. Some of the complaints may have involved a combination of allegations of which maladministration was only one area of complaint.

²² Office of the Inspector of the ICAC, *Annual Report 2006-2007*, p 12

Preliminary observations by the Committee

- 1.32 The Committee notes that the total number of complaints received by the Inspector's Office is relatively constant, with complaints increasing from 35 in the Office's first year of operations to 37 in 2006-2007. Complaints that the Inspector's Office deemed as not warranting investigation increased by approximately one third in 2006-2007, while complaints that were referred back to ICAC doubled. The number of complaints received in 2006-2007 that were outside the Inspector's jurisdiction also increased significantly in comparison to the previous reporting year.
- 1.33 The Committee notes the apparent improvement in 2006-2007 in terms of the number of complaints that were finalised by the Inspector's Office within six months, while noting that this improvement may be reflective of the increase in both the number of complaints determined as not warranting investigation and those that were outside jurisdiction. The average time taken to finalise complaints also halved from 4.6 to 2.3 months.
- 1.34 The Committee intends to examine the Inspector's 2006-2007 Annual Report in more detail in 2008, particularly, the reasons for the trends noted above, which may not necessarily be obvious on the basis of the information and figures given to date. Trends in complaint handling and management will be an area of ongoing interest and examination by the Committee.

Policy and procedures of the Office of the Inspector relating to the formulation, assessment and investigation of complaints

Relevant policies

- 1.35 The Inspector's Annual Report for 2005-2006 states that "... operating policies and procedures will continue to be developed in response to emerging business needs...".²³ The following table²⁴ outlines the standards and guidelines relevant to particular policies developed by the Inspector's Office thus far:

Policies Developed to Date	Standards and Processes Observed
1. Assistance to complainants	<ul style="list-style-type: none"> ▪ NSW Ombudsman "Investigating Complaints; A Manual for Investigators", June 2004 ▪ Australian standard ISO10002-2006 "Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.3 "Accessibility"
2. Policy concerning allegations of misconduct by ICAC officers whilst "on-duty" and "off-duty"	<ul style="list-style-type: none"> ▪ There is no established standard or process in this area.
3. Policy inviting complainants to advise whether they wish their complaint to be assessed by the Inspector, where the complaint has been referred by a third party.	<ul style="list-style-type: none"> ▪ Australian standard ISO10002-2006 "Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.9 "Accountability"

²³ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 3

²⁴ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 4, p 2

Commentary

- 1.36 *Investigating Complaints* is a manual for investigators who may in the course of their duties be called upon to investigate a complaint, an allegation, or an issue of concern to management. That manual stresses that the investigator is responsible for ascertaining all relevant facts pertaining to the complaint.²⁵ The Australian Standard adopted by the Office similarly stresses the need to make every reasonable effort to investigate all the relevant circumstances and information surrounding the complaint.²⁶ The particular clauses of the Standard referred to in the table are:

4.3 Accessibility

A complaints-handling process should be easily accessible to all complainants. The characteristics of an accessible complaints-handling process include the provision of readily accessible information about the process, flexibility in the methods of making complaints (including that the process for submitting complaints should be flexible and include provision for oral complaints or complaints in other formats), toll-free or local call fee facilities for making complaints and special arrangements and/or support should be made available for complainants with specific needs (including availability of interpreters and cross-culturally trained staff).

Information should be made available on the details of making and resolving complaints. The complaints-handling process and supporting information should be easy to understand and use. The information should be in clear language. Information and assistance in making a complaint should be made available (see Annex B), in whatever languages or formats that the products were offered or provided in, including alternative formats, such as large print, Braille or audiotape, so that no complainants are disadvantaged.²⁷

and,

4.9 Accountability

The organization should ensure that accountability for and reporting on the actions and decisions of the organization with respect to complaints handling is clearly established.²⁸

- 1.37 *Complainant access* - Issues pertaining to the level of awareness of the Inspector's Office and the role he performs are discussed at paragraph 1.72 of this commentary. In terms of access, complaints can be made to the Inspector by mail, email, facsimile, and telephone. The majority of complaints made to the Inspector in the 2005-2006 reporting period were by e-mail and in 2006-2007 the majority of complaints were received by mail.²⁹ These avenues offer a variety of alternative methods for contacting the Inspector, consistent with the Australian Standard guidelines for complaint handling.
- 1.38 *Assistance to complainants* - The Inspector's policy on assistance to complainants states that assistance by the Office is limited to a maximum of two hours. An assessment is made at the end of the two-hour period as to the merits of the complaint. If the complaint is assessed as unlikely to support the allegations being

²⁵ The NSW Ombudsman, *Investigating complaints: a Manual for Investigators*, June 2004 paragraph 1.3.1

²⁶ Australian Standard ISO10002-2006 "Customer satisfaction" –Guidelines for complaints handling in organisations (ISO 1002:2004, MOD) clause 4.3 "Accessibility" paragraph 7.6

²⁷ *ibid*, p 3

²⁸ *ibid*, p 4

²⁹ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 12

made, no further assistance will be provided to the complainant.³⁰ The two-hour cap on assistance had been instituted due to:

- the personnel resources of the office, i.e. there being only 1 full time staff member with the ability to provide this assistance, i.e. the Executive Officer;
- the larger than anticipated volume of complaints; and
- the need to ensure that the Executive Officer had sufficient time available to support the Inspector's other statutory functions, for example undertaking audits.³¹

1.39 The Inspector advised the Committee that circumstances had not arisen where two hours assistance had been inadequate to assess the merits of a complaint. He also was of the view that this approach was sufficiently flexible to accommodate the needs of complainants. The policy allows for an assessment at the end of the two-hour period as to whether further time and/or other resources are required and the provision of such additional time and resources, as appropriate.³² During 2005-2006 the Executive Officer conducted interviews with complainants on two occasions during the assessment process, in order to obtain particulars of complaints.³³

Complaint assessment and investigation

1.40 Information was provided in relation to the Office's complaint handling processes in the responses made to Questions on Notice. This showed that under the assessment process complaints are acknowledged by way of a standard letter. All evidentiary material is then reviewed, including the material supplied by the complainant, as well as ICAC records comprising the Assessment Panel Report, correspondence with the complainant and Case Note Reports. The Executive Officer prepares written advice including recommendations and draft correspondence and submits these along with the complaint file for the Inspector's review and determination. The Inspector's directions are implemented, including any amendments and finalisation of correspondence for signature.³⁴ In deciding whether there is sufficient information to investigate a complaint the Inspector considers the age of the complaint, the likelihood of uncovering relevant evidence and whether the evidence indicates a reasonable likelihood that the allegations may be substantiated.³⁵

1.41 The Inspector elaborated on the manner in which his Office deals with complaints in evidence:

CHAIR: ...The complaints that you deal with I notice are mainly paper-related, although you receive certain material from the complainant and then you access, I assume, some material from ICAC and you also have your electronic connection in your office. Is that the main material that you look at to assess these complaints? Is that the ambit of it?

Mr KELLY: It is the main focus. We do occasionally interview complainants, and mostly it is Seema that conducts the interview. Generally speaking, I have a policy that we have written down that I do not do interviews myself, because at the end of the day I have to make the call on it. So, we have, in a sense, a separation of functions, and in

³⁰ *ibid*, p 4

³¹ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 15a, p 8

³² *ibid*, questions 15b and c, p 8

³³ *ibid*, questions 13 and 14b, p 7

³⁴ *ibid*, question 10, pp 5-6

³⁵ *ibid*, question 11, p 6

Commentary

appropriate circumstances we interview the ICAC officers involved: we have done that quite a deal.

So, we are not limited just to the writing, so to speak, but also to oral information. The one area that we are pretty stringent on, and it comes up quite regularly, is that we ordinarily require a complainant to give some measure of particularisation of their complaint. In other words, if they simply write in and say, "ICAC dealt with me badly and they are corrupt", then we say, "You tell us what you mean and tell us why". Only yesterday—without going into the details of the matter because, as you know, I am not allowed to do that—I had written back to a complainant saying, "Please give us the particulars" and the person wrote back and said, "I'm not going to do so because it's obvious if you look at the ICAC files." Of course, it is never obvious if you just look at the files. That is a fairly tough policy that we adopt. I, personally, am absolutely convinced that it is the right policy. It is a policy that helps preserve the integrity of ICAC's systems and it is a policy that stops us wasting a lot of resources. My budget is nearly to zero on the top of it if we had to do the devilling, so to speak. I think it is a perfectly fair approach because if at the end of the day you want to go down to the Supreme Court of New South Wales you cannot walk up to the counter and say, "I want to commence proceedings against X" without having a piece of paper that says what the basis of the complaint is. That is the one part where we are stringent, but I think rightly so.³⁶

- 1.42 On the basis of the Inspector's answers and evidence, it appears to the Committee that face-to-face interviews were not conducted with complainants, except for the two occasions cited above in respect of the process for formulating complaints. It is not apparent that interviews were held with any complainants in 2005-2006 for the purpose of investigating a complaint. However, the Committee notes that the Inspector has indicated that, "Once an investigation is commenced the OIICAC [Inspector's Office] undertakes all necessary tasks to ensure that the complaint is fully investigated".³⁷ Presumably, such tasks would include interviews with complainants should this prove necessary.
- 1.43 It is the view of the Committee that the complaint handling process adopted by the Inspector's Office materially accords with the objectives of the Australian Standard. The Committee will continue to monitor this process.
- 1.44 As previously noted, the majority of complaints to the Inspector concern matters of maladministration on the part of the Commission, as distinct from complaints regarding the exercise of its powers, for example, allegations of abuse of power or improper conduct. Part of the Committee's examination of the Inspector concerned those complaints that he had referred back to the ICAC: three matters were referred back in 2005-2006, two of which raised issues about the assessment of evidence with regard to the complainant's original complaint to ICAC. In his Annual Report for 2006-2007, the Inspector reported that six matters, which were received in the 2005-2006 reporting period and were referred back to the ICAC, had been finalised during 2006-2007. Of the complaints received during 2006-2007 that were finalised in the same reporting period, two matters were referred back to the ICAC, one of which involved allegations that ICAC had failed to properly assess relevant evidence in

³⁶ Transcript of proceedings, 1 November 2007, p 5

³⁷ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 14b, p 7

support of the original complaint made to it. As at 30 June 2007, six other complaints to the Inspector were still active.³⁸

Recommendations re ICAC's assessment of evidence

- 1.45 In view of the complaints received by the Inspector regarding ICAC's assessment of matters, the Committee was concerned about ICAC's response to two complaints cited in the Inspector's 2005-2006 Annual Report. These complaints had been referred back to the ICAC by the Inspector with recommendations for action.
- 1.46 The first complaint alleged maladministration by the ICAC on the basis that ICAC officers were unreasonable in failing to assess evidence supplied by the complainant in support of his original complaint. The Inspector noted that an assessment of the complaint showed that it warranted investigation, leading him to recommend that the ICAC assess the evidence that the complainant had provided. The Inspector further recommended that the ICAC develop an explicit policy for staff about the standard of effort required to access evidence that might, at first instance, prove difficult to access.³⁹
- 1.47 The second complaint alleged maladministration by the ICAC in relation to a complaint concerning the conduct of councillors in a local government election. Once again, the complainant alleged that the ICAC had been unreasonable in its assessment of the evidence, particularly in failing to speak to certain key witnesses. The Inspector assessed the complaint as being within jurisdiction and, following an assessment of the material supplied by the complaint and relevant electronic records of the ICAC, the Inspector recommended that the ICAC reconsider its decision not to investigate the complaint as there were issues of both process and substance. The Inspector also suggested that the adequacy of the ICAC's assessment reports should be generally examined as he held concerns about the accuracy of matters being reported by Assessment Officers (in this case to the Operations Review Committee, since disbanded).⁴⁰
- 1.48 In answers to questions on notice, the Inspector advised that the ICAC's response regarding the first complaint was that it did not need to develop a specific policy on the standard of effort required to assess evidence, as this issue could be addressed in the staff induction process. With regard to the second complaint, ICAC recognised the issues raised by the Inspector about the adequacy of reports to the Operations Review Committee (ORC) and the Commission's assessment procedures. The Inspector was informed that ICAC would consider the issues raised as part of the review of its complaint assessment procedures to be undertaken following the abolition of the ORC.⁴¹
- 1.49 The following summary from the Inspector's Annual Report for 2006-2007 regarding ICAC's handling of two matters referred back to it by the Inspector, appears to correlate to these two complaints:

³⁸ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, pp 17-18; Office of the Inspector of the ICAC, *Annual Report 2006-2007*, pp 14-16, 21-22

³⁹ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 17

⁴⁰ *ibid*

⁴¹ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 17, p 9

Complaints referred back to the ICAC (pp.14-16)

Complaint 5. This complaint alleged that ICAC officers had been unreasonable in failing to review certain evidence and the ICAC had been wrong in subsequently concluding there was insufficient evidence to justify investigating his allegations of corrupt conduct by a named public officer. The Inspector determined the complaint should be investigated and advised the ICAC of his concerns about the ICAC's failure to assess key relevant evidence. He recommended that the ICAC assess the relevant evidence and develop an explicit policy for staff about the standard of effort required to access evidence that might, at first instance, prove difficult to access. The Commissioner subsequently advised the Inspector that he accepted that the ICAC may not have properly assessed the complaint and that the Deputy Commissioner had re-assessed the evidence in question and concluded that it did not disclose any evidence of corrupt conduct. The Commissioner had accepted the Deputy's assessment and her view that there was no need for an explicit policy. The Commissioner further advised that the issue could be adequately addressed during the induction of new ICAC officers.⁴²

Complaint 6 - The Inspector had written to the ICAC advising of his concerns regarding the adequacy of the assessment that had been undertaken on this complaint, including the failure to make certain inquiries and accurately advise the Assessment Panel and the Operations Review Committee on relevant issues. The Inspector recommended that certain witness be interviewed by the ICAC and that the adequacy of its procedures for reporting to the Assessment Panel and the Operations Review Committee be considered. However, the Commissioner advised that the Solicitor to the ICAC had reviewed the Inspector's report and recommended that only one witness should be interviewed and that the ICAC's reporting procedures should be looked at as part of the ICAC's general review of its complaint assessment procedures. The Commissioner had accepted these recommendations. Four witnesses were subsequently interviewed by ICAC, which formed the view based on this evidence, that the complaint did not merit investigation. The Inspector advised the complainant that he was satisfied about the action taken by the ICAC and did not propose to deal with the complaint any further.⁴³

- 1.50 It is relevant to note that the process adopted by the Inspector for evaluating whether or not complaints about ICAC's assessment of evidence warrant further action, or raise procedural or systemic issues, necessitates the Inspector's Office undertaking a further assessment of ICAC's original complaint assessment.
- 1.51 The Chair raised with the Inspector the extent to which his Office re-assessed ICAC's management of the assessment of complaints:

CHAIR: You have indicated in your report that you are also interested in the management side of ICAC. How much of the proportion of your work do you intend to take up looking at the managerial side as opposed to the more legal assessment side?

Mr KELLY: That issue comes up, I guess, primarily in my regular discussions with the Commissioner. I should say at the outset that I think there has been a significant strengthening in management processes in ICAC over the time I have been working at it. I suspect the abolition of the Operations Review Committee has had a positive effect because that process obviously took up a lot of time in terms of putting the documentation together ...

