



New South Wales



**Office of the Inspector**  
**of the Independent Commission**  
**Against Corruption**

**Report to the Premier:**  
**The Inspector's**  
**Review of the ICAC**

**12 May 2016**



**INSPECTOR  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

**REPORT TO PREMIER**

**PREFACE, SHORT EXECUTIVE SUMMARY, RECOMMENDATIONS**

The Report that follows concentrates on both the ICAC and the Office of the Inspector in the light of recent history. It was originally suggested that I prepare a comprehensive review of the ICAC from its inception in 1988. Such a task if done “comprehensively” would be beyond the resources of myself as Inspector and my staff, would involve the examination of public enquiries and outcomes and non-public aspects of the functioning of the ICAC both before and after the appointment of the Inspector in 2005. Such a task would have been of unmanageable proportions.

The Report that follows is of necessity related to parochial matters. I say this because of the fluidity that appears to be attending the structure and work of cognate institutions in those other States that have similar bodies, on the one hand, and on the other the comparatively extraordinarily large scale of the Commonwealth Government’s consideration of the establishment of some form of national integrity commission. The latter has attracted a substantial body of submissions.

“Parochial” is not a word of disparagement but a word that reflects reality. On the 2<sup>nd</sup> of May 2016 the Hon. Michael Kirby AC CMG, at the opening of “Privacy Month” delivered an opening address. The speaker concluded with remarks that the State of New South Wales could lead the way to answering a challenge that has proved too difficult for too many others to act upon, that is the challenge of privacy law.

It is my view that this State also can lead the way, the more so in the milieu to which I have referred above, in the field, not only of the fight against corruption, but also in the necessary concomitant, the promotion of integrity, founded upon the present structure of the ICAC by adopting the recommendations set out hereunder.

The ultimate and in my opinion attainable position is that ICAC can be and be seen to be a dedicated and strong body in both dealing with exposed corruption and in its prophylactic role. That status will be enhanced by the public being aware that everything that the ICAC does is subject to the oversight of the Office of Inspector who should have such powers to induce in the members of the public confidence in its capacity to ensure the propriety of the conduct of the ICAC itself.

The ICAC will be taken the more seriously if it is known that the oversight of it is a serious business; the reputation of this State can only be improved by this outcome.

As I indicate in the body of this Report I have come to the view that the proceedings of the ICAC should be in private. That does not prevent the exposure of found corrupt conduct at the end of the investigation and the referral to prosecuting authorities. It will prevent the undeserved trashing of reputations and will still permit a proper focus and a fairly managed forensic process, without the distraction of the temptation for flamboyance or theatre.

The exposure of corrupt conduct after such proceedings will be in a more brilliant and clear light rather than in any part exposure emerging out of the darkness, the shadows into an occasional entr'acte.

The recommendations that are set out below are both substantive and by way of suggestions for further consideration as the Minister and/or the Parliamentary Joint Committee considers appropriate. To both areas for consideration any person can be invited to make their contribution to the deliberations of the Parliamentary Joint Committee.

It is appropriate that I acknowledge the especially valuable work done by my Principal Legal Advisor, Ms Susan Raice, in gathering together some of the raw material for the document. Although he has just recently been appointed, John Nicholson SC, Assistant Inspector has given me the benefit of his thoughts on several matters.

In the end it is a report from me as Inspector, an Office Personal to its holder, that was sought: this is what I provide.

## **RECOMMENDATIONS**

1. The Examinations conducted by the ICAC should be in private (see paras 77-87).
2. There should be a provision (even if based to some extent on the model of Victoria or South Australia) which requires that: only in exceptional circumstances should a person not be informed before the commencement of a Compulsory Examination or Private (Public) Inquiry as to the nature of the allegation or complaint being investigated. Amendments to ss. 30, 31 and 35 would be required (as well as other sections within Div.3). (see paras 65, 66 and 89)
3. There should also be a provision which requires that in a summons to a person to appear before the ICAC for a Compulsory Examination or Private (Public) hearing, the nature of the complaint or allegations being investigated shall be set out unless to disclose such information would be likely to prejudice the conduct of the investigation or would be contrary to the public interest. Further the Commission where it has determined not to disclose the nature of the allegations or complaint being investigated must notify the Inspector in writing within three days of the issue of the Summons with details of the Summons, the witness, and the reasons upon which the ICAC relies for its

conclusion as to prejudice to the conduct of investigations or it being contrary to the public interest. (paras 65, 66, 88 and 89)

