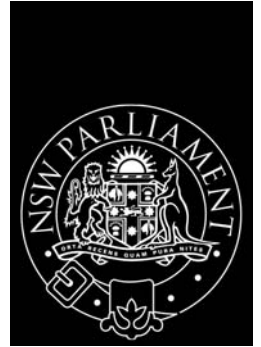


PARLIAMENT OF NEW SOUTH WALES



Committee on the  
Independent Commission Against Corruption

QUARTERLY EXAMINATION OF THE INSPECTOR OF THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION,  
JULY-SEPTEMBER 2006

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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.





## CHAIRMAN'S FOREWORD

This report of the Committee on the Independent Commission Against Corruption (the ICAC Committee) documents activities of the Inspector of the Independent Commission Against Corruption.

The establishment of the office of the Inspector of the Independent Commission Against Corruption under the Independent Commission Against Corruption Amendment Act 2005, and the appointment of the first Inspector, Mr Graham Kelly, from 1 July 2005, allowed, for the first time, an external statutory body to examine complaints about the Commission and its officers and to oversee the exercise of Commission's powers. The exercise of the Inspector's functions is monitored by the ICAC Committee.

After discussion with the Inspector, the ICAC Committee established a program of quarterly examinations. The first quarterly examination was unreported, as there were only matters of administration (processes of selection and establishment of office quarters, recruitment of staff, etc.) involved. The quarterly examinations from the period October-December 2005 onward have been published by the Committee.

This report continues the quarterly examinations of the Inspector's operations into the second year of the office of the Inspector of the Independent Commission Against Corruption. It is the last to be completed by the ICAC Committee of the 53rd Parliament, which will soon be dissolved prior to a general State election in March 2007. I anticipate that the new Parliament will reappoint an ICAC Committee to monitor the work of the Independent Commission Against Corruption and the office of the Inspector of the Independent Commission Against Corruption, and hope that the practice of quarterly examinations of the work of the Inspector will continue. It also remains for the new ICAC Committee to examine the 2005-2006 annual report of the Inspector of the Independent Commission Against Corruption, which was released in late October 2006.

The ICAC Committee is pleased to report to both Houses of Parliament that for the period under examination—July-September 2006—the Committee is generally satisfied that the Inspector of the Independent Commission Against Corruption has conducted his activities in accordance with the Independent Commission Against Corruption Act 1988. The Inspector advised the Committee that there were no major issues impeding his ability to carry out his statutory functions in an optimal manner. I am therefore pleased to declare that there are no comments on any matter appertaining to the Inspector to which, in the opinion of the Committee, the attention of Parliament should be directed (under Independent Commission Against Corruption Act 1988 Section 64 (1)(b)).

### Acknowledgments

I thank my colleagues—Government, Opposition, and cross bench—for their work on the ICAC Committee generally, and their diligence in examining the activities of the Inspector of the Independent Commission Against Corruption.

I also thank Mr Ian Faulks, my Committee Manager, and his staff for their assistance.

I commend this report to Parliament.

The Hon. Kim Yeadon MP  
Chairman, ICAC Committee

## Chapter One - Introductory remarks

This report comprises a record of the examination of the Inspector of the Independent Commission Against Corruption at a public hearing of the ICAC Committee (the Committee on the Independent Commission Against Corruption) held at Parliament House, Sydney, on Wednesday 20 September 2006. The report includes both an edited record of the testimony of the Inspector and written documentation tabled at the meeting.

### **The relationship between the ICAC Committee and the Inspector of the Independent Commission Against Corruption**

The statutory relationship between the ICAC Committee and the Inspector of the Independent Commission Against Corruption is established by the Independent Commission Against Corruption Act 1988.

It is a function of the ICAC Committee to monitor and to review the exercise by the Inspector of the Inspector's functions—Independent Commission Against Corruption Act 1988 Section 64 (1)(a), and to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Inspector to which, in the opinion of the Committee, the attention of Parliament should be directed—Independent Commission Against Corruption Act 1988 Section 64 (1)(b).

The ICAC Committee has established a quarterly review process with the Inspector of the Independent Commission Against Corruption.

The ICAC Committee will also conduct an examination of each annual report of the Inspector of the Independent Commission Against Corruption and report to Parliament on matters arising, in accordance with the Independent Commission Against Corruption Act 1988 Section 64(1)(c). This will be integrated with the quarterly review process.

### **Quarterly examinations of the Inspector of the Independent Commission Against Corruption**

Quarterly examinations of the Inspector of the Independent Commission Against Corruption, are conducted by the ICAC Committee. Typically, the Inspector of the Independent Commission Against Corruption, and his Executive Officer, appear before the Committee. The quarterly review process reflects the important and closer working relationship envisaged for the Committee and the Inspector, than is possible for then Committee and the Independent Commission Against Corruption itself.

This report documents the fourth quarterly review that has been conducted by the ICAC Committee since the establishment of the Inspector's office from 1 July 2005. The reviews, and the reports of the reviews, are shown below:

- July-September 2005 (No formal report).
- October-December 2005 (ICAC Committee report 6/53)
- January-March 2006 2005 (ICAC Committee report 8/53)
- April-June 2006 (ICAC Committee report 9/53)
- July-September 2006 (ICAC Committee report 10/53, this report)

The quarterly review process does not supplant the ICAC Committee's statutory role in reviewing the annual reports of the Inspector of the Independent Commission Against Corruption, the first of which will be tabled in Parliament in several months time.