I think that with the abolition of the Committee the management structure that is now in place in relation to the assessment of complaints is much more efficient. The second thing, and of course one is always in a bit of a cleft stick on this—I would not want to give the impression that former staff members were other than extremely good—but I

⁴² Office of the Inspector of the ICAC, *Annual Report 2005-2006*, pp 15-16

⁴³ *ibid*, p 16

think the recruitment of Theresa Hamilton, with her background in the Queensland commission⁴⁴, has had a positive effect because there has been, I think, this is very impressionistic though, but I think there has been a cross-fertilisation of approaches and management styles, and that always does organisations good, in my experience.⁴⁵

- 1.52 The Inspector went on to clarify that the difficulties he perceived with the assessment of evidence included decisions by ICAC officers in certain instances not to seek further information or clarification through relatively straightforward enquiries as to the particular circumstances surrounding a complaint:

Reverend the Hon. FRED NILE: You say ... that ICAC is not making basic inquiries to establish the veracity of complainants' allegations. Can you give an example? What is the reason for that in your opinion?

Mr KELLY: What I really meant harks back to the discussion we were having on evidence. In at least a couple of cases that I can immediately call to mind it would have been relatively easy to ring someone up and ask, "What happened here?" instead of just taking a piece of paper on its face value or taking a complainant's statement as the complete event. I cannot be sure why that has happened. But I think it comes back to a resourcing issue that I have mentioned to the Committee before. I recall in the year immediately gone the Commission dealt with 2,149 complaints or matters—whatever they like to call them—and they have about 10 assessment officers. So there is an enormous volume of complaints that come in and quick decisions have to be made on them.⁴⁶

- 1.53 The Chair of the Committee pursued this issue and ICAC's decision not to institute a specific policy on assessment of evidence, as had been suggested by the Inspector:

CHAIR: Lastly on complaints, the assessment of evidence seems to be a real issue in your reports. You have a section 12A audit where you made certain recommendations and you assessed some complaints where you questioned an explicit policy on standard of effort required to assess evidence. If you look at both of those courses of action that you have taken—one with an audit and one with assessment of complaints—there seems to be an issue with how ICAC assesses evidence in terms of relevant evidence, allegations of failure to assess relevant evidence and so on. Were those recommendations put in place? Alternatively, did you get explicit policy? In general, what can you tell the Committee about how you feel that ICAC is moving forward to address those issues?

Mr KELLY: To be fair to everyone, I think I should discuss that with the Commissioner at my next meeting. But the general impression is that there has been in recent times a greater understanding of, first, what constitutes evidence; and, secondly, the need to have regard to the evidence. We face the same issue. It is quite tricky in some ways because inherently you do not need, and should not require, anything like the sworn testimony that you would expect in a court. You do not need affidavits, for example. On the other hand, mere assertions do not constitute evidence. A lot of the complaints that come to ICAC—and I have to say I think a fair proportion of the complaints that come to us—are based on mere assertions or, in some cases, mere speculation such as, "The council didn't do this; therefore, it must have been corrupt." Of course, none of that flies.

However, what we have observed in relation to a couple of cases where ICAC has not been as precise as it might have been is that, for example, it may not have rung

⁴⁴ A reference to the Queensland Crime and Misconduct Commission (CMC).

⁴⁵ Transcript of proceedings, 1 November 2007, p 4

⁴⁶ *ibid*, pp 6-7

Commentary

someone up and said, "Well, what are the facts?" Alternatively, it may have thought that merely because the only evidence was oral evidence that was not enough. Of course, often the only evidence is oral evidence. Even in the most serious of crimes people are convicted on the basis of oral evidence. It is around those grey areas that the difficulties arise.⁴⁷

- 1.54 The Committee also asked the Inspector whether ongoing training of ICAC staff had been considered and held any merit. His response is instructive on the extent of the problems he has encountered when taking into consideration the nature of the assessment process undertaken by ICAC officers and each officer's workload:

Mr KELLY: ... In connection with the assessment of evidence, the major cause of complaint to me is when ICAC has not taken up complaints and a subset of that is that the major component of those complaints is that they have not found the evidence or assessed the evidence properly. So it is sort of a subset of a subset. There were, I can recall to mind, a couple of cases where I thought the assessment officer had not properly understood what was evidence and what was not evidence. My understanding is that there is much better, I guess, ultimate supervision of that issue within the assessment area than might have been the case when those issues arose.

I have not in recent times followed up with the Commissioner precisely what training programs are under way. I think it is a timely reminder that I should check again and my approach will reflect what I said in answer to the question from Mr Donnelly. I like to approach things by imagining that you were the person who was in the hot seat. I think to be an assessment officer in ICAC must be a pretty tough, hard job and it would be a job where it is very easy to make mistakes. For the most part they do not make mistakes but it is certainly easy to make blemishes. I have said to this Committee before, you take the 2000 complaints and take approximately 10 full-time people sitting in that assessment area, you take approximately how many days a year they actually work and you are looking at them having to process one complaint a day, every day they are at their desks and that is hard. I do think there is scope for continually honing their skills in picking issues and dealing with things like what constitutes evidence. Now it is very hard, and I am sure the Commissioner would say this to you if he were sitting here as well, to find precisely applicable training for that kind of approach. It is not just complaint handling stuff because that is not what we are talking about and I think they probably understand all of that fairly well. It is not quite going to a course on what constitutes admissible evidence either—it is somewhat more refined than that. So that is a very long answer, apart from my monosyllabic answer.⁴⁸

- 1.55 ICAC's management structure underpins its operations and the Inspector elaborated on the significant changes that had occurred in this area in order to put the assessment issue into some context:

CHAIR: Is it a managerial issue?

Mr KELLY: Chairman, I have said before I think embedded in the very structure of ICAC is a tremendous managerial challenge. ICAC's budget is basically at the ICAC level of a global budget of approximately \$16 million; I might be out by \$1 million here or there but near enough to \$16 million. ICAC then has to make decisions about the application of that. A very large part of that budget is simply driven by salaries and salary-related expenses and very little else. But really at the end of the day you are making decisions about resource allocation between two clearly competing functions.

⁴⁷ *ibid*, 1 November 2007, p 6

⁴⁸ *ibid*, 1 November 2007, p 14

One is the corruption prevention function and the other is effectively the complaints function.

...

Sitting under that issue is how you view and manage your complaints and investigations function. Quite clearly the investigations function has been tremendously important. The really big, momentous results from ICAC have come from extensive investigations, often involving covert operations or wiretapping or whatever. That is where the big successes have been. Yet they are absolutely resource intensive functions and they are not functions that are repetitive day in and day out. It is not like you know you have to have so many traffic police at any given time. These are functions that have resource demands that go up and down and that is a very big management issue. Again I would not want to suggest I have any view other than I think successive Commissioners have done a very good job in making those resource allocations. Then, in terms of the stuff that comes in the door, off the street so to speak, in those 2000 complaints a year you have to make very hard decisions about which fish you are going to get.

Ms Srivastava and I were discussing this morning that if you lived in a more idealised world, you would probably try to articulate clearer criteria about what fish you would keep, the species or the size. It is a bit like the fishing regulations, if you continue the analogy. At the moment it is not absolutely clear in our core cases. I suppose, in fairness, I probably should discuss this with the Commissioner first, but it is not always obvious to us why some complaints are taken up and others are not. Perhaps it would be better if there were clearer criteria on that. However, I am sure the Commissioner would say, and I am sure the head of the assessment area would say, to a large extent you have got to be judgmental about it and you have to pick.⁴⁹

- 1.56 It is apparent that the Inspector has observed improvements in this area of ICAC's management of complaints, and that he intends to discuss the matter further with the Commissioner. The Committee will await with interest the outcome of the Inspector's next meeting with the Commissioner as to any further developments or specific policy initiatives in this area, and any decision as to whether ICAC's assessment of evidence provided in support of the complaints made to it, is a matter that warrants further monitoring and review.

ICAC's file management practices

- 1.57 One other area of ICAC's complaint handling processes, which raises some concerns for the Committee, relates to the provision of information to the Inspector by the ICAC. In his Annual Report for 2005-2006, the Inspector indicates that,

ICAC has generally been forthcoming in meeting requests for information. Material is generally produced to the Office within 1-3 weeks of a request being made.⁵⁰

- 1.58 However, prior to the public hearing, the Inspector advised the Committee that there had been two occasions where difficulties had arisen in the provision of information by the ICAC in response to a request by the Inspector:

1. The ICAC could not locate a certain document requested which was relevant to a complaint being investigated by the OIICAC.
2. During an audit (on the ICAC's compliance with the law when exercising powers provided by the ICAC Act which allow it to compel other persons or agencies to co-

⁴⁹ *ibid*, pp 14-15

⁵⁰ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 5

Commentary

operate with it) the ICAC advised the OIICAC that it could not locate a number of the sample of records being audited without considerable resources being expended.⁵¹

- 1.59 In evidence the Inspector confirmed that he had resolved one request and considered such file management problems not to be unusual:

Mr JONATHAN O'DEA: ... One is, of those two matters raised in answer to question 9A, those two situations where ICAC did not immediately or was not immediately forthcoming in terms of requests for information, were both of those matters ultimately resolved to your total satisfaction or perfectly?

Mr KELLY: In the second case, yes; in the first case, we have not ultimately resolved and reported on the matter. The unfortunate fact is that they could not locate the relevant document.

Mr JONATHAN O'DEA: Do you accept that?

Mr KELLY: One of the observations that we have made to them from time to time, and where I have reason to believe there is a genuine attempt to improve, is that some of their file management practices have not been as great as one might have hoped in terms of record-keeping. I do not want to be particularly condemnatory or anything like that; it is not an unusual phenomenon in public authorities that sometimes the document management system is not quite as good as you would wish.⁵²

- 1.60 The Committee notes that the problems experienced by the Inspector do not appear to be unreasonable in view of the high level of complaints received and processed by the ICAC. However, the Committee will continue to monitor any further difficulties experienced by the Inspector in relation to ICAC's provision of information to his Office as such problems have the potential to impede the Inspector in the performance of his statutory functions.
- 1.61 On a related front, the Inspector has made some comment about the ICAC's record-keeping in respect of the documentation needed to meet the legal requirements around ICAC's use of its powers. In the course of performing his audit on ICAC's exercise of its powers under parts 4 and 5 of the ICAC Act, the Inspector audited the supporting documentation required to be attached to notices and summonses. He concluded that the sample showed ICAC had considered issues of natural justice and procedural fairness and noted:

While there were no substantive issues of concern the audit revealed a lack of proper record-keeping by the ICAC. Records concerning service of some of the notices were missing from the file, and other records such as notices, summonses and minutes could not be located on file. The Inspector's staff advised the ICAC that it could not properly conduct a complete audit on the identified sample due to a lack of complete records being available.⁵³

- 1.62 As indicated previously, the Committee intends to examine the Inspector's audit reports in greater detail at the first available opportunity in 2008.

⁵¹ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 9a, p 5

⁵² Transcript of proceedings, 1 November 2007, p 10

⁵³ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 11

Giving reasons for decisions relating to complaints

1.63 The Executive Officer undertakes the assessment of a complaint in the first instance and, in doing so, considers:

- [the] age of the complaint and the likelihood of uncovering relevant evidence; and
- whether the evidence either provided by the complainant and/or obtained from the ICAC and other sources indicate a reasonable likelihood that the allegations may be substantiated.⁵⁴

1.64 The following criteria are used by the Inspector's Office in determining whether or not to decline to investigate a complaint:

- whether a complaint is within jurisdiction;
- nature of complaint – seriousness of issues raised and whether they raise concerns about public confidence and integrity in the ICAC;
- age of the complaint and the likelihood of uncovering relevant evidence;
- cost of investigating the complaint with respect to the seriousness of the issues raised and the overall resource demands of investigating the complaint;
- available resources and existing workload of the OIICAC;
- whether the issues raised in a complaint raise issues of value to an audit;
- whether any other agency is investigating or has investigated the same issues, and, if so, any outcome which has been determined;
- the likely impact of either investigating or not investigating a complaint further in respect of any broader issues of concern;
- history of complainants (whether they are vexatious);
- the ICAC's own policies and criteria for determining its best use of its resources (i.e. priorities).⁵⁵

1.65 As a result of changes made to the ICAC Act by the *Independent Commission Against Corruption Amendment Act 2005*, the ICAC is expressly required to provide reasons to complainants for not investigating allegations of corruption.⁵⁶ Section 20(5) of the ICAC Act provides:

s.20(5) If the Commission decides to discontinue or not to commence an investigation of a complaint or report made to it, the Commission must inform the complainant or officer who made the report in writing of its decision and the reasons for it.

1.66 This amendment followed on from a review of the ICAC Act in 2005 by Bruce McClintock SC, who concluded in his report:

I support the practice of ICAC to provide reasons to complainants. Whilst there is no duty at common law for administrators to provide reasons, it is well accepted that it is good administrative practice to do so. Providing reasons enhances public confidence in the decisions of ICAC. It can improve the quality and consistency of decision-making as the process of articulating reasons may assist ICAC to assess and identify the relevant

⁵⁴ Inspector of the ICAC, answers to question on notice, 26 October 2007, question 11, p 6

⁵⁵ *ibid*, question 12, p 6

⁵⁶ See section 20(5) of the ICAC Act.

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factors. Complainants may not agree with the reasons provided by ICAC, but they will be in a better position to understand the decision made by ICAC.⁵⁷

- 1.67 McClintock reported that such a legislative requirement may enhance public confidence in the complaint handling processes of ICAC and would emphasise the ICAC's practice of voluntarily providing reasons to complainants. He considered the proposed amendment to be "a measure of routine accountability". However, McClintock was clear that the requirement to give reasons for such decisions should not be burdensome:

In making this recommendation I am not suggesting that ICAC should be required to provide excessive detail or to reveal operational or confidential matters. If necessary these matters can be provided for in the drafting of the provision.⁵⁸

- 1.68 In the course of his public examination by the Committee, the Inspector was asked whether he too supplied reasons to complainants for not investigating or discontinuing the investigation of a complaint:

CHAIR: Do you provide reasons to complainants for not proceeding?

Mr KELLY: I suppose there is always a debate about what constitutes reasons but we usually give some explanation for not proceeding.

CHAIR: In general terms.

Mr KELLY: Yes. At the end of the day most of the complaints when we analyse their basis involve maladministration. Quite often we will get to the point where we say, "This is what you are really complaining about and we don't believe that amounts to maladministration requiring us to take the matter any further." Sometimes the reason is as brief as that and other times we give a bit more. I think if you do not do at least that then, first, people are legitimately disgruntled; and, secondly, you are setting up a system that gives rise to further complaint.⁵⁹

- 1.69 He was questioned further on the extent to which he should provide detailed reasons for these decisions:

The Hon. JOHN AJAKA: ... You indicated that when you make a decision or you send correspondence to a complainant you tend to give a brief reason for your decisions. You do not feel that an expanded and detailed reasoning would in a sense give the complainant a little less of an argument that he is still being kept in the dark?

Mr KELLY: I have felt comfortable about going about it the way we have. I guess there are two or three observations I would make. There are resources once you get into anything that is approaching a judicial type judgement. Secondly, to be completely frank, with some complainants it would not matter what you wrote down. There would be a parsing of every sentence and just further correspondence. That happens not uncommonly, no matter what you do.⁶⁰

- 1.70 The Committee acknowledges the potential resource implications for the Inspector's Office if a practice were to be adopted that involved giving detailed reasons to

⁵⁷ Bruce McClintock SC, *Independent Review of the Independent Commission Against Corruption Act 1988*, Final Report, January 2005, p 135 para 7.6.4.

⁵⁸ *ibid*, para 7.6.8.

⁵⁹ Transcript of proceedings, 1 November 2007, pp 5-6

⁶⁰ *ibid*, p 8

complainants for decisions not to proceed to investigate, or to discontinue investigating, a complaint. However, as the investigation of complaints by the Inspector is predominantly a paper-based exercise, the Committee considers that as far as possible complainants should be provided with reasonably full particulars for the basis of these decisions. Such an approach is consistent with the statutory obligations applicable to the ICAC under s.20(5) of the ICAC Act.