4. In the event that “public” inquiries are retained, or even if private examinations replace them, there should be a requirement that ICAC when determining whether or not the public interest is served, to have regard to and to specify the elements of the public interest to be served and to consider whether the public interest would be better served by referring the matter to another public authority or to the DPP. (paras 83-85)
5. Section 112 of the Act be amended to reflect the provisions of both Victorian and Queensland legislation to enable persons to complain to the Inspector without fear of breaching s.112 or any other cognate suppression order. (paras 92-97)
6. Section 74BA(2) should be repealed. (para 23)
7. Section 22 be amended whereby the form of any notice that requires production of documents or other things to exclude a requirement for production “forthwith”. Amendments should be made where appropriate to ensure that a Notice to Produce allows a reasonable time for the production according to the terms of the Notice which must specify a time and place otherwise than “forthwith” and before which no production need occur. Further amendments to s.22 suggested are:-
  - 1) That a notice under s.22 of the ICAC Act should only be granted by:
    - a) by a Commissioner or Assistant Commissioner in circumstances where a particular investigation is nominated; for example: “Operation Smithsonian”;
    - b) in circumstances where the nominated document or thing might reasonably be regarded as to leading to a chain of inquiry that might advance the nominated inquiry;
    - c) the party upon whom the s.22 Notice to Attend and Produce is served be provided with a reasonable time to respond to the requirements as set out in the Notice;
  - 2) That a reasonable time also includes a sufficient time for the party upon whom the Notice to Attend and Produce is served to obtain relevant legal advice and initiate setting aside procedures. (paras 98-101)
8. I further recommend that a new s.22A be introduced into the ICAC Act providing that if a document or thing has been produced to the Commission pursuant to a s.22 Notice to Attend and Produce:
  - 1) Where documents or other things are produced to ICAC the person nominated to produce the documents or other things should be given a receipt identifying each of the documents or things produced.

- 2) The Commission may retain the document or other thing if and for so long as its retention by the Commission is reasonably necessary for the purposes of the investigation nominated in the Notice to Produce;
  - 3) If retention of the document or other thing by the Commission is not or ceases to be reasonably necessary for such purposes, the Commission shall cause it to be delivered to:
    - a) The person who appears to the Commission to be entitled to possession of the document or other thing, or
    - b) The Attorney General or Director of Public Prosecutions with a recommendation as to what action should be taken in relation to the document or other thing; provided that any such delivery must be notified to the person who appears to the Commission to have been otherwise entitled to possession of the document or thing before or at the time of any such delivery. (para 102)
9. Section 57B should be amended to provide a new function to the Inspector namely an expanded role to assess the appropriateness of the Commission's determination not to investigate a complaint or a matter referred to it by another public authority or the DPP. (para 91)
  10. Either by amendment to the Memorandum of Understanding or otherwise by agreement the Inspector should be informed of all assessments made by the ICAC, outcomes thereof and the reasons therefor. (para 126)
  11. The *Independent Commission Against Corruption (Commissioner) Act 1994* should be repealed and all matters relevant to the appointment of the Commissioner should be within the ICAC Act 1988. (paras 10-13)
  12. If there is to be a Deputy Commissioner that should be a statutory appointment under the ICAC Act 1988 of limited duration (5 years). (paras 120-121)
  13. Contingent upon whatever advice the Crown Solicitor has given to the Parliament, s.64 of the Act should be considered for the purposes of amendment to ensure that subject to safeguards as to purely operational matters both the ICAC and its Inspector are answerable on all matters to the Parliament of New South Wales. (para 124)
  14. The Office of the Inspector should be a full time position and Assistant Inspector(s) part time. The Inspector should have power to employ staff similar to the powers provided to ICAC by s.104. The present position of principal legal advisor should be upgraded to Solicitor to the Inspector. (para 6)
  15. Exoneration Protocol: Consideration should be given to the introduction into the legislation of something with such a title. It should provide that in circumstances where there is an absence of a criminal conviction arising from any prosecution based upon the same or similar or cognate facts as warranted the making by the ICAC of a finding of corrupt conduct, the person against whom the finding was made may make an

application to the Supreme Court for an expunging of the records of the ICAC or to have the findings set aside. The ICAC would of necessity be a party to such proceedings. (para 51)