## **The Independent Commission Against Corruption Act 1988**

The functions and powers of the Inspector of the Independent Commission Against Corruption are defined in Part 5A of the Independent Commission Against Corruption Act 1988, Sections 57A-57F, as follows:

### **Part 5A Inspector of the Independent Commission Against Corruption**

#### **57A Inspector of the Independent Commission Against Corruption**

(1) Appointment

The Governor may appoint an Inspector of the Independent Commission Against Corruption.

(2) Schedule of provisions relating to Inspector

Schedule 1A has effect.

#### **57B Principal functions of Inspector**

(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.

#### **57C Powers of Inspector**

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.

### **57D Inquiries**

- (1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.
- (2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the Royal Commissions Act 1923 and that Act (section 13 excepted) applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.
- (3) A witness summoned by or appearing before the Inspector is to be paid such amount as the Inspector determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

### **57E Staff of Inspector**

- (1) Such staff as may be necessary to assist the Inspector may be employed under Chapter 2 of the Public Sector Employment and Management Act 2002.
- (2) The Inspector may also employ staff. Chapter 2 of the Public Sector Employment and Management Act 2002 does not apply to or in respect of any such staff.
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.
- (4) The Inspector may arrange for the use of the services of:
  - (a) any staff or facilities of the Commission, a Department or a local or public authority, or
  - (b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (4A) The Department Head of a Department in which staff of the Inspector are employed may delegate to the Inspector or a member of staff of the Inspector any of the Department Head's functions under the Public Sector Employment and Management Act 2002 with respect to those staff (other than this power of delegation).
- (5) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

(6) In this section:

**Department** has the same meaning as in the Public Sector Employment and Management Act 2002.

**Department Head** has the same meaning as in the Public Sector Employment and Management Act 2002.

**57F Incidental powers**

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.

## CHAPTER TWO – Quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2006

This chapter contains an edited transcript of the quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2006, which was conducted by the ICAC Committee on Wednesday 20 September 2006.

The witness examined was:

- Mr Graham John Kelly, Inspector of the Independent Commission Against Corruption

**Hon. Kim YEADON MP (CHAIRMAN):** The ICAC Committee would like to welcome to our meeting the Inspector of the Independent Commission Against Corruption, Mr Graham Kelly, the executive officer of the Inspectorate, Ms Seema Srivastava, and also the administrative officer, Ms Vicki Jeffrey. The meeting today continues the practice that has been established between the Committee and the Inspector to conduct regular quarterly examinations to discuss recent developments and issues of mutual interest. This is the fifth such meeting held since the appointment of the Inspector and the third conducted this year. It follows the previous meeting conducted on Friday 4 August 2006 when governance and administrative matters relating to the operation of the Inspector's office and other relevant issues were explored. The examination today will continue to pursue matters relating to the oversight function of the Inspector. In addition, it will provide an opportunity for the Inspector to provide the Committee with an update on activities associated with his office and to highlight issues of concern to him.

...

**Mr KELLY:** Chairman, if I could adopt the previous practice of speaking to the Committee and then leaving an outline of what I have said, if the Committee is happy with that?

**Hon. Kim YEADON MP (CHAIRMAN):** Thank you, and I would invite you to do that.

**Mr KELLY:** Thank you, Chairman. When I last reported on 4 August 2006 we had had 38 complaints. Since then we have received another two, making a total of 40. Twenty-two of these complaints have now been closed and 18 are still active.

When a complaint is referred back to the Independent Commission Against Corruption to reconsider, I have adopted a practice of writing to them in the form of a letter outlining the issues and recommendations that I suggest they reconsider. This approach is obviously much more informal than writing a report and laying it before the Parliament, but it has been well received by the Commission and I believe provides a much more effective way of getting to the substance of the thing, particularly in cases that are not of tremendous public importance but perhaps ought to be looked at again. I want to place on record my

appreciation of the responsiveness with which the commissioner has adopted that approach. I propose to continue with this approach as it allows a better dialogue between ourselves and the Commission on the issues that need to be addressed and I believe produces a more effective outcome for the complainants.

The second thing that I wish to report on a little further than last time is the initial audit we have conducted. I foreshadowed to you at our last meeting that the office has now completed a draft of its first audit under section 57B(1)(a) of the Independent Commission Against Corruption Act 1988. The purpose of the audit was to assess the Commission's compliance particularly with section 12A of the Act, which provides that 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 of other public authorities and public officials in the prevention of corrupt conduct.

In accordance with audit best practice, I have sent a draft of my findings and recommendations to the Commission for comment before finalising the audit. As the Commission has not yet had an opportunity to review and respond to the draft report, I would in fairness prefer not to discuss the draft report in detail in this public forum. Suffice it at present to say that, in general terms, the key issues that I have raised for the Commissioner's consideration are the need for, first, greater consistency in the way assessment reports are written; secondly, training for assessment officers in regard to certain evidentiary issues and, thirdly, better management of referrals of complaints apparently involving serious and systemic corrupt conduct to other agencies. I would, however, if the Committee so desires, be prepared to go into a little greater detail on an *in camera* basis. This would have to be on the clear understanding that the Commission has not yet had an opportunity to respond to those points.