- 1.71 That is not to say that the Committee is suggesting the Inspector's actions to date have been inconsistent with this preferred approach. In his Annual Report the Inspector accounts for 21 complaints that were determined as not warranting further investigation.⁶¹ The Committee assumes that each complainant to the Inspector receives at least as complete an explanation for his decision on their matter as is offered in the relevant complaint history cited in the Annual Report.

Complainant access and community awareness

- 1.72 The Office of the Inspector publishes an information brochure explaining its role, the kind of complaints it deals with, the form they should take, their assessment and any further action that might be taken.⁶² Although the brochure states complaints should be in writing, the Office accepted 9 telephone complaints in the review period 2005-2006 and assisted two complainants to formulate their complaints by conducting personal interviews.⁶³ In the 2006-2007 reporting period the Office received 16 telephone complaints.⁶⁴
- 1.73 In past evidence the Inspector has explained that the main criterion underpinning the Office's policy regarding the interviewing of complainants is that 'the end result could be a finding of maladministration or illegality against an integrity commission, then it is appropriate that as far as possible the basis of the complaint be articulated in writing and not left to a relatively amorphous oral discussion.'⁶⁵ A further reason given by the Inspector was the allocation of resources involved.⁶⁶ It is a policy of the Office to assist complainants to formulate a complaint where the complainant is unable to do so because of language or other difficulties.⁶⁷
- 1.74 The community also has access to the Inspector through the Office's website, which was set up in March 2006. That website has information on the role of the Inspector, legislation relating to the Office, a complaint form and how it is dealt with, and a series of frequently asked questions. The public made 643 visits to the Office's website during the reporting period.⁶⁸
- 1.75 The issue of public awareness of the Inspector was the subject of scrutiny by the Committee in the course of a previous public examination. In that examination the Inspector reported that the trend was that the overwhelming majority of complaints

⁶¹ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, pp 13-17

⁶² This brochure can be found at www.oiiac.nsw.gov.au

⁶³ Inspector of the ICAC, answers to question on notice, 26 October 2007, question 13, p 7

⁶⁴ Office of the Inspector of the ICAC, *Annual Report 2006-2007*, p. 12.

⁶⁵ Committee on the Independent Commission Against Corruption, *Quarterly Examination of the Inspector of the Independent Commission Against Corruption, January-March 2006*, report 8/53, June 2006, p 7

⁶⁶ *ibid*, p 7

⁶⁷ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, p 4

⁶⁸ *ibid*, Table 1, p 9

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were from men, only a couple were made by women, and an overwhelming majority were from people of a Caucasian background.⁶⁹

1.76 The then Chair suggested to the Inspector that it might be worth contacting the Ethnic Affairs Council because as an umbrella body it may be an efficient means of disseminating information. In response to this suggestion the Inspector said his Office would contact the Ethnic Affairs Council and have a discussion with them.⁷⁰ The Committee notes that in July 2005 the Inspector ran advertisements in weekend metropolitan papers announcing the establishment of his Office. In May/June he placed 32 advertisements and articles in local ethnic newspapers.⁷¹

1.77 The matter of access to and awareness of the Inspector's role was again discussed during the review of the 2005-2006 Annual Report. The Inspector was questioned as follows:⁷²

CHAIR: One of the items raised in your earlier meetings with the Committee—it may have been raised on a quarterly examination—was advertising your role, and I note that in the report you have indicated where you have spoken to certain people and you have sent out brochures and you have advertised in newspapers. I also note that the change to the memorandum of understanding is that ICAC also play their part in this. Are you satisfied that your presence out in the community is at a sufficient level or will this be an ongoing role with you? I am talking about the ethnic community. You have mentioned that the main people who come to you are the male Caucasian variety.

Mr KELLY: That is right.

CHAIR: So, will this be an ongoing task of your office to advertise yourself?

Mr KELLY: I think it is one of the things we need to have on the checklist annually. There seems to be a pretty broad-based understanding of the existence of the office by those who want to access its facilities. So, I do not lie awake at night worrying that there are people out there who do not know who need to know. Nevertheless, it is obvious that there is an under representation of complaints from ethnic communities. Interestingly, that is exactly the same at ICAC. So, there is probably some other phenomenon at work there.

Generally speaking—and can I prove this statistically? The answer is no—but my impression is that the composition of complaints that come to us is a pretty fair mirror of the composition of complaints that come to ICAC. So, yes, I think we should keep it on the agenda as a checklist item. Should we spend a lot of money on it? I do not believe that that is required.⁷³

1.78 The Committee notes the Inspector's evidence that the under-representation of ethnic groups is a parallel feature of the ICAC complaints profile. If recommendations are to be made that are aimed at encouraging individuals from these groups within the community to complain to the Inspector and ICAC, such proposals would have to be supported by relevant cost-benefit studies and some measurement of the impact of awareness initiatives undertaken by the Inspector's Office thus far. Analysis of the reasons behind the under-representation also would seem to be required.

⁶⁹ Committee on the Independent Commission Against Corruption, report 8/53, p v

⁷⁰ *ibid*, p 21

⁷¹ Office of the Inspector of the ICAC, *Annual Report 2005-2006*, pp 8-9

⁷² Transcript of proceedings, 1 November 2007, p 3

⁷³ *ibid*, p 3

SECTION 3: THE EXTENT OF THE INSPECTOR'S JURISDICTION

Inspector's audit role:

1.79 One matter relating to the Inspector's audit function that emerged during the examination is that the ICAC Inspector and the Inspector of the Police Integrity Commission (PIC) perform their audit functions differently in one significant respect. Unlike the PIC Inspector, the ICAC Inspector does not audit current investigations. Mr Kelly explained that his audits are carried out on completed ICAC operations. In his view,

This approach avoids my being seen to have been involved in current operational decision-making of ICAC investigations where issues of non-compliance of the law might arise.⁷⁴

1.80 He reiterated this view at the public hearing:

Mr KELLY: ... I am aware that the PIC Inspector in one way operates very differently—that is, the PIC Inspector becomes involved to some extent in the current activities of the PIC. For example, as I understand it, he reviews some of their compulsory processes. I came to the conclusion at the very beginning after a discussion with the ICAC Commissioner that I should not approach my task like that because if I were to be involved at that stage during the course of an investigation and then subsequently someone complained to me I could not assess the complaint objectively. So I have deliberately stayed back from current activities.

I think on a previous occasion you and I had a discussion about whether the person in this job should be a lawyer. What I am about to say does not change my view, but it is interesting that the court system adopts much the same view. It is very difficult to get an appeal court to intervene in the middle of judicial proceedings for that same sort of reason. So in that respect the way I approach it, I know it is quite different from the Police Integrity Commission Inspector. Of course, the complainants are very different. Generally speaking, the issues are very different. So I am not sure that there is much greater scope for cross-fertilisation. What I do find useful is the about once a year interaction with people from other jurisdictions who have organisations similar to ICAC and there the issues are very similar.⁷⁵

Interpretation of s12A of the *Independent Commission Against Corruption Act 1988*

1.81 Section 12A of the *Independent Commission Against Corruption Act 1988* provides that:

12A Serious and systemic corrupt conduct

In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

1.82 In June 2007 the Inspector reported on an audit he had conducted into the ICAC's compliance with this particular section of the Act. He also raised a matter of interpretation in relation to the phrase "serious and systemic corrupt conduct" in

⁷⁴ Inspector of the ICAC, answers to questions on notice, 26 October 2007, question 1, p 1

⁷⁵ Transcript of proceedings, 1 November 2007, p 7

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s.12A when dealing with a complaint he had referred back to the ICAC during the 2006-2007 reporting period. The anonymous complaint had been received by the Inspector in October 2006 and was referred back to the ICAC in November 2006 as a matter more appropriate to ICAC's jurisdiction. The complaint raised allegations of corruption by a named local government council officer. The Inspector reported that:

In February 2007 the ICAC advised that it had considered the allegations and determined that, if proven, the conduct "...would amount to serious but not systemic corrupt conduct. Accordingly, the ICAC has determined that the matter should not be made the subject of a formal ICAC investigation."

- 1.83 In subsequent correspondence the Inspector enquired as to whether ICAC was of the view that corrupt conduct must be both serious and systemic in order to be the subject of a formal investigation. The Commissioner responded that:

As you would be aware, one of the ICAC's principal functions is to investigate 'corrupt conduct' (s 12 of the *Independent Commission Against Corruption Act 1988*). Section 12A provides that the Commission should, as far as practicable, direct its attention to serious and systemic corrupt conduct. It is not entirely clear whether the use of the conjunctive in this provision is intended to refer to conduct that is both serious and systemic, or whether it refers to conduct that is either. The Commission has taken the latter view.

The effect of these provisions is that ICAC may investigate any matter that may involve corrupt conduct, although in most cases it would do so only where the conduct was either serious or systemic. In some cases, even serious corrupt conduct may not warrant investigation by the ICAC, either because it does not raise systemic issues or because it could be adequately dealt with by another agency. Similarly, systemic corrupt conduct that relates to relatively minor wrongdoing may not warrant the use of the ICAC's investigative resources.

- 1.84 The Commissioner confirmed that the ICAC would not be investigating the complaint.⁷⁶
- 1.85 The Chair questioned the Inspector at the public hearing on 1 November regarding the interpretation of s.12A and its relevance to ICAC's assessment of matters:

CHAIR: ... I noticed on page 21 of the 2006-07 report there is an instance where there is exchange of correspondence between you and the Commission about a particular matter, and the issue is serious and systemic corruption. There is an interpretation of what that means. I think you, in one of your audit reports, have adopted the interpretation that it means either.

Mr KELLY: Yes.

CHAIR: And so has the Commissioner.

Mr KELLY: Yes.

CHAIR: But he says in there that there are instances where it could be one serious event which highlights inherent corruption issues the Commissioner could pursue or one serious event that does not follow that. Conversely, there could be systemic issues that are not warranted by ICAC but there could be ones that are and they are systemic. So, it is left fairly open, and a horses for courses basis, if I can put it that way, as to what the interpretation could be. You have given an analogy of the fishing net, one

⁷⁶ Office of the Inspector of the ICAC, *Annual Report 2006-2007*, pp 21-22

option of which is choosing which fish you want to keep, and you have given another course of action, changing the definition of corrupt conduct.

The reason I say all that is that all this relates to the assessment of evidence. In your job as Inspector, since you have been appointed to the role, the main complaint you have had is the assessment of evidence. The majority of complaints you have had are that ICAC has not properly assessed the evidence, and the decision as to whether or not to investigate has been the main source of your complaints. I have asked you this before, and I think the Commissioner has responded to you by saying that these matters of assessment of evidence and the weight to be given to them will be covered in the induction of legal officers. Do you see cause for you to be recommending any training or ongoing training? Do you see a role for yourself to monitor that issue with ICAC? Do you think that could be a cause for ongoing training with ICAC, not just the induction, seeing that is the main focus of the work you get in your role?

Mr KELLY: I think the short answer is yes. The long answer is somewhat more complicated. I think had the Commission not been prepared to adopt the interpretation that it can be either serious or systemic, had it said it has to be both, I would have felt compelled to come before this Committee and say either Parliament did not intend that or, if it did intend that, the provision should be amended. As soon as you turn your mind to it, almost instantaneously you will find the most egregious examples of corruption that are not systemic. Of course ICAC should investigate. So, I think ICAC operates on that basis, a basis I feel comfortable with and a basis that Parliament ultimately feels comfortable with as a major advance.⁷⁷

- 1.86 The Inspector clarified that the interpretation of s.12A of the Act had been a matter of discussion with Cabinet Office and that the relevant officer concurred with the interpretation taken by the Inspector and the Commissioner:

The Hon. JOHN AJAKA: I wish to refer to what was said earlier about section 12A. If it was Parliament's intention that both limbs of serious and systemic were to be satisfied then technically ICAC, by not proceeding on the basis of one or the other, is not really complying with the Act and maybe it is something that your office, as the Inspector, should be seriously looking at or possibly we, as a Committee, might have to look at?

Mr KELLY: When this issue first came up we spoke to the person in the Cabinet office who had been involved in the preparation to the amendments and there was not any element of doubt that it was meant to be disjunctive. Unfortunately, the English language is such that sometimes and/or, or the correct use of them, becomes a little unclear. So we have felt comfortable that at least the relevant people in the Cabinet office intended the two concepts to act disjunctively and that then to my mind solved the problem.

The Hon. JOHN AJAKA: You are not aware of any case in which this has been tested?

Mr KELLY: No.⁷⁸

- 1.87 Despite this assurance, the absence of any particular difficulties, and the level of general agreement that exists between the Inspector, ICAC and the Cabinet Office on this provision, the Committee remains concerned about the interpretation of s.12A of the Act. Should the interpretation of this section be tested it is not clear what interpretation the courts would place on the provision. Accordingly, for more abundant caution and to place the matter beyond doubt, the Committee recommends an amendment to the Act in the following terms:

⁷⁷ Transcript of proceedings, 1 November 2007, pp 13-14

⁷⁸ *ibid*, p 15

RECOMMENDATION 2

It is recommended that the Premier, as Minister with responsibility for the administration of the *Independent Commission Against Corruption Act 1988*, consider bringing forward an amendment to the Act to put beyond doubt that the reference to “serious and systemic corrupt conduct” in s.12A is to be interpreted as a reference to either serious and/or systemic corrupt conduct.

Memorandum of Understanding between the ICAC and the DPP

- 1.88 Shortly before taking evidence from the Inspector, the Committee finalised and adopted its report on the examination it had conducted into the Annual Report of the ICAC for 2005-2006.⁷⁹ One of the matters covered by the Committee in that report was the operation of the Memorandum of Understanding (MoU) between the ICAC and the Director of Public Prosecutions (DPP).
- 1.89 The Committee identified certain difficulties around finalisation of possible criminal prosecutions and the provision of admissible evidence to the DPP arising from an ICAC investigation. If the ICAC and the DPP are unable to make any progress towards remedying these problems the Committee has flagged that it will conduct an inquiry in this area. Consequently, the Committee was reassured to hear the following evidence from the Inspector:

CHAIR: On the issue of the relationship between agencies, we obviously have what has been an ongoing discussion over past committees about the relationship between ICAC and the Department of Public Prosecutions. Your analogy of snakes and ladders without the ladders is one I have noticed you have stated to the Committee before and you have been able to clearly recognise the difference in their roles.

Mr KELLY: Yes.

CHAIR: And the attempts that have been made for those two agencies to work together as best as they possibly can, given that there are a lot of issues there. I want to ask, would you be willing to assist in any process of a new memorandum of understanding that is currently, or due to be as I understand it, talked about between those two agencies given your recognition of the issues?

...

Mr KELLY: The short answer to your question is yes. The other answer I would give in the public forum is that it is absolutely clear to my mind that there needs to be a process whereby people who are found to have engaged in corrupt conduct that constitutes a crime, or if after appropriate prosecution is found to constitute a crime, should be dealt with and dealt with expeditiously. There is not a shadow of doubt otherwise; frankly, we are all wasting our time. In saying that it is necessarily implicit, and therefore I will make it explicit, I do not believe that ICAC achieves the purpose that people expect it to achieve if all the process results in is a finding of corrupt conduct and the person is never prosecuted or, to use American frontier language, is never brought to justice. So there must be, in my mind, some process for the resolution of that issue. The other thing I will say in my public answer to the question is that I can understand the starting

⁷⁹ Committee on the Independent Commission Against Corruption, *Review of the 2005-2006 Annual Report of the Independent Commission Against Corruption*, report 1/54, October 2007

point of the Director of Public Prosecutions, as well as the starting point of ICAC. However, I think we as a society also have an entitlement to focus on the end point.⁸⁰

- 1.90 The Inspector confirmed that he met with the DPP and the ICAC in March 2006 to discuss the arrangements between both agencies and had been advised that a new MoU was in place. He also noted that no statistical information had been provided by either agency on anticipated or actual reductions in the time taken to refer and assess briefs for prosecution. The ICAC Commissioner had made the Inspector aware of recent efforts to improve this process.⁸¹

⁸⁰ Transcript of proceedings, 1 November 2007, p 15

⁸¹ Inspector of the ICAC, answers to question on notice, 26 October 2007, question 20, p 11

Chapter Two - Questions on notice

RESPONSES TO QUESTIONS ON NOTICE ON OFFICE OF THE INSPECTOR ANNUAL REPORT 2005-2006

Role of the Inspector

- 1. The legislation that provides for the ICAC Inspector is modelled on the provisions of the Police Integrity Commission Act 1996, which establish the office of the PIC Inspector. What is your approach to the role performed by the ICAC Inspector and how does this compare with the role performed by the PIC Inspector?**

My approach to my role is to ensure that my statutory functions are carried out effectively to ensure the ICAC's accountability. I also take an interest in general management issues affecting the ICAC's performance. This is consistent with the general legislative intention that the Inspector's role should improve the ICAC's performance.