16. By legislation or other means such as the creation of relevant Regulations, the conduct of proceedings by ICAC, whether in public or in private, be embodied in a Code or set of Rules. (para 7)

INSPECTOR  
INDEPENDENT COMMISSION AGAINST CORRUPTION

REPORT TO PREMIER

1. This Report is consequent upon Operation “Hale”, an aborted investigation initiated by the Independent Commission Against Corruption (ICAC) and in respect of which I delivered a Report to the Parliament on the 4<sup>th</sup> of December 2015. Operation “Hale” is by now notorious and its detail need not be repeated by reason of my Report, my further oral evidence and written submissions, and the responses from the ICAC and its Commissioner both orally and in writing recorded in Hansard at [www.parliament.nsw.gov.au/committees/ICAC Committee/Review of the Report of the Inspector of the NSW Independent Commission Against Corruption regarding Operation Hale](http://www.parliament.nsw.gov.au/committees/ICAC%20Committee/Review%20of%20the%20Report%20of%20the%20Inspector%20of%20the%20NSW%20Independent%20Commission%20Against%20Corruption%20regarding%20Operation%20Hale)). That Operation “Hale” is the catalyst for this Report is reinforced by the fact that Operation “Hale” was the “first” investigation carried out by an Inspector resulting in adverse findings in the s.77A Report (and substantial consequential controversy).
2. This Report, I stress, is not concerned with Operation “Hale” but with its ramifications in terms of the *ICAC Act 1988* generally, the structure, culture and procedures of the ICAC itself and oversight in particular and the role of the Inspector.
3. Shortly stated, the principal recommendation I, as the current holder of the Office of Inspector make, are that the proceedings of the ICAC be conducted in private except in the exceptional circumstances referred to in the cognate legislation of the State of South Australia. All interests safely can be protected by such a process and the not uncommon criticism of public hearings as theatre and the cause of disproportionate reputational damage will be eliminated. I make no express recommendations in relation to the jurisdiction of the ICAC as part of this Report but, for myself, would suggest that at some time consideration be given to the removal of Local Government and Universities from the jurisdictional reach of the ICAC.
4. I do not recommend that there be a Royal Commission established to review comprehensively every aspect of the ICAC as called for by many people who communicate with me as Inspector. Similarly I do not recommend that there be a judicial inquiry which also is often the subject of requests received in my office.



5. To date there have been two major reviews of the legislation. First that conducted by Bruce McClintock SC in January 2005 and, secondly what I will refer to as the Independent Panel Review conducted by the Hon. A M Gleeson AC and Mr McClintock SC in 2015 consequent upon the decision of the High Court of Australia in *Independent Commission Against Corruption v Margaret Cunneen & Ors* [2015] HCA 32. Amendments to the legislation followed.
6. My Report will not be recommending the abolition of the ICAC. On the contrary, the principal themes of the Report will be the retention of the ICAC and the requirement of a stronger oversight body than that such as is presently comprised of but one Inspector (part-time), an Assistant Inspector (part-time) and a Principal Legal Advisor (also part-time) together with one Executive Support Officer. There is, it can be stated at this point, an extraordinary lack of proportion between the resources of the Inspector and the powers of the ICAC over which the Inspector seeks to exercise oversight. The Inspector should have the power to employ his or her own staff, similar to the powers provided to the Commission in s.104 of the ICAC Act. Further, the position of the Principal Legal Advisor should be elevated to that of Solicitor to the Inspector, in keeping with the role, duties and importance of the position. It may be necessary to also employ other legal officers to assist the Inspector and Solicitor to the Inspector.
7. Another area that will be the subject of recommendation is that by legislation or other means the conduct of proceedings by the ICAC whether in private or in public, be embodied in a code or a set of Rules; (to the extent that it is necessary the same might have to be applied to the functioning of what will be recommended to be a much enlarged and empowered Office of the Inspector).
8. Such a restructured Office of the Inspector should not be seen as encroaching upon the fundamental independence of the ICAC. It should be seen as a far more efficient mechanism for the performance of the Inspector's oversight role. The ICAC, as was clear from the Second Reading Speech of Mr Greiner, was above all else to enjoy independence. Having that independence does not render the ICAC inviolate, above criticism or immune to scrutiny however.

## **A – SOME LEGISLATIVE HISTORY**

9. The second reading speech by the then Premier Mr Greiner was delivered in the Legislative Assembly in support of the principal Act on the 26<sup>th</sup> May 1988. It has often been quoted.