Looking to the immediate future, we have drafted terms of reference for our next audit and have forwarded these to the Commissioner for comment by the end of the first week of October. At the Commissioner's own suggestion, the next proposed audit will be to review the Independent Commission Against Corruption's exercise of its compulsory powers and its compliance with the laws of the State in that context. Issues to be addressed will include the Commission's exercise of powers compelling the giving of evidence and the production of documents. I do not have a particular timetable at the moment for the completion of that audit. That will depend upon the recruitment of an additional member of staff to assist us to undertake that.

That brings me to budget and staffing. The ongoing fairly high workload of the office resulted in our seeking an enhancement to the office budget principally to allow for the employment of another officer to assist with particularly the audit side of the business. I am pleased to say that we have now been notified that approval for this budget enhancement has been given. I should mention though that the overall budget remains very modest and it is my determination to keep that well and truly under control.

Another issue that I should mention to the Committee is the memorandum of understanding with the Independent Commission Against Corruption. You will remember that, shortly after my appointment, the Commissioner and I entered into a memorandum of understanding about the way in which we would operate. One of the requirements of that is that it be



reviewed after twelve months. That period is up and the Commissioner and I have agreed to both a process for the review of it and for a couple of issues that we believe should be spelled out a little more clearly in it, for example, how we inform the complainants to me about the outcome of their complaints, and I am terribly concerned to ensure that that is consistent with the way the Commission itself needs to deal with information, particularly when it decides to pursue complaints.

The memorandum of understanding, as you know, sets out a monthly meeting arrangement between the Commissioner and myself and addresses issues such as the contact between our executive officer and the Deputy Commissioner with regard to the obtaining of material. The memorandum of understanding also addresses other liaison issues. I might generally mention that our relationships at an operational level with the Commission continue to operate well and the Commissioner and I continue to meet on a monthly basis.

Another matter that I might bring to the Committee's attention, because I know that there is a measure of interest in it, relates to our website. The website was established in March 2006. Links to the website appear on other websites, including the Independent Commission Against Corruption, the Premier's Department, the New South Wales Government, the New South Wales Attorney General's Department and the Office of the New South Wales Ombudsman. We recently did an audit of the usage of the website and I must say I was extremely surprised in the favourable sense to discover that there had been in the period since it was established some 1,380 visits and there had been a total number of 15,072 hits to the middle of September 2006, a much higher level of usage of it than I had expected. The data does I think show that the website has been used as a source of information about the Inspector's role and, what is more, we have been informally advised by a number of the complainants that they have on occasion used the website in deciding to complain to us.

Again looking forward, in relation to our 2006-07 business plan, now that our funding position has been made clear, I have settled the substance of our business plan. Fundamentally, the plan this year requires us to finalise the existing complaints and to manage any new complaints as efficiently as possible. Nevertheless, while we will continue to be responsive to the complaints side of the business, we will be pro-active in managing the audit function under section 57B(1)(a) of the Independent Commission Against Corruption Act 1988 as we see this as having the potential to improve the Commission's performance through the identification of any systemic issues, some of which seem to drive the complaints to us. So, as I think I foreshadowed at the initial meeting before my appointment was confirmed by the Committee, my emphasis particularly in the forthcoming year will be on the performance enhancement side rather than dealing with the complaints.

I might generally observe again to the Committee that the majority of the complaints that we have received are not of major importance to the public interest and, whilst it is important that they be dealt with properly, at the end of the day very few of them rise to the level of matters of general principle that ought to be taken up as a matter of good public administration, so in terms of debating pretty scarce resources of our office, I believe it is better to focus on the performance enhancement side.

I should say, Chairman, very exclusively, I would welcome any comments from the Committee on that approach or a discussion of any items that the Committee might think we should build in to the business plan. Once I finalise the actual terms of the business plan, which I expect to do by the end of next week, I will send a copy of it to the Committee through the Chairman, if that is acceptable to the Committee.

That is all I have to say in opening.

**Hon. Kim YEADON MP (CHAIRMAN):** Thank you very much. As we go through the questions, some of them might touch on the audit that you want to look at *in camera*. If that is so, you might just indicate that that is the case and we will accumulate those and deal with them *in camera* at the end.

**Mr KELLY:** Yes. I am sorry, there was one thing that I meant to mention in my opening statement: On an earlier occasion Ms Keneally expressed an interest in my meeting or being available to the members generally. Unfortunately, on the day involved I was stricken by a terrible bout of gastroenteritis and had to cancel, but I am ready, willing and able if that can be scheduled, but of course in the current circumstances I appreciate that that is very difficult.

**Hon. Kim YEADON MP (CHAIRMAN):** We will look at the desire for that amongst members and the logistics and get back to you on it, if necessary.

At our last meeting you suggested that the Independent Commission Against Corruption develop a triage system to focus the attention of officers on the most important issues that were coming before them. Did the Commission act on that suggestion?