I am not aware of the details of how the PIC Inspector approaches his role and am therefore unable to comment on the second part of the question. I am aware, however, that the PIC Inspector undertakes audits on current investigations to ensure compliance with the law. Audits by my office are carried out on ICAC operations which have been completed. This approach avoids my being seen to have been involved in current operational decision-making of ICAC investigations where issues of non-compliance of the law might arise.

Funding and Resources

- 2. The Annual Report states that "in 2005-2006 the total operating budget for the Office was \$382,051, including \$68,000 in corporate costs" (page 3). Is it possible to supply the Committee with a more detailed breakdown of the operating budget of the Inspectorate for this period, e.g. staffing, property, plant and equipment expenses?**

The details of the 2005-2006 revised operating budget and year to date actual expenditure are as follows:

Expenditure	Revised Budget	Year-to-Date Expenditure	Variance
Employee Related Expenses	\$288, 073	\$248,551	\$39,522
Other Operating Expenses	\$25, 600	\$63, 166	(37, 566)
Total Maintenance	\$0	\$1,351	(1,351)
	<u>\$313, 673</u>	<u>\$311, 717</u>	<u>\$605</u>

Questions on notice

3. The Annual Report states that the “Premier’s Department provides, on a fee for service basis, a range of support services to the office such as information technology, payroll and general human resources support” (page 3). How does this arrangement work and has it been efficient?

The Department of Premier and Cabinet, on a fee for service basis, provides payroll, information technology and other corporate support services, e.g. purchasing of stationery. The annual fee charged is approximately \$16,000 per employee for provision of these services.

The services provided by the Department of Premier and Cabinet generally works well. Any information technology problems are quickly resolved and departmental staff generally are been very helpful in supporting the office in administration, for example, paying bills and providing monthly expenditure information, invoices and provides monthly expenditure information.

4. The Annual Report states that “...operating policies and procedures will continue to be developed in response to emerging business needs...” (page 3). What policies and procedures have been developed by the office to date and what standards and processes were observed in their development?

Policies developed to date:

Policies Developed to Date	Standards and Processes Observed
1. Assistance to complainants	<ul style="list-style-type: none"> ▪ NSW Ombudsman “Investigating Complaints; A Manual for Investigators”, June 2004 ▪ Australian standard ISO10002-2006 “Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.3 “Accessibility”
2. Policy concerning allegations of misconduct by ICAC officers whilst “on-duty” and “off-duty”	<ul style="list-style-type: none"> ▪ There is no established standard or process in this area.
3. Policy inviting complainants to advise whether they wish their complaint to be assessed by the Inspector, where the complaint has been referred by a third party.	<ul style="list-style-type: none"> ▪ Australian standard ISO10002-2006 “Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.9 “Accountability”

Staff

5. The Annual Report indicates that “Two permanent staff are employed on a full-time basis” (page 2).

a. Does the Office employ any part-time staff?

Yes, an administrative assistant works two days a week.

b. Have staffing levels changed in the office since the tabling of the Annual Report?

No.

c. Did the Inspectorate engage any additional staff or assistance for the 2005-2006 financial year, i.e. consultants, secondees, and legal advice, and if so for what purpose and at what the cost?

Yes, a project officer from the NSW Ombudsman's office was seconded for a period of four months to assist with auditing and complaints management. The cost of this was \$27,217.67.

Senior Counsel was also engaged to provide legal advice on issues arising from a complaint being investigated. The cost of this was \$16,000.

6. The Annual Report explains that the workload of the Office, particularly in respect of the number of complaints received during 2005-2006, proved to be higher than expected. The on-going nature of the high workload resulted in the Office requesting a budget enhancement prior to 30 June 2006. Since June 2006 a budget enhancement has been approved. The bulk of this enhancement will be used to recruit an additional staff member to assist with managing the Office's day-to-day workload (page 3). Has an additional staff member been recruited, at what level and what type of work does this position undertake?

Additional lawyers and a project officer have worked in the office on a temporary basis undertaking audits and complaint handling. They were employed at various levels, between Clerk Grade 9/10 to Legal Officer Grade 6, on the basis of their skills and experience. It has not been possible to employ a person to undertake such duties on an going basis due to various factors such as other employment opportunities, a lack of fit with the office including, dissatisfaction with the nature of the work and the location of the office.

7. How do the staffing arrangements and operations of the OIICAC Inspectorate compare with those of the PIC Inspectorate and the Inspector of the Corruption and Crime Commission in Western Australia? Are the workloads of each Inspectorate comparable?

Questions on notice

Staffing arrangements:

OIICAC	PIC Inspector	Inspector of Corruption & Crime Commission (WA)
1 x executive officer 1 x office manager	1 x administrative assistant*	Currently uses his existing secretarial staff employed by him as barrister. In his 2006/07 Annual Report states that he is in the process of recruiting a full time professional assistant to undertake audits.**

Workload of Inspectorates:

OIICAC	PIC Inspector	Inspector of Corruption & Crime Commission (WA)
2006-2007 Number of complaints received: 39 Number of audits undertaken: 2	2006-2007 Number of complaints received: 30 * Number of audits undertaken: not comparable	2006-2007 Number of complaints received: 42 ** Number of audits undertaken: nil

*Source: Annual Report of the Inspector of the Police Integrity Commission 2006/07

**Source: Parliamentary Inspector of Corruption and Crime Commission Annual Report 2006/07

Relationship with ICAC

8. The Annual Report states that "The MOU [between ICAC and the Inspector] was due to be reviewed in September 2006" (page 5).

a. Has this review taken place and were any changes made to the MOU?

Yes. There were two changes, these being:

1. The Commissioner is to be notified when an Executive Director is requested to attend an interview with OIICAC regarding a complaint;
2. A clause was inserted to provide that the ICAC would ensure that complainants were made aware about the Inspector's role and functions.

b. Would you please provide a copy of the MOU to the Committee?

A copy of the MOU is attached at Tab A

9. The Annual Report states that “ICAC has generally been forthcoming in meeting requests for information. Material is generally produced to the Office within 1-3 weeks of a request being made” (page 5).

a. To date, have there any situations where difficulties have arisen in the provision of information by the ICAC in response to a request by the Inspector?

Yes, in two situations.

1. The ICAC could not locate a certain document requested which was relevant to a complaint being investigated by the OIICAC.
2. During an audit (on the ICAC’s compliance with the law when exercising powers provided by the ICAC Act which allow it to compel other persons or agencies to co-operate with it) the ICAC advised the OIICAC that it could not locate a number of the sample of records being audited without considerable resources being expended.

b. On how many occasions has the ICAC taken longer than 3 weeks to produce information?

On two occasions.

Complaints

10. Please outline the current system for managing complaints, in particular, the process by which an individual complaint is assessed.

Assessment Process:

- Complaints received are acknowledged by way of a standard letter.
- All evidentiary material reviewed including:
 - Material supplied by the complainant;
 - ICAC records including, the complaint, Assessment Panel Report, correspondence with complainant, Case Note Reports.
- Executive Officer prepares written advice including recommendations and draft correspondence and submits these along with the complaint file for Inspector’s review and determination.
- Inspector’s directions implemented, including any amendments and finalisation of correspondence for signature.

11. What factors are considered when determining whether there is sufficient information to investigate a complaint and who is responsible for undertaking this assessment?

Questions on notice

The factors considered are:

- Age of the complaint and the likelihood of uncovering relevant evidence; and
- Whether the evidence either provided by the complainant and/or obtained from the ICAC and other sources indicate a reasonable likelihood that the allegations may be substantiated.

The Executive Officer undertakes the assessment in the first instance. The Inspector makes the final assessment .

12. What other criteria is used by the Inspectorate in determining whether or not to decline to investigate a complaint?

Other criteria used by the Inspectorate to determine whether or not to decline to investigate a complaint are:

- Whether a complaint is within jurisdiction;
- Nature of complaint – seriousness of issues raised and whether they raise concerns about public confidence and integrity in the ICAC;
- Age of the complaint and the likelihood of uncovering relevant evidence;
- Cost of investigating the complaint with respect to the seriousness of the issues raised and the overall resource demands of investigating the complaint;
- Available resources and existing workload of the OIICAC;
- Whether the issues raised in a complaint raise issues of value to an audit;
- Whether any other agency is investigating or has investigated the same issues, and, if so, any outcome which has been determined;
- The likely impact of either investigating or not investigating a complaint further in respect of any broader issues of concern;
- History of complainants (whether they are vexatious);
- The ICAC's own policies and criteria for determining its best use of its resources (i.e. priorities)

13. Has the Inspectorate conducted personal interviews with complainants during the assessment process and, if so, how frequently does this occur? Who would conduct these interviews?

Yes. This has occurred on two occasions. The interviews were conducted by the Executive Officer.

14. The policy on Complaint Handling provides that "...particulars of a complaint should be provided in writing, unless there is a sound reason why a complainant is unable to do so." (page 4)

a. How does the number of written complaints to the Inspector compare with the number of oral complaints?

Twenty-six written complaints were received and nine oral complaints were received.

b. On how many occasions has the Inspectorate provided assistance to a complainant, in what circumstances and what kind of assistance has been provided?

Assistance is provided to complainants during the assessment process to obtain particulars of complaints where required. As advised in response to question 13, this has occurred on two occasions.

Once an investigation is commenced the OIICAC undertakes all necessary tasks to ensure that the complaint is fully investigated.

c. What training is available to staff of the Inspectorate involved in complaint handling and dealing with complainants?

All staff will attend courses provided by complaint handling agencies such as the NSW Ombudsman's office.

In addition, the following literature is available to staff as training resources and staff are required to familiarise themselves with such literature as part of induction and ongoing on the job training:

- Effective Complaint Handling;
- Dealing with Difficult Complainants;
- The Rights Stuff: Tips for making complaints and solving problems;
- NSW Ombudsman Protected Disclosures Guidelines;
- NSW Ombudsman The Complaint Handler's Tool Kit 2nd edition; and
- NSW Ombudsman Investigating Complaints

Other training available to staff involved in complaint handling are:

- Software management including database management relating to complaints;
- Communication training.

The Executive Officer principally deals with complaints and complainants and has undertaken extensive complaint handling training in previous positions, including: investigation management, interviewing skills and conflict resolution.

Questions on notice

15. The policy on Complaint Handling provides that assistance provided by the Office is limited to a maximum of 2 hours. An assessment is made at the end of the 2 hour period as to the merits of the complaint. If the complaint is assessed as unlikely to support the allegations being made, not further assistance will be provided to the complainant. (page 4)

a. What factors led to a decision to cap the amount of assistance to complainants at 2 hours?

The factors that led to the cap were:

- The personnel resources of the office, i.e. there being only 1 full time staff member with the ability to provide this assistance, i.e. the Executive Officer;
- The larger than anticipated volume of complaints; and
- The need to ensure that the Executive Officer had sufficient time available to support the Inspector's other statutory functions, for example undertaking audits.

b. Have there been circumstances where 2 hours assistance has been inadequate to assess the merits of a complaint?

No.

c. Have you found this approach to be sufficiently flexible to accommodate the needs of complainants?

Yes. The policy allows for an assessment at the end of the 2 hour period as to whether further time and/or other resources are required and enables the provision of such additional time and resources as appropriate.

16. The policy concerning alleged misconduct of ICAC Officers while 'off-duty' states that "Complaints concerning 'off duty' conduct will be referred to the Solicitor to the Commission for further action." (page 4)

a. To date, how many complaints has the Inspector received relating to "off duty" conduct?

One.

b. Is the Solicitor to the Commission required to advise the Inspector of any action taken as a result of the conduct referred?

The Solicitor to the Commission is requested to advise the Inspector of the outcome of his considerations.

17. In relation to complaints referred back to ICAC, the Inspector:

- **recommended that the Commission develop an explicit policy for staff about the standard of effort required to access evidence, which might, at first instance, prove difficult to access; and**
- **suggested that the adequacy of the ICAC's assessment report should be generally examined as there were concerns raised by an examination of the assessment report in the complaint about the accuracy of matters being reported by Assessment Officers. (page 17)**

As of June 2006 the Inspector had not received a response from the ICAC on either of these matters. Has the Inspector subsequently received a response to these proposals and, if so, what was the nature of the response? If not, what reasons has the ICAC given for not responding to date?

Yes, the Inspector has subsequently received a response to these proposals. The responses were, respectively, as follows:

- That the Commission did not need to develop a specific policy on the standard of effort required to access evidence as it was felt to be an issue that could be addressed in the induction process;
- The ICAC advised that it recognised the issues raised by the Inspector about the adequacy of its reports to the Operations Review Committee (ORC) and its assessment procedures. The ICAC further advised that it would consider the issues raised as part of the review of the Commission's complaint assessment procedures (to be undertaken following the abolition of the ORC).

Freedom of Information

18. The Annual Report states "Under Schedule 2 of the Freedom of Information Act 1989 the Inspector is exempt from the provisions of the FOI Act" (page 3). Schedule 2 of the FOI Act provides that the Inspector is exempt in relation to operational auditing, complaint handling, investigative and reporting functions.

- a. In effect, what information would be available in respect of the administrative functions performed by the Inspector, which do not appear to be exempt from FOI?**

Administrative functions concerning the management of the OIICAC do not appear to be exempt from the FOI Act. Examples of available information would include OIICAC budget details, human resource policies and practices.

- b. Has the Inspector received any FOI applications? If so, what sort of information was sought and how have these applications been dealt with?**

No.

Questions on notice

Business Plan

19. The Annual Report mentions an Office business plan for 2006-2007 (page 6). What are the main goals of the business plan and will the Inspectorate require additional funds or resources to achieve these goals? Will the business plan involve significant changes to the priorities of the Inspectorate?

Goals:

- Finalise outstanding complaints received in 2005-2006;
- Handle all new complaints as effectively as possible to ensure that complaints without merit do not disproportionately absorb the Office's resources;
- Undertake all other work as required under the ICAC Act 1988 (for example the Annual Report);
- Prioritise the undertaking of audits pursuant to s. 57B (1) (a) of the *ICAC Act 1988* (the Act) in order to monitor compliance with the laws of the State and to identify any systemic issues affecting the accountability and performance of the Independent Commission Against Corruption;

Deliverables:

- Finalise the audit report on the ICAC's compliance with s. 12A of the ICAC Act;
- New audit on ICAC's exercise of compulsory powers undertaken; and
- Follow up on recommendations from the Joint Parliamentary Committee Report 5/53, December 2005.

No, the Inspectorate will not require additional funds or resources to achieve its business plan goals.

No, the business plan does not involve significant changes to the Inspectorate's ongoing priorities.