*“The second thing I want to make absolutely clear is that the establishment of the ICAC is not a political stunt. The commission will not be set up to pillory our political opponents or to engage in political witchhunts. It has an extensive jurisdiction that applies across the entire ambit of the public sector. No one has been exempted.*

*Ministers, members of Parliament, the judiciary, and the Governor, will all fall within the jurisdiction of the ICAC. The independent commission will have jurisdiction to investigate corrupt conduct occurring before the commencement of the legislation. However, in deciding whether or not to investigate a matter the commission will take into account whether the conduct occurred at too remote a time to justify investigation. Obviously there will be no point in committing valuable resources to investigate matters that are too old to be effectively pursued ...*

*The commission will have an independent discretion, and will decide what should be investigated and how it should be investigated. That is the whole point of having a commission independent of the Executive Government and responsible only to Parliament. The only matters that the commission must investigate are matters referred to it by resolution of both Houses of this Parliament.*

*The third fundamental point I want to make is that the independent commission will not be a crime commission. Its charter is not to investigate crime generally. The commission has a very specific purpose which is to prevent corruption and enhance integrity in the public sector. ... legislation makes it clear that the focus of the commission is public corruption and that the commission is to co-operate with law enforcement agencies in pursuing corruption.*

*Honourable members will note that the bill makes specific provision to allow the commission to refer matters to other investigatory agencies to be dealt with. Obviously that will be the most sensible way to deal with the majority of matters that will come to the attention of the commission. The commission will monitor those investigations and will retain only the most significant and serious allegations of corruption.*

*My fourth point is that the independent commission is not a purely investigatory body. The commission also has a clear charter to play a constructive role in developing sound management practices and making public officials more aware of what it means to hold an office of public trust and more aware of the detrimental effects of corrupt practices. Indeed, in the long term I would expect its primary role to become more and more one of advising departments and authorities on strategies, practices and procedures to enhance administrative integrity. In preventing corruption in the long term, the educative and consultancy functions of the commission will be far more important than its investigatory functions. ... it would also be crass and naive to measure the success of the independent commission by how many convictions it gets or how much corruption it uncovers. The simple fact is that the measure of its success will be the enhancement of integrity and, most importantly, of community confidence in public administration in this State. The final point I want to make by way of introduction concerns the question of civil liberties. This commission will have very formidable powers. It will effectively have the coercive powers of a Royal commission. There is an inevitable tension between the rights of individuals who are accused of wrongdoing and the rights of the community at large to fair and honest government.*

*There will be those who will say that this legislation is unjustified interference with the rights of individuals who may be the subject of allegations. Let me make a number of points in response to that sort of claim. First, though the commission will be able to investigate corrupt conduct of private individuals which affects public administration, the focus is public administration and corruption connected with public administration. The coercive powers of the commission will be concentrated on the public sector.*

*Second, corruption is by its nature secretive and difficult to elicit. It is a crime of the powerful. It is consensual crime, with no obvious victim willing to complain. If the commission is to be effective, it obviously needs to be able to use the coercive powers of a Royal commission. Third, the commission will be required to make definite findings about persons directly and substantially involved. The commission will not be able to simply allow such persons' reputations to be impugned publicly by allegations without coming to some definite conclusion.*

...

*The commissioner will be a person who has the legal qualifications necessary to be a judge of the Supreme Court. Practising judges will not be eligible for appointment. This accords with the Government's policy that the resources of the judiciary should not be diverted from judicial work. There is provision for the appointment of assistant commissioners who will be subject to the same conditions of appointment as the commissioner.*

...

*The independent commission is not intended to be a tribunal of morals. It is intended to enforce only those standards established or recognized by law. Accordingly, its jurisdiction extends to corrupt conduct which may constitute a criminal offence, a disciplinary offence or grounds for dismissal. The commission's jurisdiction will cover all public officials.*

*The commission will be able to act on complaints of corrupt conduct which are brought to its attention, or to act on its own motion. The commissioner will have a wide discretion to investigate a complaint, to refer a complaint to another agency for investigation, or to decide that a complaint should not be investigated. In deciding whether to investigate a complaint the commissioner may have regard to whether the complaint is trivial, vexatious or not in good faith, as well as whether the conduct is too remote in time to justify investigation. ...*