**Mr KELLY:** I have had some discussions with the Commissioner about that and mentioned the idea to him. As far as I am aware, it has not been implemented as such, though the assessment process is being changed because of the abolition of the Operations Review Committee, and the Commissioner and I again have had some discussion about the way that they should go forward with that, though we have not yet received in a formal sense the new processes, so that remains work in progress, Chairman.

**Hon. Kim YEADON MP (CHAIRMAN):** Also at the last meeting we talked about regular staff turnover at the Independent Commission Against Corruption. Have there been any further developments?

**Mr KELLY:** We have not sought up-to-date information since the last meeting. Of course, Chairman, the Deputy Commissioner has, as I understand it, been nominated for appointment as the Commissioner of the Police Integrity Commission, and that will be a major vacancy. It is a matter for the Commissioner obviously, though at our last meeting we did discuss that and the implications for the Commission.

**Mr ROBERTS MP (ICAC Committee):** You are on one day a week. In order to perform your statutory role, is that enough time? We know you are a very efficient man.

**Mr KELLY:** It has its challenges, it certainly does. I render an invoice monthly and it has probably averaged out at just on a day and a half a week. Not all of that time is spent in the office; I do a lot of the review of documents at other locations. You can always spin things out as long as you want, but I have to say that the staff are extraordinarily efficient and we have internally worked out a very good working relationship, including use of electronic systems, and I think in good conscience I could not say that more than that amount of time is required. I mean if there were a decision by the Parliament and the Government that there were to be a complete review of the Independent Commission Against Corruption inside, outside and what have you, it would require much more, but certainly the complaint side does not require any more and I believe by targeting audit functions and by having a good interactive relationship with the Commissioner, who is responsive to my looking in the window kind of observations about the place, that is adequate.

**Hon. Kim YEADON MP (CHAIRMAN):** You mentioned your memorandum of understanding with the Independent Commission Against Corruption. The Commission also has a memorandum of understanding with the Office of the Director of Public Prosecutions, which was primarily to deal with the issue of delays in prosecutions. Are there any observations on that front in recent times?

**Mr KELLY:** We made an informal enquiry of the Director of Public Prosecutions a few weeks ago and the feedback that we got was that it was working well from their point of view. There are still issues, but they are the normal issues of moving from a catalogue of evidence, so to speak, to a form where there is a prosecution brief that can actually be acted on, and I think that everyone accepts that that is an issue and there has to be prioritisation within the Office of the Director of Public Prosecutions. Obviously I have no reason to believe that they do not go about that in a perfectly sensible way and certainly from the Commission's point of view they are much more concerned now to send their material to the Director of Public Prosecutions in a form that makes it easier for the Director to proceed to prosecution.

**Hon. Kim YEADON MP (CHAIRMAN):** I think also at our last meeting you indicated a level of disjuncture or tension between the role of education and the role of investigation within the Independent Commission Against Corruption. Have you given any further thought to that issue or do you intend to do anything further with it, to make any recommendations in relation to it, or is it just an observation that you have shared with the Committee and intend to leave it there?

**Mr KELLY:** At this stage it is just an observation, but I do think that there are real issues of resource allocation. If you look at the number of people involved in corruption prevention - I am sorry, I was going to say it is very large and that is quite the wrong way to put it - it is quite large compared with the number of people involved in complaint assessment. I think the strategic operations division, in terms of lack of hearing complaints about its workload, seems to be about balance, so there are real resource allocation issues. I have had some discussions with the Commissioner about that and he understands very clearly that there are resource allocation issues. I would like to look at the operation of the organisation a bit longer before coming forward with particular recommendations. In other words, I think after a couple of more audits of functions I will be in a much better position to come forward more confidently about what I believe should be an appropriate structure.

**Hon. Kim YEADON MP (CHAIRMAN):** It has been about a year now that you have been in the position. Are there any general comments you would like to make in relation to your own resources? You have addressed that to some extent, but you are fairly comfortable with where you are up to, there are no glaring issues from your perspective?

**Mr KELLY:** No, Chairman. I do not tear my hair out about it. There have been frustrations in terms of the establishment of the office. These things are always more difficult than you imagine, little nitty-gritty things. I have to say that, when I walk in, the pile of stuff on my table has a much lower proportion of pure administration now than it did six months ago, so that is a good sign, and it is much easier therefore to get to the substance of it. I think we are in pretty good shape on that score.

In terms of the kinds of complaints that come through, I think it is a matter of great significance that overwhelmingly the complaints have been about the Independent Commission Against Corruption not acting rather than about the Commission acting. In other words, people have complained that the Commission has not acted on their complaint rather than that the Commission has done something positively bad. That is not to say that that is exclusively the case. I think we are entitled to be comforted by that. If 90 percent of the complaints were about the Commission acting badly as opposed to not acting, I think there would be grounds for real concern, so to some extent I would have to say that the position is considerably better than what I expected it to be.

The other observation that I would make I would prefer to deal with in connection with the audit.

**Hon. Kim YEADON MP (CHAIRMAN):** Are you anticipating a time on tabling an annual report to the Parliament?

**Mr KELLY:** Yes, we will well and truly comply with the statutory program. I would expect we would do it by about the middle of October 2006. There is a very advanced draft of it available.