Issues Raised by Parliamentary Joint Committee

20. The Joint Parliamentary Committee directed the Inspector to "monitor and assess the impact of any new arrangements between the Commission and the Office of the Director of Public Prosecutions and report to Parliament within six months on whether they have improved or are likely to improve operational effectiveness" (page 6). Has the Inspector undertaken any further work in this regard?

Yes, in March 2006 the Inspector met with the Director of Public Prosecutions (DPP) and the Commission of the ICAC to discuss what arrangements existed between their respective agencies. The Inspector was advised that a new Memorandum of Understanding established between the Office of the Director of Public Prosecutions (ODPP) and the ICAC was assisting the two agencies to work with greater clarity and

efficiency. No statistical information was provided, however, by either agency about either anticipated or actual reduction of time taken to refer and assess briefs for prosecution.

The Commissioner has recently advised that he is concerned that the ODPP's requisitions requires the ICAC to devote additional resources to collating briefs and undertaking further investigations. The Commissioner's view is that it is not the ICAC's responsibility to undertake such functions. The Deputy Commissioner, Ms Theresa Hamilton, has advised that she is having discussions with relevant officers at the ODPP about ways in which both agencies can work better together to address the Commissioner's concerns and to improve the process for referrals and assessment of briefs for prosecution.

21. The Joint Parliamentary Committee requested the Inspector to "use the additional information contained in future ICAC Annual Reports regarding the time taken to deal with complaints, to examine the issues of delay in the completion of investigations" (page 7). Has the Inspector undertaken any examination of this issue?

Yes.

Complaints

Page 9 of the ICAC Annual Report for 2005-06 sets out a table on performance, workload and work activity measures. This table shows that in 2004-05 2511 complaints, reports and information was received and dealt with an average in 41.2 days. In 2005-06 2191 complaints, reports and information received were dealt with on average in 45 days. Despite this slight increase in the last reporting period, overall, these figures represent a significant improvement from the average time taken of 51 days taken in 2003-04 to deal with complaints. The Inspector will continue to monitor and report on this issue and notes that in its last Annual Report the ICAC set a target of 80% of complaints being dealt with, on average, in 42 days.

Investigations

Out of 51 investigations commenced in 2004-05 (including preliminary, category 1 and category 2 investigations) the ICAC reported 30 (i.e. 58%) as being finalised in six months and 30% completed in 12 months.

Out of 63 investigations commenced in 2006 including preliminary, category 1 and category 2, the ICAC reported that 24 were finalised in 6 months (i.e. 38%) and 82% of the investigations completed in 12 months.

It appears that the ICAC is taking longer to finalise investigations in six months in 2005-06 compared to 2004-05 because of the higher number of investigations undertaken in that reporting period. The Inspector will continue to monitor and report on this issue and notes that in its last Annual Report the ICAC set a target of 90% of investigations being completed in 12 months.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INDEPENDENT COMMISSION AGAINST CORRUPTION
AND
THE INSPECTOR OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION

This Memorandum of Understanding ("MOU") is made the 23rd day of October 2007 between the Independent Commission Against Corruption ("the Commission") and the Inspector of the Independent Commission Against Corruption ("the Inspector").

1. BACKGROUND

1.1 The Inspector's role was created by the provision of the *Independent Commission Against Corruption (Amendment) Act 2005* which inserted Part 5A into the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). The relevant provisions commenced operation on 1 July 2005.

1.2 The principal functions of the Inspector are set out in section 57B of the ICAC Act and provide as follows;

(1) The principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and*
- (c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and*
- (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

- (a) contrary to law, or*
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or*

(c) based wholly or partly on improper motives.

- 1.3 Section 57C of the ICAC Act sets out the powers of the Inspector and provides as follows;

The Inspector:

(a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and

(b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and

(c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and

(d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and

(e) may investigate and assess complaints about the Commission or officers of the Commission, and

(f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and

(g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

2. PURPOSE

- 2.1 To set out arrangements for liaison between the Commission and the Inspector concerning referral of matters, exchange of information and points of contact between both agencies.

3. INTENT

- 3.1 The Commission undertakes to co-operate fully and frankly with the Inspector and his staff in order to assist the discharge of the Inspector's functions under the ICAC Act.

4. LIAISON

- 4.1 The primary point of liaison will be between the Inspector and the Commissioner or their respective nominated delegates.
- 4.2 The Inspector and the Commissioner agree to meet periodically, and at least once per month, to discuss relevant issues and raise any matters touching on the Inspector's functions and the conduct of the Commission. Both the Inspector and the Commissioner will keep their own short notes of these meetings. Contact at other times may occur as and when required.

Questions on notice

- 4.3 If the Inspector or his staff need information or material or to inquire of the Commission regarding a complaint or other matter touching on the conduct of the Commissioner, this will be referred to the Deputy Commissioner in the first instance. In the absence of the Deputy Commissioner, such inquiry will be directed to the Solicitor for the Commission.
- 4.4 For any other matters arising from the Inspector's functions, general inquiries, or requests for information and material etc, liaison shall occur between the Executive Officer to the Inspector and the Deputy Commissioner. In the absence of the Deputy Commissioner, such inquiry will be directed by the Inspector's staff to the Solicitor for the Commission.
- 4.5 Where the Inspector and/or his staff wish to interview any of the Executive Directors of the Commission in connection with a complaint, the Commissioner will be notified wherever possible.
- 4.6 Where the Inspector and/or his staff wish to interview any staff of the Commission in connection with a complaint, the relevant Executive Director will be advised wherever possible.
- 4.7 The Commission acknowledges however, there may be occasions where the Inspector and his duly authorized staff may need to act unilaterally without prior notification as outlined in paragraphs 4.5 and 4.6.
- 4.8 Written correspondence from the Commission to the Inspector will be addressed to the Inspector and marked "Private and Confidential" c/-;

Office of the Inspector of the Independent Commission Against
Corruption
GPO Box 5341
SYDNEY NSW 2001

Or by email to Inspector@CAC@oiicac.nsw.gov.au
Or such other address as the Inspector may advise.

5. NOTIFICATION OF COMPLAINTS OF MISCONDUCT BY THE COMMISSION TO THE INSPECTOR

- 5.1 The Commission will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission that comes within the principal functions of the Inspector.
- 5.2 Unless urgent and requiring immediate attention, in which case oral communication will be provided to the Inspector as soon as possible to be subsequently confirmed in writing, all such matters will be communicated to the Inspector by way of written notification.

- 5.3 Notification of matters referred to in paragraph 5.1 will also be reported by way of schedule to be provided at the meeting between the Inspector and the Commissioner as referred to in paragraph 4.2. The schedule will briefly set out the relevant information as available and known to the Commission including any action the Commission itself has taken to deal with the complaint.
- 5.4 The Commission will make information concerning the Inspector's role and function publicly available to complainants. This includes:
- a) having copies of the relevant brochures concerning the Inspector's role and functions available at the waiting room and/or public areas of the Commission's premises;
 - b) having appropriate information about the Inspector and links to the Inspector's website on the ICAC web page;
 - c) where a determination is made not to investigate a complaint further advise complainants, the basis upon which they may be able to pursue a complaint with the Inspector and provide the Inspector's contact details.
- 5.5 Furthermore, where requested, Commission officers will provide any persons with the contact details for the Inspector as per the address details in paragraph 4.8 and/or the Office of the Inspector's general telephone number of 8374 5381.

6. REVIEW

- 6.1 This MOU may be reviewed at any stage the request of either party but in any event shall be reviewed no later than 12 months from the date of the MOU.

The Hon. Jerrold Cripps, QC
Commissioner of the ICAC

Graham Kelly
Inspector of the ICAC

Chapter Three - Questions without notice

This chapter contains a transcript of evidence taken at a public hearing held by the Committee on Thursday 1 November 2007. Page references cited in the commentary relate to the numbering of the original transcript, as found on the Committee's website.

CHAIR: It is a function of the Committee on the Independent Commission Against Corruption to examine each annual report of the Inspector and to report to Parliament upon it in accordance with section 64 (1) (c) of the Independent Commission Against Corruption Act. The Committee welcomes the Inspector and Executive Officer of the Inspectorate to the table for the purposes of giving evidence on matters relating to the 2005-06 Annual Report of the Inspector of the Independent Commission Against Corruption. I would like to convey the thanks of the Committee for your appearance today.

GRAHAM JOHN KELLY, Inspector, Office of the Inspector of the Independent Commission Against Corruption, Level 7, Tower 1, Lawson Square, Redfern, and

SEEMA SRIVASTAVA, Executive Officer, Office of the Inspector of the Independent Commission Against Corruption, Level 7, Tower 1, Lawson Square, Redfern, affirmed and examined:

CHAIR: Firstly, the Committee has received a submission from the Inspector of the Independent Commission Against Corruption in response to a number of questions on notice relating to the 2005-06 annual report. Inspector, do you wish the submission to form part of your evidence here today?

Mr KELLY: Yes.

CHAIR: Do you wish it to be made public?

Mr KELLY: Yes.

CHAIR: I direct that the material to be attached to the evidence of the witness form part of the evidence today. In relation to making the report public, I direct that the statement by the Inspector be made public. Mr Kelly, would you like to make an opening statement to the Committee?

Mr KELLY: I do not have anything in particular to add to the answers we provided in writing or to the general observations I have made to the Committee before, except to indicate that we continue to operate as we have done in the past, there continues to be about just on one complaint per week, and the pattern of complaints continues to be approximately the same. The only other update is that we are discussing with the Independent Commission Against Corruption the nature and terms of our next proposed audit.

CHAIR: I notice that in your 2005-06 report you had a budget of \$382, 051, which you have indicated in your report. We have with us also the 2006-07 report—because of the timing of it you have released that report as well—and it shows a budget of \$636, 730. It is

Questions without notice

indicated in your reports that there has been no change in the permanent staff you have but that you have employed additional staff on a temporary or short-term basis to perform certain roles. Are you able to give the Committee an indication, given an enhancement in your budget of that size, approximately where that money has gone in relation to staffing or any other issues?

Mr KELLY: Ms Srivastava will give you greater detail on it. But the basic approach is simply that when the office was first set up there really was not much of an idea what resources we would need, and the Premier's Department came up with, to speak colloquially, a back-of-the-envelope kind of guess. But the arrangement was that, within appropriate reason and appropriate controls, we would be funded as we needed to be. Then, at the end of the year, effectively our actuals were taken and a slight supplement granted on top of that.

Where the biggest difference occurred is in respect of the employment of temporary staff, in particular to help us with a couple of the audits where it was simply not practicable to do those audits within the constraints of what we had, particularly bearing in mind that a fair amount of effort had to be devoted simply to setting up the office. There are two important points that I would emphasise. First, we are most definitely not profligate in our expenditure of money; in fact, our approach is quite the contrary, quite mean. Second, we certainly have not felt that we have been deprived of financial resources at all; in fact, I feel completely comfortable about the resourcing that is provided, effectively through the Premier's Department budget.

Ms SRIVASTAVA: In terms of the detail, what was allocated for employee-related expenses was about \$500,000, and we have spent \$450,000 overall in the 2006-07 year, and that includes for both the office manager and me, as well as for hiring additional temporary staff to assist.

CHAIR: Is it the case that it will be necessary to continue to employ additional temporary staff to fulfil roles like auditing, special needs, opinions of counsel, et cetera, and those kinds of services?

Mr KELLY: The answer is yes, from time to time. As I sit here, can I predict particular things? No. But in the very nature of the work we do, there will be a need from time to time; particularly, although we have been very modest in the amount we have spent on legal advice, I foresee that from time to time we will have to get external legal advice. Equally, in relation to any bigger audits that we undertake, quite clearly we would need additional human resources to assist with that. The audits that we have as the possible focus of the next phase of our auditing program will not, in all probability, require us to employ others; the ones we have been talking about are relatively narrow and focused in scope. For example, the one that really took up the greatest degree of input was the one on the section 12A compliance, where we examined a very large number of complaints that had been lodged to ensure compliance, and that required three or four months of secondment by a person from the Ombudsman's Office, for which we paid.

CHAIR: Does that limit you in your predictability as to how much money you will need in any particular year? Does it mean that there is a certain ad hoc nature about the money you will need? Does it vary?

Mr KELLY: It could vary, and it could vary quite dramatically. I suppose if I had a concern on the money side, it is that my arrangement with the Premier's Department is that any special project would have to be separately funded. If, for example, there were an occasion for me formally to seek counsel assisting and all that kind of stuff, then I would have to go to the Premier's Department to seek special funding for that. I should emphasise that I have no reason to believe that that would not be forthcoming, providing that we are appropriately modest. But I guess that is the one area of vulnerability that I see. In terms of anything we might wish to do in the ordinary course of events, I feel quite comfortable about the funding arrangements.

CHAIR: I detect in the reports a certain amount of difficulty with staffing with regard to two issues: first, your location, and, second, factors you have mentioned that make it difficult to get staff, such as other opportunities to do with the office or the location. Would you like to be in a different location? The reason I ask that question is that when you are in a central part of the city it has to be, does it not, easier to access legal services because of the geographic location, given that most legal services are around the central part of the city? Would you like to comment on that? Are they two of the main issues?

Mr KELLY: Yes. Of course, you have the advantage of having visited our offices. Whilst the premises themselves are perfectly fine—one could complain about a little bit here or a little bit there but, overall, inside the walls is perfectly fine—it is not a great geographic location. In particular, simple things, like someone going for a walk at lunchtime just does not happen, and that makes it a pretty trying environment. Although I should emphasise she never complains about this, our office manager, who is, in a sense, the face of the organisation, and people we have had on a couple of occasions working on a temporary basis, frankly have not felt comfortable in the environment and one person who we had engaged on a temporary basis left, and one of the things that I think contributed to his deciding to move on was that he says that he had been physically harassed on a couple of occasions. However, leave that to one side for one moment. I want to emphasise that this is not, despite the location, a racial issue at all; it is absolutely not that; it is just that it is a pretty odd environment for an office like this.

For those of you who do not know, it is right on the top of Redfern police station; so it has some challenges in it. But I think more than that, it is an isolated location so you do not get the ordinary interactions that a lot of the younger people would expect to get in a professional environment. My own view is that that has inhibited us recruiting and retaining people.

CHAIR: That was going to be my next question, but you have answered that. It is an impediment?

Mr KELLY: I think it is. Seema and I are used to it and it does not worry us at all, and, I should say, particularly our office manager, who is a very laconic kind of person and she gets around incredibly; but, frankly, it is not everyone's cup of tea. So that is the physical location. I think your question also ran to other issues. Nowadays we are dealing with, to speak in current language, Gen Y and Gen X kind of people that would be fitting into the hierarchy working for Seema and they are looking at their next job or the job after next, not the current job. When they look at the current job that we would have on offer there is really no career structure and no possibility of a career structure in a small office like this. And I guess they also say to themselves, "How will this look on my CV?" I guess, if you were

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a bright young lawyer—and we are probably primarily talking about bright young lawyers—it is probably not the most scintillating entry in your CV.

CHAIR: Is that what you meant though when you said you need challenges to the job?

Mr KELLY: Yes.

CHAIR: Overall though, with the establishment and the operation of the office, its internal infrastructure and equipment, having been in the role now for a while, at this stage are you satisfied with all those matters and all those items?

Mr KELLY: By nature I would never want to give the impression of complacency or self-satisfaction, but looking back over the just on 2½ years, I do not really think that I could have expected to have the core infrastructure in much better shape than it is in. The test of that is that although not necessarily as quickly as we might like we manage to deal with the complaints that come in. A lot of complainants I am sure do not like the answers that we give them, but we get not very many who say that we have really done a bad job and have not treated them well—some do, but not very many.

Then, I look at the other side of what we do: I look at the auditing side and I feel reasonably comfortable that we have ploughed through areas that have been useful in terms of the oversight of ICAC and I suspect have contributed to an improved performance by it.