*The proposed Independent Commission Against Corruption will not have power to conduct prosecutions for criminal offences or disciplinary offences, or to take action to dismiss public officials. Where the commission reaches the conclusion that corrupt conduct has occurred, it will forward its conclusion and evidence to the Director of Public Prosecutions, department head, a Minister or whoever is the appropriate person to consider action. In doing so the commission can make recommendations. The person*

*to whom the matter is referred is not required to follow the recommendation. However, the commission can require a report back on what action was taken. Where the commission considers that due and proper action was not taken, the commission's sanction is to report to Parliament. It is important to note that the independent commission will not be engaging in the prosecutorial role. The Director of Public Prosecutions will retain his independence in deciding whether a prosecution should be instituted.*

*The Government recognizes the importance of appointing a commissioner with experience and judgment to exercise the important functions and formidable powers established by this legislation. The Government also recognizes the need to appoint a person of strength, independence and impartiality who is not afraid to make difficult decisions. We are also mindful of the need to ensure that the independent commissioner and the commission do not become politicized. The position of commissioner will itself be a high office of public trust and the Government will ensure that the person appointed will be a person of integrity and independence, with the necessary experience and judgment ...*

10. In 1994 the Parliament passed what was undoubtedly a highly contentious piece of legislation namely the *Independent Commission Against Corruption (Commissioner) Act*. The second reading speech of the Hon. E.P. Pickering is to be found at Hansard for that day (15 September 1994) at [www.parliament.nsw.gov.au/Legislative Assembly by date](http://www.parliament.nsw.gov.au/Legislative Assembly by date).
11. In effect this legislation enabled the appointment of the then Justice O'Keefe of the Supreme Court of New South Wales to the Office of Commissioner of the ICAC without derogating from his judicial pension entitlements nor his right to be reappointed to the Bench. The person who is the beneficiary of the 1994 legislation cannot be described as a Commissioned Judge of the Supreme Court "on leave" or anything else of a similar nature. The Commission to the Supreme Court is in effect revoked, the appointee takes up the Office of Commissioner of the ICAC and at the conclusion of the five-year term can be again the recipient of a Commission as a Judge of the Supreme Court.
12. The legislation was vigorously debated on political, legal and indeed personal grounds.
13. I recommend that the 1994 Act be repealed and that everything attending the appointment, remuneration, benefits and other conditions of the person appointed to the Office of Commissioner of the ICAC be set out in the ICAC Act 1988.

14. It is my view that it is demeaning to Judicial Office for a holder of that Office to be able to abandon the high honour of the grant of a judicial commission to embark upon five years as Commissioner of the ICAC at an extraordinarily increased salary and then be free to be reappointed to the Supreme Court.
15. If, per chance, upon the expiry of the five years in Office as Commissioner of the ICAC the appointee has not quite reached the requisite number of years (10) and a minimum age (60) to be entitled to a full judicial pension, it would not be inappropriate, in my opinion, for arrangements for that shortfall, as it were, to be made up.
16. The nature of the function of the Commissioner of the ICAC over the last 28 years has been gradually exposed by the evolution of both the public media and social media in a way that could (but I hasten to add has in fact not) affect the standing and reputation of the Commissioner or Assistant Commissioner to the point where that person's (re)appointment as a member of the judiciary would cause concern in the community particularly amongst member of the legal profession itself which had dealings with that person as former Commissioner or any person that had dealings with the ICAC who might find themselves as litigants in the Court to which the appointee has returned.
17. The next major amendment to the legislation occurred in 2005 which, inter alia, enacted the appointment of an Inspector.
18. It is important in this context to note that a review was then being conducted by the late Jerrold Cripps who upon his appointment as Commissioner of the ICAC was replaced by a member of the Bar, Mr Bruce McClintock SC. At the time of his appointment Jerrold Cripps was not a Supreme Court Judge but had been a Judge of that Court, a Judge of the Land and Environment Court and of the District Court and was in every respect perfectly qualified to be appointed as Commissioner. The appointment of an outside person such as Mr McClintock SC was especially appropriate.
19. The 2005 legislation also made important amendments to ss.12 and 13 of the original Act in relation to powers and jurisdiction and to procedures in relation to compulsory examinations and public inquiries. It was enacted after, of course, the completion, by Mr McClintock SC of the review (after 15 years of operation) of the ICAC Act. There were further amendments to the legislation in 2006, 2008, 2013 and importantly 2015 consequent upon the decision of the High Court in *Cunneen*.
20. Since the decision of the High Court in *Cunneen* and the passage of the amending legislation in 2015, it is well known, that there have been calls for a review of the nature, function, purpose and operation of the ICAC and indeed the Inspector whether by the Parliament, by a Royal Commission, by a Commission of Inquiry, by a Judicial Inquiry. Such an overreaching review (beyond the limits of this Report) after 28 years should in my opinion take place but it cannot be performed and should not be

performed by a current office holder such as myself or of the Commission but rather by an independent panel.