There is one issue on which I would appreciate a measure of guidance from the Committee. The current draft has a fairly comprehensive catalogue and description of the individual complaints that we have received in the relevant time. They are made as anonymous as possible, but nevertheless when you get into specifics I guess people can always start guessing. I feel a little apprehensive about going into that detail, however, if frankly I were a Member of the Parliament, I would think that that detail would be helpful. But it is a fine line and if members of the Committee have a view about that then I would be happy to take that into account.

**Hon. Kim YEADON MP (CHAIRMAN):** I suppose, prima facie, the general public would not be aware of the details of a lot of cases and therefore anonymity would remain, but perhaps a range of people would, although they would be limited in number and they would already be familiar with the case anyway if they knew that much, so I do not know how detrimental it would be. My own feeling is that it is not a problem. The more information you can provide to the Parliament, the better.

**Ms KENEALLY MP (ICAC Committee):** I would like to go back to the issue you have raised about a focus in the future perhaps on corruption prevention and other functions of the Independent Commission Against Corruption outside of the complaint handling functions. In some senses, that concerns me because I see your role, and I understand that the Parliament saw your role, as one of receiving complaints about the Commission's assessment of allegations that had been made to the Commission. Would you see that still as your primary focus if you were to take up some of these activities looking at the Commission's other activities? Would you still see complaint-handling and assisting members of the public as your primary role?

**Mr KELLY:** If that is your obligation, clearly that has to be fulfilled. Equally the obligation in the statute is to audit and monitor from the point of view of performance and compliance with the law. For example - and let's take an extreme example - assume that the Independent Commission Against Corruption had, instead of 25 people, roughly speaking, in corruption prevention and 10 people in assessments, 35 people in corruption prevention and one person in assessments. Then it seems to me that it would be fundamentally failing to comply with the statute and that would touch very directly on your jurisdiction. So I think it is inseparably related with the performance of their very core function. The philosophical problem that I see with the statute is that two very different functions are thrust on the one body. The corruption prevention function has very, very little to do with their investigative function except insofar as their investigations inform them of risks of corruption taken into account in making corruption prevention recommendations.

This is an impertinent observation before a parliamentary Committee, but if one could call back the hands of time and if I were the person making recommendations to the Government about the creation of an Independent Commission Against Corruption, I would not recommend that both of those functions be placed in the one body.

**Ms KENEALLY MP (ICAC Committee):** We look forward to your audit.

**Hon. Kim YEADON MP (CHAIRMAN):** Do you intend to table the audit in the Parliament or make it available only to the Committee? What do you see as its eventual use or distribution?

**Mr KELLY:** Certainly make it available to the Committee and I probably would like to discuss with the Committee whether it should then be formally tabled. It will not be a very dramatic document.



## Appendix 1 - Aide Memoire

<b>RECEIVED IN EVIDENCE</b>	
INQUIRY: <i>July - Sept 2006</i>	SUB: .....
DATE: <i>20/9/2006</i>	EXHIBIT: .....
TABLED: <i>Graham Kelly</i>	AGENCY: <i>NSP/CDR</i>

**Aide Memoire**

**Inspector Graham Kelly**

**Meeting with the Parliamentary Committee on ICAC**

**Wednesday 20 September 2006, 5pm  
Parliament House  
Macquarie Street, SYDNEY**

**1. COMPLAINTS**

- When I last reported to you on 4 August 2006 we had 38 complaints. Since then, we have received a further 2 complaints making a total of 40 altogether. Twenty-two of these complaints have now been closed and 18 are still active.
- Where a complaint is referred back to the ICAC to reconsider, I have adopted a practice of writing to them in the form of a letter outlining the issues and recommendations that I suggest they reconsider. This approach is more informal than writing a report and has been well received by the ICAC. I propose to continue with this approach as it allows a better dialogue between ourselves and the ICAC on issues that need to be addressed.

**2. THE AUDIT**

- I foreshadowed to you at our last meeting, the Office has now completed a draft of its first audit under s.57B(1)(a). The purpose of the audit was to assess the ICAC's compliance with s.12A of the ICAC Act 1988 which provides:

*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.*

- In accordance with audit best practice, I have sent a draft of my findings and recommendations to the Commission for comment before finalisation. As the Commission has not yet had the opportunity to review and respond to the draft report, I would, in fairness, prefer not to discuss the draft report in detail in this public forum. Suffice it to say that, in general terms, the key issues I have raised for the Commissioner's consideration are the need for:
  - Greater consistency in the way Assessment Reports are written;
  - Training for Assessment Officers in regard to certain evidentiary issues; and
  - Better management of referrals of complaints, apparently involving serious and systemic corrupt conduct, to other agencies.
- I would, however, be prepared to go into a little greater detail on an in-camera basis if the Committee so wishes. But this would have to be on the clear understanding that the Commission has not yet had an opportunity to respond to the draft.

### **3. NEXT AUDIT**

- The Office has drafted terms of reference for its next audit and has forwarded these to the Commissioner for comment by the end of the first week of October (i.e. 2 weeks allowed for comment).
- At the Commissioner's suggestion, the next proposed audit will review the ICAC's exercise of its compulsory powers and its compliance with the laws of the State in that context. Issues to be assessed will include, the ICAC's exercise of powers compelling the giving of evidence and production of documents.