CHAIR: One of the items raised in your earlier meetings with the Committee—it may have been raised on a quarterly examination—was advertising your role, and I note that in the report you have indicated where you have spoken to certain people and you have sent out brochures and you have advertised in newspapers. I also note that the change to the memorandum of understanding is that ICAC also play their part in this. Are you satisfied that your presence out in the community is at a sufficient level or will this be an ongoing role with you? I am talking about the ethnic community. You have mentioned that the main people who come to you are the male Caucasian variety.

Mr KELLY: That is right.

CHAIR: So, will this be an ongoing task of your office to advertise yourself?

Mr KELLY: I think it is one of the things we need to have on the checklist annually. There seems to be a pretty broad-based understanding of the existence of the office by those who want to access its facilities. So, I do not lie awake at night worrying that there are people out there who do not know who need to know. Nevertheless, it is obvious that there is an underrepresentation of complaints from ethnic communities. Interestingly, that is exactly the same at ICAC. So, there is probably some other phenomenon at work there.

Generally speaking—and can I prove this statistically? The answer is no—but my impression is that the composition of complaints that come to us is a pretty fair mirror of the composition of complaints that come to ICAC. So, yes, I think we should keep it on the agenda as a checklist item. Should we spend a lot of money on it? I do not believe that that is required.

CHAIR: In relation to your role, I notice that your functions are contained in section 57B of the Act, and it sets out four sub-paragraphs. In your report you obviously indicate your audit power, which is in paragraph (a), and then you group paragraphs (b) and (c) for the general complaints, and we will get to those a bit later. Then you come to paragraph (d), which talks about general procedures. What kind of activity would you envisage would fall into that function? Paragraph (d) states:

To assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

And you have stated there that you have done nothing in that process.

Mr KELLY: That is exactly right. It is a question of how you apply the resources and the way in which you, in a sense, approach the task. We have gathered together pretty much all the policies and processes that are written down by ICAC and we have generally familiarised ourselves with them. We have not come across anything that has rung alarm bells to the point where we thought, "Gee, we had better go in and, in a sense, re-engineer that process", and that is what we mean in saying that we have not done that. What we have concentrated on though, in particular, in the 12A audit is to see how they behave in fact and often when we look at complaints we have a look at the handling of the complaint against what they have said as being the procedures. So, I guess we come at this indirectly in a pragmatic way rather than in a—

CHAIR: Formal way?

Mr KELLY: Yes.

CHAIR: You have indicated in your report that you are also interested in the management side of ICAC. How much of the proportion of your work do you intend to take up looking at the managerial side as opposed to the more legal assessment side?

Mr KELLY: That issue comes up, I guess, primarily in my regular discussions with the Commissioner. I should say at the outset that I think there has been a significant strengthening in management processes in ICAC over the time I have been working at it. I suspect the abolition of the Operations Review Committee has had a positive effect because that process obviously took up a lot of time in terms of putting the documentation together, and Seema and I, particularly in the early days when the committee still existed, spent a fair amount of time looking at reports to it, and they were very voluminous and really one wondered about the productivity of the whole thing.

I think that with the abolition of the committee the management structure that is now in place in relation to the assessment of complaints is much more efficient. The second thing, and of course one is always in a bit of a cleft stick on this—I would not want to give the impression that former staff members were other than extremely good—but I think the recruitment of Theresa Hamilton, with her background in the Queensland commission, has had a positive effect because there has been, I think, this is very impressionistic though, but I think there has been a cross-fertilisation of approaches and management styles, and that always does organisations good, in my experience.

CHAIR: You have indicated the policies that you have put in place for assistance to complainants in regard to complaints about ICAC officers on duty, and inviting complainants

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to advise whether they wish you to proceed with an assessment. Has there been much change in those policies since the time of your report? Have they been basically the same?

Mr KELLY: It is basically the same, yes. From the beginning we have approached as much of the role as possible in a strategic way. Where it seems that an issue gives rise to a policy matter we have generated a policy, so that over time we will be able to deal with like things consistently. I am a great believer in that kind of strategic approach. I do not mean a bureaucratic approach just churning off rules, in a sense, but trying to approach things strategically and in an organised way. I would be a little troubled if we had to change too many things.

CHAIR: I want to ask you a few questions about the complaint handling processes. The main reason, I suppose, for your role is to assess complaints against the ICAC, which is an accountability venture that we all welcome. I think I am right in saying that the type of complaints you receive or the overwhelming majority of complaints you receive are not perhaps what we all expect; the majority of them are the way ICAC assesses its complaints, the decision to investigate or not investigate, and, of course, you talk in your audit report about there being some issues there as well. The complaints that you deal with I notice are mainly paper-related, although you receive certain material from the complainant and then you access, I assume, some material from ICAC and you also have your electronic connection in your office. Is that the main material that you look at to assess these complaints? Is that the ambit of it?

Mr KELLY: It is the main focus. We do occasionally interview complainants, and mostly it is Seema that conducts the interview. Generally speaking, I have a policy that we have written down that I do not do interviews myself, because at the end of the day I have to make the call on it. So, we have, in a sense, a separation of functions, and in appropriate circumstances we interview the ICAC officers involved: we have done that quite a deal.

So, we are not limited just to the writing, so to speak, but also to oral information. The one area that we are pretty stringent on, and it comes up quite regularly, is that we ordinarily require a complainant to give some measure of particularisation of their complaint. In other words, if they simply write in and say, "ICAC dealt with me badly and they are corrupt", then we say, "You tell us what you mean and tell us why". Only yesterday—without going into the details of the matter because, as you know, I am not allowed to do that—I had written back to a complainant saying, "Please give us the particulars" and the person wrote back and said, "I'm not going to do so because it's obvious if you look at the ICAC files." Of course, it is never obvious if you just look at the files. That is a fairly tough policy that we adopt. I, personally, am absolutely convinced that it is the right policy. It is a policy that helps preserve the integrity of ICAC's systems and it is a policy that stops us wasting a lot of resources. My budget is nearly to zero on the top of it if we had to do the devilling, so to speak. I think it is a perfectly fair approach because if at the end of the day you want to go down to the Supreme Court of New South Wales you cannot walk up to the counter and say, "I want to commence proceedings against X" without having a piece of paper that says what the basis of the complaint is. That is the one part where we are stringent, but I think rightly so.

CHAIR: I have a few questions about the criteria that you have listed in your report. You refer to the age of the matter. Do you have a particular cut-off point?

Mr KELLY: No. There was one matter that really involved issues going back to 1979. Frankly, had the complainant articulated a reasonably precise complaint I think we would have said, "Nineteen seventy-nine is a little too far away." I had a funny experience in relation to this because we had a visit from the Chinese Deputy Director of Public Prosecutions. He asked a question about age of complaints and I said that our oldest complaint related to 1979 and he burst out laughing. I thought that was probably a pretty fair indication of his view.

CHAIR: So you balance the age with the particularity of the complaint.

Mr KELLY: We have looked at some that go back a reasonable distance.

CHAIR: You also refer to available resources and existing workload. How much does that factor into whether you proceed with an investigation of a complaint?

Mr KELLY: That has not been a central determinant in any of them. I guess in some we have said, "Well, there doesn't seem to be much in this and should we really be spending much more time on it?" And the answer is no. So it is a factor that is present in our minds but it is not a governing factor. I can say to you absolutely confidently that if the complaint otherwise appears to have real substance to it and the only issue was human resources to apply to it then that is a situation where we would look for some other help.

CHAIR: Do you provide reasons to complainants for not proceeding?

Mr KELLY: I suppose there is always a debate about what constitutes reasons but we usually give some explanation for not proceeding.

CHAIR: In general terms.

Mr KELLY: Yes. At the end of the day most of the complaints when we analyse their basis involve maladministration. Quite often we will get to the point where we say, "This is what you are really complaining about and we don't believe that amounts to maladministration requiring us to take the matter any further." Sometimes the reason is as brief as that and other times we give a bit more. I think if you do not do at least that then, first, people are legitimately disgruntled; and, secondly, you are setting up a system that gives rise to further complaint.

CHAIR: Lastly on complaints, the assessment of evidence seems to be a real issue in your reports. You have a section 12A audit where you made certain recommendations and you assessed some complaints where you questioned an explicit policy on standard of effort required to assess evidence. If you look at both of those courses of action that you have taken—one with an audit and one with assessment of complaints—there seems to be an issue with how ICAC assesses evidence in terms of relevant evidence, allegations of failure to assess relevant evidence and so on. Were those recommendations put in place? Alternatively, did you get explicit policy? In general, what can you tell the Committee about how you feel that ICAC is moving forward to address those issues?

Mr KELLY: To be fair to everyone, I think I should discuss that with the Commissioner at my next meeting. But the general impression is that there has been in recent times a greater understanding of, first, what constitutes evidence; and, secondly, the

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need to have regard to the evidence. We face the same issue. It is quite tricky in some ways because inherently you do not need, and should not require, anything like the sworn testimony that you would expect in a court. You do not need affidavits, for example. On the other hand, mere assertions do not constitute evidence. A lot of the complaints that come to ICAC—and I have to say I think a fair proportion of the complaints that come to us—are based on mere assertions or, in some cases, mere speculation such as, "The council didn't do this; therefore, it must have been corrupt." Of course, none of that flies.

However, what we have observed in relation to a couple of cases where ICAC has not been as precise as it might have been is that, for example, it may not have rung someone up and said, "Well, what are the facts?" Alternatively, it may have thought that merely because the only evidence was oral evidence that was not enough. Of course, often the only evidence is oral evidence. Even in the most serious of crimes people are convicted on the basis of oral evidence. It is around those grey areas that the difficulties arise.

Reverend the Hon. FRED NILE: I have questions about one or two matters that were referred to earlier in the memorandum of understanding. ICAC is to raise awareness of the Inspector's role and functions. Are they doing anything in that regard to your satisfaction?

Mr KELLY: Yes. They routinely inform people of the opportunity to complain to me. I reiterate generally that there has been a very good level of cooperation from them—it is not absolutely perfect every time obviously—and there is a very good relationship with the Commissioner.

Reverend the Hon. FRED NILE: You say in the briefing paper that ICAC is not making basic inquiries to establish the veracity of complainants' allegations. Can you give an example? What is the reason for that in your opinion?

Mr KELLY: What I really meant harks back to the discussion we were having on evidence. In at least a couple of cases that I can immediately call to mind it would have been relatively easy to ring someone up and ask, "What happened here?" instead of just taking a piece of paper on its face value or taking a complainant's statement as the complete event. I cannot be sure why that has happened. But I think it comes back to a resourcing issue that I have mentioned to the Committee before. I recall in the year immediately gone the Commission dealt with 2,149 complaints or matters—whatever they like to call them—and they have about 10 assessment officers. So there is an enormous volume of complaints that come in and quick decisions have to be made on them.

If you were starting with a clean sheet of paper I think in some ways you would design ICAC differently from the way it has turned out to be. I probably have a slightly different view from the Commissioner and very possibly have a different view from the Parliament. But in many ways there are a large number of complaints that go to ICAC that have no realistic possibility of giving rise to serious and systemic corruption, and they burn up a lot of resources. That even means that people probably, to speak colloquially, give some things the once over lightly instead of giving it that little bit more detailed attention.

Quite coincidentally, I was looking this morning at some newspaper reports—the Committee will no doubt be aware of this—and on 19 October there was a report in the *Daily Telegraph* about the alleged bullying of a security officer at the Premier's department. I do not wish to make any comment whatsoever about the veracity, seriousness or any such

thing of that matter, but I feel compelled to say that it is not apparent to me on the face of it that that is something that should go to ICAC. It might be heinous conduct in all sorts of other ways if it were made out, but it does not respond to the notion of being corrupt conduct. Yet ICAC has to devote resources to deal with it. That then leads to the imperfections that we were talking about.

Reverend the Hon. FRED NILE: I have another general question about your responses to questions on notice. You were asked a question about the PIC Inspector and you said, "I am not aware of the details of how the PIC Inspector approaches his role." Do you think there would be some benefit in having a meeting with the PIC Inspector to compare your roles? Perhaps you are doing that through other means. It seems that you are operating in parallel but there is no interaction between the two offices. When they are similar perhaps there should be some comparison.

Mr KELLY: I met with the immediately previous PIC Inspector at the very beginning—in fact, it may have been before I was formally appointed. The new PIC Inspector and I had an arrangement to meet but, one way or another, someone got tied up and we did not. I am aware that the PIC Inspector in one way operates very differently—that is, the PIC Inspector becomes involved to some extent in the current activities of the PIC. For example, as I understand it, he reviews some of their compulsory processes. I came to the conclusion at the very beginning after a discussion with the ICAC Commissioner that I should not approach my task like that because if I were to be involved at that stage during the course of an investigation and then subsequently someone complained to me I could not assess the complaint objectively. So I have deliberately stayed back from current activities.

I think on a previous occasion you and I had a discussion about whether the person in this job should be a lawyer. What I am about to say does not change my view, but it is interesting that the court system adopts much the same view. It is very difficult to get an appeal court to intervene in the middle of judicial proceedings for that same sort of reason. So in that respect the way I approach it, I know it is quite different from the Police Integrity Commission Inspector. Of course, the complainants are very different. Generally speaking, the issues are very different. So I am not sure that there is much greater scope for cross-fertilisation. What I do find useful is the about once a year interaction with people from other jurisdictions who have organisations similar to ICAC and there the issues are very similar.

Mr DAVID HARRIS: When the commission revises or develops new documents or policies, such as the code of conduct, do you see your office as having any formal role in having input into that process, given your knowledge of the types of complaints and potential witnesses?

Mr KELLY: Not in the development as such but the commission provides the outcomes to us and we review them, without doing it in any particular formalistic kind of way. If it struck us that there was an obvious difficulty, then I would raise that in a submission to the commission. I have not had occasion to do that. For example, when they were developing their new procedures following the abolition of the Operations Review Committee the Commissioner and I had informal discussions about the way we should approach it, and we did make one observation which has subsequently been taken up.

Mr JOHN TURNER: In your report you mention that the memorandum of understanding is due to be reviewed in September and signed in October. Has that been executed?

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Mr KELLY: Yes it has.

Mr JOHN TURNER: And there was no drama in getting to that position?

Mr KELLY: None at all. In fact, if I recall correctly it was signed last week, last Tuesday.

Mr JOHN TURNER: In your answers on notice, No. 3, you say that the Department of Premier and Cabinet charge an annual fee of approximately \$16,000 per employee for the provision of payroll information technology and other corporate support services. On a rough calculation on your employee-related expenses solely that is about 17 per cent of that budget. Drawing on your private sector experience is that a realistic fee for employee-related services?

Mr KELLY: It is a while since I have been involved in the outsourcing of those kinds of resources but going back to when I was that would be pretty reasonable. I have not felt the need to put it out to tender, and I am not quite sure what the reaction would be if I proposed that. I see it in this context: the overall budgetary relationship with Premiers has been pretty satisfactory. We have had a bit of a fight here and there but generally speaking we have walked away feeling fairly comfortable about the outcomes. At the moment I do not have a problem.

Mr JOHN TURNER: You have three employees. On that basis that is \$48,000 of your budget going back to the Department of Premier and Cabinet.

Mr KELLY: Yes, that would be about right.

The Hon. JOHN AJAKA: Are you satisfied with the way ICAC advises the public of your existence and the availability of being able to complain to you? Is it something that you believe is well and truly pointed out and not just nice little fine print down the bottom?

Mr KELLY: Yes, I am satisfied. In fact, in early times I almost had to rein them in because they obviously get complaints about themselves and their initial inclination was simply to send the complaint to me. I took the view—I think I discussed this with the previous Committee—that it is good for any organisation itself to deal with complaints against itself in the first instance. So not only do I feel pretty comfortable that they draw attention to the resources available to complainants through my office; in fact, if anything they probably like it a little too much.