21. In this context I remind of the Report prepared by the Independent Panel constituted by the Hon. Murray Gleeson AC and Mr McClintock in 2015 and my own Report delivered to Parliament under s.77A collaterally to that Report, my own pointing to then areas of concerns if not complaint that had been the subject of communication to me as Inspector. Some of these areas will be adverted to again.
22. Both the PIC Act and the ICAC Act were amended in 2013 by the *Police Integrity Commission and Independent Commission Against Corruption (Inspectors) Act 2013 (No 72 of 2013)*. This Act allowed for the two positions of the Inspector of the PIC and the Inspector of the ICAC to be held by the same person. The Act *did not abolish or merge* the two positions, rather it permitted one person holding both Offices.
23. The 2015 amendments to which I referred earlier at para 19, included the insertion of s. 74BA which provides that:

***74BA Report may only include findings etc of serious corrupt conduct***

- (1) The Commission is not authorised to include in a report under section 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.*
- (2) The Commission is not precluded by this section from including in any such report a finding or opinion about any conduct of a specified person that may be corrupt conduct within the meaning of this Act if the statement as to the finding or opinion does not describe the conduct as corrupt conduct.*

This amendment was consequent upon the Gleeson/McClintock Independent Panel Review's recommendation 4 which was that "*the Act be amended so that the Commission's power to make findings of corrupt conduct may be exercised only in the case of serious corrupt conduct. This could be achieved by the insertion of a new section 74B(1A) to that effect.*"

However, it is my view that the amendment, with the insertion of s.74BA(2), has gone further than that recommended by the Independent Panel Review and that it in fact negates the intended effect of the original recommendation. I am of the view that s.74BA(2) should be repealed and that ICAC be precluded from making other findings or opinions about any conduct of a specified person unless it falls within the definition of "serious corrupt conduct". Otherwise, it has the effect of giving ICAC a "free kick", as it were, by allowing it to make a finding about any conduct which in its view may fall within the meaning of corrupt conduct but is not serious corrupt conduct and so cannot be a "corrupt conduct finding". This clearly was not the intention of recommendation 4.

24. Overall it makes sense that this Report deals principally with the ICAC from 2005 to date, that is in relation to its present structure since the appointment of the Inspector.

**B - ICAC COMMISSIONERS TO DATE**

<b>Ord</b>	<b>Commissioner</b>	<b>Term start</b>	<b>Term end</b>	<b>Term in office</b>
1	Ian Temby QC	13 March 19 89	12 March 19 94	4 years, 364 days
2	The Honourable Barry O'Keefe AM QC	14 November 1994	13 November 1999	4 years, 364 days
3	Irene Moss AO	14 November 1999	13 November 2004	4 years, 365 days
4	The Honourable Jerrold Cripps QC	14 November 2004	13 November 2009	4 years, 364 days
5	The Honourable David Ipp AO QC	16 November 2009	24 January 2014	4 years, 69 days
6	The Honourable Megan Latham	28 January 2014	incumbent	

**C – A GLIMPSE AT THE WORK OF THE ICAC**

25. I set out some statistical information for the period 1 July 2005 to 30 June 2015.
26. Between 1 July 2005 and 30 June 2015, ICAC received 30,284 complaints. 724 proceeded to preliminary investigations and 156 of those progressed to investigations. 88 reports were published. Corrupt conduct findings were made against 378 persons of which 146 were prosecuted. 25 persons were the subject of disciplinary proceedings.
27. In more detail, in the past 10 years (calendar years 2006 to 2015 inclusive) 70 Reports were published (Operations Vika, Misto, Jarah, Yaralla, Spector, Verdi, Cyrus, Cabot and Meeka, Cavill, Dewar, Nickel, Torino, Tilga, Jasper, Acacia, Indus, Jarilo, Stark, Drake, Jarek, Citrus, Petrie, Crusader, Barrow, Barcoo, Vesta, Napier, Carina, Charity, Churchill, Danby, Magnus, Siren, Challenger, Syracuse, Halifax, Kanda, Vargas, Avoca, Cicero, Corinth, Corsair, Coral, Centurion, Calpurnia, Segomo, Columba, Argyle, Chaucer, Tambo, Bauer, Capella, Bellin, Mirna, Atlas, Monto, Greenway,

Berna, Torrens, Sirona, Pelion, Persis, Bligh, Quilla, Aztec, Cadmus, Odin, Inca, Derwent and Hunter).