#### **4. BUDGET AND STAFFING**

- The ongoing high workload of the Office resulted in our seeking an enhancement to the Office budget principally to allow for the employment of another officer to assist with the workload. I am pleased to say that we have been notified that approval has been given.

#### **5. MEMORANDUM OF UNDERSTANDING (MOU) WITH ICAC**

- In September 2005 the Commissioner and I signed an MOU to regulate the communication between ourselves and our respective agencies. The MOU sets out a monthly meeting arrangement between the Commissioner and myself and addresses issues such as contact between my Executive Officer and Deputy Commissioner with regards to obtaining material. The MOU also addresses other liaison issues.
- The MOU contains a clause which provides for it to be reviewed at any time or at the end of 12 months. The 12 months has almost expired. The MOU is currently being reviewed by our two agencies. I am not expecting any substantial change to the MOU but we will fine tune some of the operational arrangements regarding liaison and notifications to be provided.

#### **6. REPORT ON THE OIICAC WEBSITE**

- The website [www.oicac.nsw.gov.au](http://www.oicac.nsw.gov.au) was established in March 2006.
- Links to the OIICAC website on other websites include:
  - i. The Independent Commission Against Corruption;
  - ii. The Premier's Department;
  - iii. NSW Government;
  - iv. NSW Attorney General's Department; and
  - v. Office of the NSW Ombudsman.

- The total number of visits to the website to date is 1,380.

Month	Visits
March	6
April	55
May	290
June	292
July	317
August	340
Sept*	80

\*Inclusive up to 11 September 2006 only.

- The total number of hits to the website to date is 15,072.

Month	Hits
March	225
April	2,994
May	2,882
June	2,793
July	2,691
August	2,890
Sept*	597

\*Inclusive up to 11 September 2006 only.

Note: Technically, 'Hits' refers to the total number of files that are requested from the server.

- Although I am somewhat surprised by the number of visits to the site, the data shows that the website has been used as a source of information about the Inspector's role and functions. Informally we have been advised

by complainants, on occasion, that they have used the website in deciding whether to lodge a complaint to the Office.

#### **7. 2006-07 BUSINESS PLAN**

- Now that our funding position is clear, I have now settled the substance of the Office's Business Plan for 2006-07.
- Fundamentally, the Business Plan requires us, in 2006-07, to finalise existing complaints and manage any new complaints as efficiently as possible.
- While we will continue to be responsive to our complaints function, we will be pro-active in managing the auditing function under 57B (1) (a) of the ICAC Act 1988 as we see this as having the potential to improve the ICAC's performance through identification of any systemic issues (some of which seem to drive complaints to us).
- In other words, the Office's 2006-07 Business Plan will seek to prioritise my function under s.57B (1)(a).

I'd welcome any comments from this Committee on this general approach.

Once I have finalised the actual terms of the Business Plan, expected to be before the end of the month, I will send a copy to the Committee through the Chairman.

Graham Kelly  
**Inspector of the ICAC**  
20 September 2006

## Appendix 2 - Extracts from the minutes of the ICAC Committee regarding the quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2006

This appendix contains relevant extracts from the minutes of ICAC Committee meetings of:

- Wednesday 20 September 2006; and
- Wednesday 22 November 2006

regarding the quarterly examination of the Inspector of the Independent Commission Against Corruption for the period July-September 2006.

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

**5:15 P.M., WEDNESDAY 20 SEPTEMBER 2006  
AT PARLIAMENT HOUSE, SYDNEY**

**MEMBERS PRESENT**

*Legislative Council*

Ms Gardiner  
Rev. Nile

*Legislative Assembly*

Mr Yeadon  
Mr Pearce  
Ms Keneally  
Mr Roberts  
Mr Kerr

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jim Jefferis, Senior Committee Officer, Ms Phelps, Committee Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

**1. Apologies**

Apologies were received from Mr Primrose, Mr Mills, Mr Turner and Mr Price.

**2. Previous minutes**

On the motion of Ms Keneally, seconded Mr Pearce, the minutes of Meeting No. 19 of Wednesday 7 June 2006, Meeting No. 20 of Thursday 3 August 2006, and Meeting No. 21 of Friday 4 August 2006 were accepted as a true and accurate record.

...

**5. Hearing to examine the activities of the Inspector of the Independent Commission Against Corruption, July-September 2006**

The public were admitted.

## **Graham John Kelly**

was called and sworn.

Ms Seema Srivastava and Ms Vicki Jeffery were also in attendance.

The Committee examined the witness.

### **6. In camera hearing to examine the activities of the Inspector of the Independent Commission Against Corruption, July-September 2006**

The Inspector requested that certain evidence be taken in camera.

The Committee deliberated. The Committee agreed that the evidence to be given should be heard in private.

On the motion of Mr Pearce, seconded Mr Roberts:

Pursuant to the Independent Commission Against Corruption Act 1988 Section 70, certain evidence proposed to be given before the Committee will be taken in camera.

Passed unanimously.