The Hon. JOHN AJAKA: That was my next question and you have answered that. I appreciate that. You indicated that when you make a decision or you send correspondence to a complainant you tend to give a brief reason for your decisions. You do not feel that an expanded and detailed reasoning would in a sense give the complainant a little less of an argument that he is still being kept in the dark?

Mr KELLY: I have felt comfortable about going about it the way we have. I guess there are two or three observations I would make. There are resources once you get into anything that is approaching a judicial type judgement. Secondly, to be completely frank, with some complainants it would not matter what you wrote down. There would be a parsing

of every sentence and just further correspondence. That happens not uncommonly, no matter what you do.

The Hon. JOHN AJAKA: We experience it here. I was most interested in what you were indicating about levels of advancement for employees, attracting the right candidates, your location, which the Chair had raised. Is there any possibility of your office linking with other government departments, either on secondment, whether it be the Crown Solicitor's office, the Director of Public Prosecutions, where rather than you trying to hire someone from scratch, maybe someone from the Director of Public Prosecutions could be seconded to you for 12 months, as they used to do at the old petty sessions days of the Local Court, where they might be seconded for 12 months, they then go back to where they started, having gained a wider range of experience and of course their career paths have not been hindered in any way.

Mr KELLY: We have done that to a certain extent. In fact, the person who provided the basic input into the 12A report came to us on secondment from the Office of the Ombudsman. We had an administrative assistant on secondment from the Industrial Relations Court, and we have looked at a couple of other possibilities on other occasions as well. So that is something we have done.

The Hon. JOHN AJAKA: And can be looked at in the future. It is not a situation where someone is the deputy and the guy or lady above them will not be leaving for 20 years and there is just no room to move.

Mr KELLY: Philosophically, I am a great believer in secondments.

The Hon. JOHN AJAKA: I am the same. I understand that your existence has been approximately just under three years.

Mr KELLY: Yes. It was 1 July 2005.

The Hon. JOHN AJAKA: Did you find a situation where a lot of old matters were suddenly coming to you, as well as the general new matters? So there was a bit of catching up and now it is starting to level off or is it fairly consistent today as it was three years ago?

Mr KELLY: That is a very interesting question to ask me because when my proposed appointment came before this Committee I think the expectation around the table was that there was this reservoir of old complaints that would inundate us in the first few months. That did not really transpire. There were some and I think we have largely got to the end of them now. But there was not the great build up that people had expected. There has been a remarkable degree of consistency in the number of complaints over the past couple of years and it runs to roughly speaking one a week. If you take the Christmas shutdown out of the picture, it is roughly a complaint a week.

The Hon. JOHN AJAKA: The only thing I wanted to maybe ask about was the matter over the 900 hours, the complaints still active, but I understand you are going to do that Chair?

CHAIR: Yes, we will deal with that.

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The Hon. JOHN AJAKA: I will leave that then. Thank you.

Ms LYLEA McMAHON: I have two questions. One relates to how you define on and off duty in terms of your role of investigating conduct.

Mr KELLY: Do you mean for ICAC officers?

Ms LYLEA McMAHON: Yes, for ICAC officers.

Mr KELLY: We have not needed to be terribly definitional. The off duty one that I immediately remember—and there might have been a couple—was obvious. There was not any suggestion it was travelling to or from work or anything like that. It was obvious. ICAC itself has a process for dealing with such complaints so we refer the complaint to ICAC's own process for dealing with it. Will that ever come up? I do not know, and I guess if it does we may have to be a bit more definitional.

Ms LYLEA McMAHON: If you are acting in a professional capacity there are some situations where that continues with you, confidentiality being one, for example. There is an expectation that you are confidential about issues that you come across 24 hours a day, all day every day.

Mr KELLY: We have not come across that kind of case, fortunately. We are not even approaching that. Obviously I cannot go into details but the one that immediately comes to mind was utterly private.

Ms LYLEA McMAHON: I suppose that is a better definition, private versus professional conduct, rather than on and off duty. The other one relates to an answer you gave in terms of the resources of ICAC being expended on investigating inappropriate complaints. How do you see that as being resolved?

Mr KELLY: If the Committee might indulge me to go back a little in history to get to how it might develop in the future, the definition of corrupt conduct from the beginning was very broad and in particular it has the capacity to pick up a situation where there is no more unlawfulness than the potential existence of a disciplinary offence. That gave rise to some difficulty and indeed was litigated. When the judicial review of ICAC was underway, which was initially conducted by Jerrold Cripps before his appointment as Commissioner, he looked in some detail at whether the definition could be circumscribed in some kind of way. I think I recall this correctly: He wrote to a number of organisations, such as the Council for Civil Liberties, the Bar Association and the Law Society, and asked for suggestions as to how the definition might be modified. Also I think he asked people to show any example where the Independent Commission Against Corruption had to conduct an inquiry where they did not think there was an allegation of corrupt conduct. That exercise turned out not to show to his mind a basis for recommending some kind of modification or tightening of the definition.

Looking to the future, you can approach this in two ways: You can either have a very stringent triage system, which is sort of what ICAC has moved to, so that the fishing net, so to speak, is very big and very broad but you select which fish you want to keep, or you can try to tighten the definition. I personally think there is scope for the definition to be tightened but I think that if that were to be done it would have to be as a result of a very deliberate

determination by this Parliament about what resources it wants ICAC to employ doing what. I hark back to the newspaper report I mentioned earlier. To my mind it simply ought not to be within anyone's contemplation that a complaint of that nature should end up at ICAC. There might be other places where it should go, but not to ICAC. I think if I went further in answering your question I probably would be intruding far too far into the realm of public policy than I should go, although I do have views.

Mr JONATHAN O'DEA: One of the questions I have identified is the same as Ms McMahon's in terms of the definition of off duty. I think it needs to be clarified more as a private or personal nature as well, rather than out of hours or away from the premises, given the scope of the review over the potential abuse of power or impropriety, or other forms of misconduct which might relate to work, even though technically off duty. I am just reinforcing that point. I have two other questions. One is, of those two matters raised in answer to question 9A, those two situations where ICAC did not immediately or was not immediately forthcoming in terms of requests for information, were both of those matters ultimately resolved to your total satisfaction or perfectly?

Mr KELLY: In the second case, yes; in the first case, we have not ultimately resolved and reported on the matter. The unfortunate fact is that they could not locate the relevant document.

Mr JONATHAN O'DEA: Do you accept that?

Mr KELLY: One of the observations that we have made to them from time to time, and where I have reason to believe there is a genuine attempt to improve, is that some of their file management practices have not been as great as one might have hoped in terms of record-keeping. I do not want to be particularly condemnatory or anything like that; it is not an unusual phenomenon in public authorities that sometimes the document management system is not quite as good as you would wish.

Mr JONATHAN O'DEA: The other question I have is that I notice that in certain regards you use time measures.

Mr KELLY: Yes.

Mr JONATHAN O'DEA: Do you record the number of hours you spend on each individual complaint? You have about 52 complaints a year. Do you record time or costs against each complaint?

Ms SRIVASTAVA: We do not record costs but we certainly record time-hours spent.

Mr JONATHAN O'DEA: Using a factor of time, you could respond.

Ms SRIVASTAVA: Yes.

Mr JONATHAN O'DEA: What is the average cost per complaint?

Ms SRIVASTAVA: The bulk of complaints?

Mr JONATHAN O'DEA: Yes.

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Ms SRIVASTAVA: You would probably be looking at spending roughly, including the Inspector's time, my time, and the office manager's time, \$2,000 to \$2,500.

Mr KELLY: I do not know whether this is a good thing or a bad thing, but a significant charge to the office is for my time because I am remunerated on a per diem basis and that is a relatively expensive way to remunerate people.

Mr JONATHAN O'DEA: And I suppose on a rule of thumb and putting it in a very crude way, there are 52 complaints and a budget of a bit over half a million, so it costs about \$10,000 a complaint. I understand a lot of your other functions also take time. I just think in the interests of transparency it is good for us to understand that, albeit valuable, it is quite a costly process.

Mr KELLY: I think if I may say so, Mr Chairman, you have raised a very legitimate point. Am I comfortable that this office delivers half a million dollars worth of value in a context where there are obviously many, many demands on public sector resources? I think, searching my soul, I have to say I am not confident that it is good value for money. It depends on what value is thought to flow from it. Would I be happier if we had uncovered a whole bunch of egregious behaviour by ICAC? No, of course not.

So in the sense that it is confirmatory that ICAC overall has performed and continues to perform pretty fairly and pretty well, perhaps that is good value for money. Whereas once complaints, as they did in the past, came to this Committee or to individual members and unrealistically it was expected that parliamentarians would be able to solve them, there is now the avenue of being able to refer them to me. Is that good value for money? I am not in a position to judge it professionally. As a citizen, I personally think it probably is good value for money.

Is it good value for money that an omnipotent and otherwise largely unreviewable organisation like ICAC has some degree of fairly transparent accountability? There I would say unqualifiedly yes because I have a general view that extraordinarily powerful and largely unreviewable organisations are to some extent to be feared in democratic society.

Mr ROB STOKES: I have a question related to referred complaints where you have a referral process. Does this relate to where a complaint is received by a legal practitioner acting on behalf of a complainant? Is that considered a referral?

Mr KELLY: It can do so and sometimes it comes from an agency or whatever. What we feel we need to do is make sure that the underlying person whose interests are at issue wants us to deal with the complaint. We did that for three reasons: one, it is only fair to the person concerned; two, if you are going to get to the bottom of the facts, you have to ultimately engage with the person concerned; and, three, it is again a way of ensuring that we do not waste our resources on pointless exercises.

Mr ROB STOKES: The reason I raised that is because, as a general rule in that relationship, there would be an assumption that a solicitor would be acting on behalf of a client, and that would be the end of the matter and you would communicate with the solicitor.

Mr KELLY: We have had one situation where it is absolutely unclear to me that there is much communication between the client and the solicitor—and I do not mean to be critical of the solicitor.

Mr ROB STOKES: But in those situations you would generally hark back—

Mr KELLY: We would be practical about that.

Mr ROB STOKES: My next question is related to that. What proportion of complaints are roughly, say, off the top of your head, made on behalf of a complainant by a legal practitioner?

Mr KELLY: Very few, in reality. Some are made by legal practitioners, but really very few. I take comfort from that. It really is a waste of people's money. I have a pretty stringent view on what lawyers ought to be doing, and formulating these kinds of complaints is probably not the most productive work.

The Hon. GREG DONNELLY: In answers to question number 14B about the provision of assistance to a complainant, you say that advice related to question 13 has occurred on two occasions. Could you inform the Committee about the circumstances of providing assistance? What I am getting at is this: is the assistance provided because clearly the person is struggling to put their position forward clearly to you to enable you to make an assessment of the complaint, or are there other criteria brought to bear about providing assistance?

Mr KELLY: I will make some general comments and then Ms Srivastava will give detail about things she has been directly involved in. When we got going, there was sort of a threshold issue about whether in a sense we would help people formulate their complaint. I came to the conclusion that as a general proposition we should not, and there were a couple of pretty powerful reasons. First off, that has the capacity to take up your time 100 per cent, whether the complaint is justified or not, so there is a real resource allocation issue there. Secondly and in some ways much more fundamentally, if you get involved in the formulation, it is very difficult then for you credibly to assess it and to come to a conclusion that will ultimately be acceptable to anyone, but certainly not to an organisation like ICAC.

It seemed to me that we basically needed to say that you, the complainant, have to tell us what the complaint is, and we are not going to formulate it for you. However, the reality is that there are in our society a material number of people who suffer from some kind of disability or some kind of lack of articulate-ness who can get badly run over by organisations, so to speak, and who need a measure of assistance in identifying what the issue is. So our policy is deliberately developed to enable that case to be dealt with fairly. Ms Srivastava has been involved in that and she might like to speak.

CHAIR: Ms Srivastava, would you like a break before you do that?

Ms SRIVASTAVA: Would that be all right?

CHAIR: Yes, certainly.

[Short adjournment]

CHAIR: Ms Srivastava, you were about to give an answer to Mr Donnelly's question.

Ms SRIVASTAVA: The two occasions when assistance was given were after receiving particulars from both complaints in writing but the particulars were not clear and it was apparent that it would be better, in order to obtain most particulars, to speak to them face to face. That assistance was given because in one instance I think it was an issue of not being able to sufficiently articulate the complaint in writing but orally the complainant found it easier to say a whole lot of information, and from that I was able to ascertain what the particulars were related to the complaint.

In regard to the other complainant, think there were issues around how well the person was and that they felt better when they could meet face to face. It was a very distressing experience for them to be required to put it in writing, and that again was to do with their health and how well they were. In providing that assistance I was mindful that I did not want to be putting words into their mouths so I asked a series of open-ended questions and on both occasions I found I received a large volume of information and then had to be able to identify what related to the complaint, and I was able to clarify from repeating what people said to me that that was the complaint that they wished to lodge.

I then provided them with notes of the meeting and asked them to confirm whether they were happy with what I had written, that that was an accurate record of what they said was their complaint and they said it was. I understand one complainant took it away and had those notes read by a friend, and they were happy with it and they came back and said yes, that is it, you can proceed on that basis.

The Hon. GREG DONNELLY: Inspector, in the same question, question 14, you make some comment about the training of ICAC staff with respect to complaint handling and dealing with complaints. My question is a bit more general, about the issue of training. Obviously the organisation is relatively small and to take someone offline for a period of time creates gaps that can be hard to fill. Notwithstanding that, is there any training you feel would be valuable to be provided to the staff which, at least to this point in time, you have not been able to provide?

Mr KELLY: I am a passionate believer in training and on previous occasions with the Committee had expressed the view that one of the things that ICAC then needed was a greater training program. I guess if you held that view you had better live up to it yourself perhaps Ms Srivastava should answer part of the question but I have certainly been as encouraging as possible to people to undertake a variety of training, including some, on the face of it, quite remote from Berwick immediate functions and including some reasonably expensive stuff.

One of the difficulties you can have with this kind of function is that people who have to perform become very narrowly focused on whatever the tasks are at hand and do not sufficiently see those tasks in a broader societal context. In my experience across a number of organisations one of the ways you overcome that is through training of one sort or another that takes them into other disciplines or other exposures. You are absolutely right to say that resources are necessarily limited. Our financial resources are not open-ended, and there is no way in the world they could be otherwise. Secondly, people out of the office do have a big impact in the office. I think that is probably enough for me to say. But perhaps Ms Srivastava might like to add something.

Ms SRIVASTAVA: I see the approach the Inspector is taking in terms of training has been one not just related to complaints or task focused work but a broad one. That has generally helped me in running the Inspectorate. It is a small agency. So, I have done training related to management as well as communication training and that has helped overall in making the job more interesting as well as to take a broad strategic approach to this non-complaints handling function.

CHAIR: Mr Kelly, some of the ground we traversed earlier, and I preface the question by this: You referred us to a newspaper article today about bullying a security guard in the Premier's Department and you expressed your opinion in general that those matters should not be before ICAC. Firstly, we are well aware that ICAC receives many complaints, a very small percentage of which it pursues. You have made the comment that ICAC performs well under difficult circumstances. I think we all generally agree—others may have a different opinion, but I think that is generally the situation. I noticed on page 21 of the 2006-07 report there is an instance where there is exchange of correspondence between you and the Commission about a particular matter, and the issue is serious and systemic corruption. There is an interpretation of what that means. I think you, in one of your audit reports, have adopted the interpretation that it means either.

Mr KELLY: Yes.

CHAIR: And so has the Commissioner.

Mr KELLY: Yes.