28. A summary of the subject matter of these Reports is the Appendix to this Report.

29. *The Reports concerned the following authorities:*

<i>Authority</i>	<i>Number of Reports</i>
<i>Councils</i>	<i>16</i>
<i>Universities</i>	<i>6</i>
Corrective Services	5
NSW Public Sector	5
Railcorp	4
Department of Education and Training	4
Department of Housing	3
NSW Parliament	3
Roads and Maritime Services/RTA	4
Others	20
<b>• Total</b>	<b>70</b>

30. In 6 of the investigations there were no corrupt conduct findings made against any persons. (Yaralla, Halifax, Calpurnia, Bligh, Odin and Derwent).

31. In the remaining 64 investigations, corrupt conduct findings were made against 295 persons. In 5 matters there were no persons recommended for prosecution. In the remaining 59 Reports, prosecutions were recommended against 216 persons. In 8 of the matters, ICAC is waiting advice from the DPP as to whether it will prefer charges. Of the recommendations in the remaining 51 Reports, the DPP determined that there was insufficient evidence to lay charges against 56 persons. Ultimately, 110 people were prosecuted for various offences, mainly under the Crimes Act 1914 and the ICAC



Act. Of the prosecutions now concluded 10 people were found not guilty, were acquitted or had charges against them withdrawn.

## **D - SUMMARY OF S.77A AND AUDIT REPORTS UNDERTAKEN BY PREVIOUS INSPECTORS OF ICAC**

### **32. Graham Kelly**

#### **Audits**

1. **June 2007 Compliance with ss 21, 22, 23, 35 and 54 of ICAC Act.**  
Inspector found no substantive issues of concern but audit revealed lack of completeness of records with respect to some Summonses and Notices.
2. **June 2007: Compliance with s. 12A**  
Inspector found that 4 of the complaints audited exposed some issues with respect to achieving the objectives of s.12A. Do not involve substantial injustice to individuals nor amount to any major failure by ICAC in the pursuit of its mandated functions.
3. **June 2008: Compliance with Listening Devices Act**  
Inspector found that ICAC complied with provisions.

#### **S.77A Reports:**

1. **September 2008: Investigation by ICAC of certain allegations against the Honourable Peter Breen MLC.**  
Inspector found sloppiness by ICAC which led to mistakes in search warrant applications but no maladministration or misconduct on part of ICAC or its officers. No evidence of lack of good faith. Recommendations made re ICAC's procedures re search warrants.

### **33. Harvey Cooper AM**

#### **Audits**

1. **March 2009:** Audit of application for and execution of search warrants
2. **September 2009:** Audit of application for and execution of listening devices
3. **November 2009:** Audit of surveillance device warrants
4. **March 2010:** Audit of exercise of ICAC's powers under s.21, 22, 23 and 35
5. **December 2010:** Audit of application for and execution of search warrants
6. **April 2011:** Audit of surveillance device warrants
7. **March 2012:** Audit of exercise of ICAC's powers under s.21, 22, 23 and 35
8. **May 2012:** Audit of surveillance device warrants and retrieval warrants
9. **November 2012:** Audit of application for and execution of search warrants
10. **April 2013:** Audit of exercise of ICAC's powers under s.21, 22, 23 and 35

11. **June 2013:** Audit of application for and execution of search warrants

In each of the above audits, the Inspector found there was no evidence of abuse of power, impropriety or other forms of misconduct on the part of ICAC or officers and evidence of maladministration, including unreasonable invasions of privacy, or of any action or inaction of a serious nature that was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

**S. 77A Reports**

No s.77A Reports were published by the Hon Harvey Cooper AM.

34. **The Hon David Levine AO RFD QC**

**Audits**

No audit reports have been published by me.

**S.77A Reports**

1. **18 June 2015: Report pursuant to the Premier's Reference**

This Report was published in response to the Premier commissioning an Independent Panel, comprising the Hon Murray Gleeson AC QC and Bruce McClintock SC, to review ICAC's powers and jurisdiction in light of the High Court decision in *Cunneen & Ors v ICAC* [2015] HCA 32.