The public were excluded.

The Committee continued examination of the witness.

Evidence concluded, the witness withdrew.

### **7. General business**

There being no further business, the Committee adjourned at 6:05 p.m..

Chairman

Committee Manager

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

**5:00 P.M., WEDNESDAY 22 NOVEMBER 2006  
AT PARLIAMENT HOUSE, SYDNEY**

**MEMBERS PRESENT**

*Legislative Council*  
Ms Gardiner

*Legislative Assembly*  
Mr Yeadon (Chairman)  
Mr Turner  
Mr Pearce  
Ms Keneally  
Mr Roberts  
Mr Kerr  
Mr Mills  
Mr Price

Also in attendance: Mr Faulks, Manager of the Committee; Mr Jefferis, Senior Committee Officer; Ms Jay, Senior Committee Officer; Ms Phelps, Committee Officer; and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

**1. Apologies**

Apologies were received from Mr Primrose and Revd. Nile.

**2. Previous minutes**

On the motion of Ms Keneally, seconded Mr Turner, the minutes of Meeting No. 22 of Wednesday 20 September 2006 was accepted as a true and accurate record.

....

**8. Consideration of draft report: 'Quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2006'**



The Chairman presented his draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2006".

The report, have been distributed previously, was accepted as being read.

The Committee proceeded to deliberate on the draft report:

Chapter 1: read and agreed to  
Chapter 2: read and agreed to

Appendix 1: read and agreed to  
Appendix 2: read and agreed to

On the motion of Mr Kerr, seconded Ms Keneally:

That the draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, April-June 2006", be read and agreed to.

Passed unanimously.

On the motion of Mr Kerr, seconded Ms Keneally:

That the draft report: "Quarterly examination of the Inspector of the Independent Commission Against Corruption, April-June 2006" be accepted as a report of the ICAC Committee, and that it be signed by the Chairman and presented to the House.

Passed unanimously.

On the motion of Mr Kerr, seconded Ms Keneally:

That the Chairman and Committee Manager be permitted to correct any stylistic, typographical and grammatical errors in the report.

Passed unanimously.

....

## **11. General business**

This being the last scheduled meeting of the ICAC Committee of the 53rd Parliament, the Chairman thanked the Members for their contribution and commitment over the period 2003-2006.

The Chairman also thanked, on behalf of the Committee, the staff of the ICAC Committee secretariat: Mr Faulks, Manager of the Committee; Mr Jefferis, Senior Committee Officer; Ms Jay, Senior Committee Officer; Ms Phelps, Committee Officer; and Ms Yeoh, Assistant Committee Officer; for their efforts in supporting the Committee's work.

There being no further business, the Committee adjourned at 5:20 p.m..

Chairman

Committee Manager

## REPORTS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

ICAC Committee (2006).	Quarterly examination of the Inspector of the Independent Commission Against Corruption, July-September 2006
ICAC Committee (2006).	Quarterly examination of the Inspector of the Independent Commission Against Corruption, April-June 2006
ICAC Committee (2006).	Quarterly examination of the Inspector of the Independent Commission Against Corruption, January-March 2006
ICAC Committee (2006).	Proceedings of the 2nd National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies, 22-23 February 2006
ICAC Committee (2006).	Quarterly examination of the Inspector of the Independent Commission Against Corruption, October-December 2005.
ICAC Committee (2005).	Examination of the 2003-2004 annual report of the Independent Commission Against Corruption
ICAC Committee (2004).	Examination of the report of the Independent Commission Against Corruption profiling the NSW public sector
ICAC Committee (2004).	Report on examination of the 2002-2003 annual report of the Independent Commission Against Corruption
ICAC Committee (2004).	Report on examination of the 2001-2002 annual report of the Independent Commission Against Corruption
ICAC Committee (2004).	The prevention and investigation of misconduct and criminal wrongdoing involving public officials
ICAC Committee (2002).	Report on matters arising from the general meeting with the Commissioner of the ICAC, 27 November 2000
ICAC Committee (2002).	Stage III, Review of the ICAC: Conduct of hearings
ICAC Committee (2001).	Stage III, Review of the ICAC: Issues paper
ICAC Committee (2001).	General meeting with the Commissioner of the ICAC , 30th November 2001
ICAC Committee (2001).	Stage II, Review of the ICAC: Jurisdictional issues
ICAC Committee (2001).	Report on alleged contempt in relation to the draft report of Bron McKillop on inquisitorial systems
ICAC Committee (2001).	General meeting with the Commissioner of the ICAC , 27th November 2000
ICAC Committee (2000).	Consideration of proposed powers
ICAC Committee (2000).	Review II, Jurisdictional issues, Issues paper
ICAC Committee (2000).	The ICAC: Accounting for extraordinary powers
ICAC Committee (1999).	General meeting with the Commissioner of the ICAC, 1st December 1999
ICAC Committee (1999).	Review of the ICAC, Issues paper