CHAIR: But he says in there that there are instances where it could be one serious event which highlights inherent corruption issues the Commissioner could pursue or one serious event that does not follow that. Conversely, there could be systemic issues that are not warranted by ICAC but there could be ones that are and they are systemic. So, it is left fairly open, and a horses for courses basis, if I can put it that way, as to what the interpretation could be. You have given an analogy of the fishing net, one option of which is choosing which fish you want to keep, and you have given another course of action, changing the definition of corrupt conduct.

The reason I say all that is that all this relates to the assessment of evidence. In your job as Inspector, since you have been appointed to the role, the main complaint you have had is the assessment of evidence. The majority of complaints you have had are that ICAC has not properly assessed the evidence, and the decision as to whether or not to investigate has been the main source of your complaints. I have asked you this before, and I think the Commissioner has responded to you by saying that these matters of assessment of evidence and the weight to be given to them will be covered in the induction of legal officers. Do you see cause for you to be recommending any training or ongoing training? Do you see a role for yourself to monitor that issue with ICAC? Do you think that could be a cause for ongoing training with ICAC, not just the induction, seeing that is the main focus of the work you get in your role?

Mr KELLY: I think the short answer is yes. The long answer is somewhat more complicated. I think had the commission not been prepared to adopt the interpretation that it can be either serious or systemic, had it said it has to be both, I would have felt compelled to come before this Committee and say either Parliament did not intend that or, if it did intend

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that, the provision should be amended. As soon as you turn your mind to it, almost instantaneously you will find the most egregious examples of corruption that are not systemic. Of course ICAC should investigate. So, I think ICAC operates on that basis, a basis I feel comfortable with and a basis that Parliament ultimately feels comfortable with as a major advance.

In connection with the assessment of evidence, the major cause of complaint to me is when ICAC has not taken up complaints and a subset of that is that the major component of those complaints is that they have not found the evidence or assessed the evidence properly. So it is sort of a subset of a subset. There were, I can recall to mind, a couple of cases where I thought the assessment officer had not properly understood what was evidence and what was not evidence. My understanding is that there is much better, I guess, ultimate supervision of that issue within the assessment area than might have been the case when those issues arose.

I have not in recent times followed up with the Commissioner precisely what training programs are under way. I think it is a timely reminder that I should check again and my approach will reflect what I said in answer to the question from Mr Donnelly. I like to approach things by imagining that you were the person who was in the hot seat. I think to be an assessment officer in ICAC must be a pretty tough, hard job and it would be a job where it is very easy to make mistakes. For the most part they do not make mistakes but it is certainly easy to make blemishes. I have said to this Committee before, you take the 2000 complaints and take approximately 10 full-time people sitting in that assessment area, you take approximately how many days a year they actually work and you are looking at them having to process one complaint a day, every day they are at their desks and that is hard. I do think there is scope for continually honing their skills in picking issues and dealing with things like what constitutes evidence. Now it is very hard, and I am sure the Commissioner would say this to you if he were sitting here as well, to find precisely applicable training for that kind of approach. It is not just complaint handling stuff because that is not what we are talking about and I think they probably understand all of that fairly well. It is not quite going to a course on what constitutes admissible evidence either—it is somewhat more refined than that. So that is a very long answer, apart from my monosyllabic answer.

CHAIR: Is it a managerial issue?

Mr KELLY: Chairman, I have said before I think embedded in the very structure of ICAC is a tremendous managerial challenge. ICAC's budget is basically at the ICAC level of a global budget of approximately \$16 million; I might be out by \$1 million here or there but near enough to \$16 million. ICAC then has to make decisions about the application of that. A very large part of that budget is simply driven by salaries and salary-related expenses and very little else. But really at the end of the day you are making decisions about resource allocation between two clearly competing functions. One is the corruption prevention function and the other is effectively the complaints function. There is no real guidance given in the legislation, nor—and I do not suggest it should be otherwise—real guidance given from the Parliament or the Government as to how that balance is to be drawn. Interestingly, in a purely conceptual way, you do not necessarily have to have an organisation that has both of those functions together. You could actually separate those functions and make your resource allocation between them much more explicit and much more dependent upon a public policy forum. So, in that sense, it is a big management issue sitting right at the top of the organisation. I think successive Commissioners have dealt with that issue very well but let us not fail to recognise that it is a big issue.

Sitting under that issue is how you view and manage your complaints and investigations function. Quite clearly the investigations function has been tremendously important. The really big, momentous results from ICAC have come from extensive investigations, often involving covert operations or wiretapping or whatever. That is where the big successes have been. Yet they are absolutely resource intensive functions and they are not functions that are repetitive day in and day out. It is not like you know you have to have so many traffic police at any given time. These are functions that have resource demands that go up and down and that is a very big management issue. Again I would not want to suggest I have any view other than I think successive Commissioners have done a very good job in making those resource allocations. Then, in terms of the stuff that comes in the door, off the street so to speak, in those 2000 complaints a year you have to make very hard decisions about which fish you are going to get.

Ms Srivastava and I were discussing this morning that if you lived in a more idealised world, you would probably try to articulate clearer criteria about what fish you would keep, the species or the size. It is a bit like the fishing regulations, if you continue the analogy. At the moment it is not absolutely clear in our core cases. I suppose, in fairness, I probably should discuss this with the Commissioner first, but it is not always obvious to us why some complaints are taken up and others are not. Perhaps it would be better if there were clearer criteria on that. However, I am sure the Commissioner would say, and I am sure the head of the assessment area would say, to a large extent you have got to be judgmental about it and you have to pick.

CHAIR: On the issue of the relationship between agencies, we obviously have what has been an ongoing discussion over past committees about the relationship between ICAC and the Department of Public Prosecutions. Your analogy of snakes and ladders without the ladders is one I have noticed you have stated to the Committee before and you have been able to clearly recognise the difference in their roles.

Mr KELLY: Yes.

CHAIR: And the attempts that have been made for those two agencies to work together as best as they possibly can, given that there are a lot of issues there. I want to ask, would you be willing to assist in any process of a new memorandum of understanding that is currently, or due to be as I understand it, talked about between those two agencies given your recognition of the issues?

Mr KELLY: Could I answer partly in the public forum and if it is proposed that we go into an in camera session I will give a supplementary answer?

CHAIR: Yes.

Mr KELLY: The short answer to your question is yes. The other answer I would give in the public forum is that it is absolutely clear to my mind that there needs to be a process whereby people who are found to have engaged in corrupt conduct that constitutes a crime, or if after appropriate prosecution is found to constitute a crime, should be dealt with and dealt with expeditiously. There is not a shadow of doubt otherwise; or frankly, we are all wasting our time. In saying that it is necessarily implicit, and therefore I will make it explicit, I do not believe that ICAC achieves the purpose that people expect it to achieve if all the process results in is a finding of corrupt conduct and the person is never prosecuted or, to

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use American frontier language, is never brought to justice. So there must be, in my mind, some process for the resolution of that issue. The other thing I will say in my public answer to the question is that I can understand the starting point of the Director of Public Prosecutions, as well as the starting point of ICAC. However, I think we as a society also have an entitlement to focus on the end point.

The Hon. JOHN AJAKA: I wish to refer to what was said earlier about section 12A. If it was Parliament's intention that both limbs of serious and systemic were to be satisfied then technically ICAC, by not proceeding on the basis of one or the other, is not really complying with the Act and maybe it is something that your office, as the Inspector, should be seriously looking at or possibly we, as a Committee, might have to look at?

Mr KELLY: When this issue first came up we spoke to the person in the Cabinet office who had been involved in the preparation to the amendments and there was not any element of doubt that it was meant to be disjunctive. Unfortunately, the English language is such that sometimes and/or, or the correct use of them, becomes a little unclear. So we have felt comfortable that at least the relevant people in the Cabinet office intended the two concepts to act disjunctively and that then to my mind solved the problem.

The Hon. JOHN AJAKA: You are not aware of any case in which this has been tested?

Mr KELLY: No.

CHAIR: Mr Kelly and Mr Srivastava, could we excuse you for a few minutes. We need to discuss a matter briefly before we commence an in camera session.

(The Committee deliberated in the absence of the witnesses.)

(Evidence continued in camera)

(The Committee adjourned at 4.19 p.m.)

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Appendix 1 – Minutes

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 5)

Thursday, 1 November 2007 at 2.02pm
Room 814/815, Parliament House

1. Members Present

Mr Terenzini (Chair), Mr Coombs, Mr Harris, Ms McMahon, Mr O’Dea, Mr Stokes, Mr Turner, Mr Ajaka, Mr Donnelly, Revd Nile

2. Apologies

Ms McKay

In attendance: Helen Minnican, Millie Yeoh, Dora Oravecz and Jim Jefferis

3. Witnesses present

Mr Graham Kelly, Ms Seema Srivastava

4. Review of the Inspector of the Independent Commission Against Corruption’s Annual Report for 2005-2006 – public hearing

The Chair opened the public hearing.

Mr Graham Kelly, Inspector of the Independent Commission Against Corruption, Ms Seema Srivastava, Executive Officer were affirmed.

The Inspector’s submission to the inquiry was tabled and included as part of his evidence. The Committee authorised the publication of the Inspector’s submission on a unanimous show of hands.

The Inspector made a few opening remarks.

The Chair questioned the witnesses, followed by other members of the Committee.

At 3.15pm the Committee took a short adjournment and the public hearing resumed at 3.20pm.

The public hearing concluded, the Committee went into deliberative session, in the absence of the witnesses.

5. Deliberative meeting

The Chair addressed the Committee regarding a matter raised by Mr Ajaka in relation to an entry in the Inspector’s Annual Report for 2006-07 and the evidence to be taken in camera. Discussion ensued regarding the matter.

Deliberative meeting concluded, the witnesses were admitted for the taking of evidence in camera.

6. Review of the Inspector of the Independent Commission Against Corruption's Annual Report for 2005-2006 – in camera hearing

The public were excluded.

The Committee continued examination of the witnesses in camera. Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

7. Publication of transcript

Resolved on the motion of Mr Donnelly, seconded, Mr Ajaka, to authorise the publication of the transcript of proceedings of the public hearing.

Proceedings concluded at 4.20pm.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 6)

Thursday, 29 November 2007 at 9.33am

Room 814/815, Parliament House

1. Members Present

Mr Terenzini (Chair), Mr Harris, Ms McKay, Mr Stokes, Mr Turner, Mr Ajaka, Mr Donnelly, Revd Nile

2. Apologies

Mr O'Dea

In attendance: Helen Minnican, Dora Oravecz and Millie Yeoh

3. Minutes

Resolved, on the motion of Mr Donnelly, seconded by Mr Ajaka, that the minutes of the meeting held on 25 October 2007 and the public hearing of 1 November 2007 be confirmed.

4. ***

5. Chair's draft report: 'Review of the 2005-2006 Annual Report of the Inspector of the Independent Commission Against Corruption'

The Chair's draft report was distributed to Committee members. The Chair addressed the Committee on the contents of the draft and proposed recommendations. Discussion on the draft report ensued. The Committee discussed possible amendments to recommendation 1 and agreed that the Secretariat would circulate proposed amendments to the draft report prior to the meeting.

Resolved on the motion of Revd Nile, seconded Mr Ajaka, that the Committee meet on Thursday, 6 December 2007 at 9.30am to consider the report and any changes proposed to the draft.

6. General business

Transcript of public hearing held on 1 November 2007.

The Chair addressed the Committee on a briefing note, distributed at the meeting, concerning changes requested to the transcript by the Inspector of the ICAC. The Chair informed the Committee of the nature of the changes sought, relevant Standing Orders and parliamentary practice. Discussion ensued.

The Committee agreed that Mr Kelly should be advised:

- That in view of standing order 293, the Committee has not made the changes he has requested (as identified in the briefing note).
- That if he would like to explain the reasons why he seeks the changes the Committee will convene at 9.30am on Thursday, 6 December to take evidence for this purpose.
- After hearing further evidence from Mr Kelly, the Committee will include the transcript of 6 December in the report to be adopted.

Mr Stokes raised a possible amendment to the draft report concerning the issue of savings associated with relocating the Inspector's office. Discussion ensued. The Committee agreed to draft an amendment to the Committee comment section at paragraphs 1.12 and 1.13 of the draft report, and to circulate the proposed amendment with any others received, prior to the next meeting.

The meeting concluded at 9.52am.

Draft Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 7)

Thursday, 6 December 2007 at 9.30am
Room 814/815, Parliament House

1. Members Present

Mr Terenzini (Chair), Mr Coombs, Mr Harris, Ms McMahon, Mr O'Dea, Mr Stokes, Mr Turner, Mr Ajaka, Mr Donnelly, Revd Nile

2. Apologies

Ms McKay

In attendance: Helen Minnican and Millie Yeoh

3. Minutes

Resolved, on the motion of Mr Donnelly, seconded Revd Nile, that the minutes of the meeting held on 29 November 2007, as amended, be confirmed.

4. Transcript of evidence 1 November 2007

The Chair updated the Committee on the briefing note previously distributed concerning changes requested by the Inspector to the transcript of his evidence given to the Committee on 1 November 2007. The Chair advised the Committee of the advice received from Hansard concerning the transcript. Discussion ensued.

Resolved, on the motion of Mr Harris, seconded Ms McMahon, that

Appendix 1 – Minutes

- a. the Committee amend the transcript and its report to include the Hansard reporters notes on p.6 of Mr Kelly's evidence; and
- b. the other omissions and changes sought by Mr Kelly to pages 5 and 7 not be made, and that the original transcript of his evidence at these points should remain unaltered; and
- c. the Inspector be advised of the Committee's decision.

5. Consideration of the Chair's draft report: 'Review of the 2005-2006 Annual Report of the Inspector of the Independent Commission Against Corruption'

The Chair addressed the Committee on the amendments he and Mr Stokes had proposed to the draft report, as previously circulated to members by way of a schedule. Discussion on the proposed amendments ensued.

Resolved on the motion of Revd Nile, seconded Mr Donnelly, that the following amendments to the report, as contained in the schedule, be agreed to.

- that Recommendation 2 in the list of recommendations and after para 1.86 be amended by inserting the word 'and' into the second last line of the recommendation to read 'serious and/or systemic corrupt conduct'.
- a new paragraph be inserted in the 'Committee comment' section before para 1.12 as follows:

During the public hearing the Committee took evidence from the Inspector on whether or not he considered that his office provided value for money as an oversight mechanism through which the ICAC accounts for the exercise of its extraordinary covert and coercive powers. The Committee fully supports the role performed by the Inspector and places considerable value on an effective and efficient accountability regime for the ICAC. The Committee also notes that the work performed by the Inspector should be conducted as cost-effectively as possible.

- para 1.12 be amended by inserting:

Based on the Inspector's evidence, the Committee believes that the location of his office may detract significantly from the Inspector's capacity to carry out his functions in the most proficient and cost-effective way possible.

- para 1.13 be amended by inserting:

While there may be some initial expense in relocating, the Committee anticipates that the move should deliver significant savings in the long-term by reducing staff-turnover and reducing the necessity for supplementation to fund additional staff places.

- that pages 6, 13 and 52 of the draft report be amended to incorporate the changes to the transcript of the Inspector's evidence, previously agreed to.
- para 1.25 be amended by deleting the words in the first two lines and inserting instead the words, "With regard to his function at s.57B(1)(d) of the Act".

- minor amendments to: para 1.30, omit the word ‘alleging’ and insert instead ‘that alleged’; and para 1.53, omit the word ‘with’.

Resolved on the motion of Mr Ajaka, seconded Mr Stokes, that the draft report, as amended, be the report of the Committee and that it be signed by the Chair and presented to the Clerk of the Legislative Assembly and the Clerk of the Parliaments.

Further resolved on the motion of Revd Nile, seconded Mr Coombs, that the Chair, the Committee Manager and the Senior Committee Officer be permitted to correct stylistic, typographical and grammatical errors.

6. ***

The meeting concluded at 9.55am.