- ICAC Committee (1999). Comparative study of the Hong Kong ICAC: Delegation's report to the Committee
- ICAC Committee (1998). Inquiry into Section 13A of the Constitution Act 1902
- ICAC Committee (1998). Collation of evidence of the Commissioner of the ICAC, the Hon B.S.J. O'Keefe AM QC, on general aspects of the Commission's operations, July 1998
- ICAC Committee (1997). Study tour of organisations and oversight bodies comparable to the ICAC, London, Berlin, New York, Washington, February 1997
- ICAC Committee (1997). Collation of evidence of the Commissioner of the ICAC, the Hon B.S.J. O'Keefe AM QC, on general aspects of the Commission's operations, November 1997
- ICAC Committee (1997). Review of the Role and Functions of the Independent Commission Against Corruption, Issues Paper, October 1997
- ICAC Committee (1997). Collation of Evidence of the Commissioner of the ICAC, the Hon B.S.J. O'Keefe AM QC, on general aspects of the Commission's operations, July 1997
- ICAC Committee (1996). Collation of Evidence of the Commissioner of the ICAC, the Hon B.S.J. O'Keefe AM QC, on general aspects of the Commission's operations, October/December 1996
- ICAC Committee (1996). Public hearing with the Hon B.S.J. O'Keefe AM QC, Questions upon notice, 25th October 1996
- ICAC Committee (1996). Collation of evidence of the Commissioner of the ICAC, the Hon B.S.J. O'Keefe AM QC, on general aspects of the Commission's operations, 27th May 1996
- ICAC Committee (1995). Study Tour to USA, Canada, United Kingdom and Ireland 30th June – 16th July 1995
- ICAC Committee (1995). Visit to Brisbane, 22nd-23rd June 1995
- ICAC Committee (1995). Collation of Evidence of the Commissioner of the ICAC, the Hon B S J O'Keefe AM QC, on General Aspects of the Commission's Operations, 15 September 1995
- ICAC Committee (1994). Inquiry into Pecuniary Interest Provisions for Members of Parliament and Senior Executives and A Code of Conduct for Members of Parliament
- ICAC Committee (1994). Report in response to the motion passed by the Legislative Assembly on 15th September 1994 and the Legislative Council on 20th September 1994 re: Justice O'Keefe's appointment
- ICAC Committee (1994). Collation of evidence of the Acting Commissioner of the ICAC, Mr John Mant, on general aspects of the Commission's operations, 3rd August 1994
- ICAC Committee (1994). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's operations, 4th March 1994
- ICAC Committee (1994). Collation of material relating to the Committee's visit to Kyogle, 1st October 1992
- ICAC Committee (1994). Sixth International Anti-Corruption Conference, 22nd-25th November 1993 and United States Study Tour, 29th November-2nd December 1993

- ICAC Committee (1993). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's operations, 15th October 1993
- ICAC Committee (1993). Inquiry into Section 52 of the ICAC Act and legal representation before the ICAC
- ICAC Committee (1993). Visit to Brisbane, 2nd-3rd November 1993
- ICAC Committee (1993). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's operations, 26th March 1993
- ICAC Committee (1993). Review of the ICAC Act
- ICAC Committee (1993). Minutes of Evidence taken before the Committee Concerning the Review of the Independent Commission Against Corruption Act
- ICAC Committee (1993). Review of the ICAC Act – Correspondence on primary facts issue
- ICAC Committee (1993). Matter raised by Andrew Tink MP
- ICAC Committee (1992). Review of the ICAC Act – Discussion paper
- ICAC Committee (1992). Review of the ICAC Act
- ICAC Committee (1992). Operations Review Committee and Assistant/Deputy Commissioners
- ICAC Committee (1992). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's operations, 9th November 1992
- ICAC Committee (1992). Fifth International Anti-Corruption Conference 8th-12th March 1992 And Hong Kong Study Tour 11th-18th April 1992
- ICAC Committee (1992). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's operations, 31st March 1992
- ICAC Committee (1991). Inquiry into matters raised by Paul Gibson MP
- ICAC Committee (1991). Collation of Evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on General Aspects of the Commission's Operations, 14th October 1991
- ICAC Committee (1991). Collation of Evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on General Aspects of the Commission's Operations, 27th March 1991
- ICAC Committee (1991). Inquiry into Commission procedures and the rights of witnesses, Second report
- ICAC Committee (1990). Inquiry into Commission procedures and the rights of witnesses, First report
- ICAC Committee (1990). Inquiry into Commission Procedures and The Rights of Witnesses, First Report, together with Minutes of Evidence, Submissions, Minutes of Proceedings, and the report of the Salmon Royal Commission on tribunals of inquiry
- ICAC Committee (1990). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's operations, 15th October 1990

- ICAC Committee (1990). Openness and secrecy in inquiries into organised crime and corruption: Questions of damage to reputations, Discussion paper prepared by the Hon A.R. Moffitt
- ICAC Committee (1990). Further information about witnesses before the ICAC, Correspondence between the Committee and the Commissioner, Mr Ian Temby QC
- ICAC Committee (1990). Inquiry into a proposal for the televising of public hearings of the ICAC
- ICAC Committee (1990). Collation of evidence of the Commissioner of the ICAC, Mr Ian Temby QC, on general aspects of the Commission's Operations, 30th March 1990
- ICAC Committee (1989). Report on witnesses for the Committee on the ICAC (Parliamentary Joint Committee)