2. **4 December 2015: Report in Operation "Hale" – ICAC re Margaret Cunneen SC & Ors**

My Report in Operation "Hale" was critical of ICAC's conduct in its investigation in Operation Hale (which was ultimately found by the High Court to be beyond its jurisdiction.). I found that ICAC had abused its power and engaged in maladministration particularly with respect to issuing Notices to Produce **forthwith**, the referral of material by ICAC to other authorities which were beyond the scope and purpose of the initial ICAC investigation and to issues of conflict of interest.

35. No audit reports have been filed by myself of the kind that occupied the Inspector during the term of the Hon. Harvey Cooper AM.

36. During my period of Office thus far there has been one full inquiry and investigation, namely Operation Hale, which effectively has occupied my resources as Inspector for nearly two years.

## E - LITIGATION

There has also been an eruption of litigation usually commenced in the Supreme Court and not uncommonly ending in the High Court and indeed not uncommonly ending in favour of the ICAC over the last two years.

- *McCloy v NSW* [2015] HCA 34
- *Duncan v ICAC* [2015] HCA 32
- *Duncan v NSW; NuCoal Resources v NSW; Cascade Coal v NSW* [2015] HCA 13
- *ICAC v Kinghorn* [2015] NSWCA 342
- *Obeid v ICAC* [2015] NSWSC 1891
- *Obeid v Ipp*(No. 2) [2015] NSWSC 1852
- *Obeid v Ipp* [2015] NSWSC 1755
- *Duncan v ICAC; Kinghorn v ICAC; McGuigan v ICAC; Cascade Coal v ICAC* [2015] NSWSC 1018

37. Given the increase in the volume of my work after the decision by the ICAC to investigate the Cunneen matter, I have had to take the decision, where parties have embarked upon litigation in their own right, even if one of the parties to such litigation is the ICAC or any officer thereof, to withdraw to a great extent the level of intervention I might otherwise exercise as Inspector.
38. I note, however, 2 matters arising from ICAC investigations, which have recently been in the Courts.
39. The first matter was the prosecution of Murray Kear, a former SES Commissioner. He was the subject of ICAC's investigation in Operation Dewar. The Report was published in June 2014. ICAC made a corrupt conduct finding against Mr Kear, namely that he engaged in corrupt conduct by deliberately failing to properly investigate allegations against SES Deputy Commissioner Steven Pearce in relation to the entry into two contracts, the use of SES funds to purchase roof racks and electric brakes for Mr Pearce's car, the obtaining of an SES-paid vehicle for an SES manager and the potential falsification of diary entries because of his friendship with Mr Pearce.
40. The ICAC found that Commissioner Kear also engaged in corrupt conduct by dismissing Deputy Commissioner Tara McCarthy from her employment with the SES, substantially in reprisal for her making allegations about the conduct of his friend, Mr Pearce. These included the allegations concerning the circumstances in which the SES had entered into the two contracts, Mr Pearce's misuse of SES funds to purchase roof racks and electric brakes for his car, Mr Pearce's alleged misuse of his SES credit card and the alleged fabrication of diary notes.
41. Mr Kear was ultimately prosecuted pursuant to section 20 of the *Public Interest Disclosures Act 1994 (NSW)* (the PID Act), for taking detrimental action against another person that is substantially in reprisal for the other person making a public

interest disclosure. In March this year, Mr Kear was acquitted by Magistrate Grogin in the Local Court. The Magistrate found Mr Kear not guilty and stated that:

*"I accept Mr Kear did not make the decision to terminate the services of Tara McCarthy lightly or quickly," Magistrate Grogin told the court.*

*"I find that there were many factors behind the dismissal of Ms McCarthy by the defendant - the inability of Ms McCarthy to assimilate into, cooperate within and lead the SES was, I find, the primary and substantial reason for her dismissal by the defendant.*

*"I am satisfied that the defendant did not dismiss Ms McCarthy as a reprisal, substantial or otherwise, for her making public interest disclosures.*

*"I find there was no element of revenge, pay-back or retaliation against Ms McCarthy by the defendant."*

42. Magistrate Grogin also said he accepted that conflict between Mr Pearce and Ms McCarthy "caused the defendant great concern" and that he sought advice, counsel and assistance from a number of people within the emergency services community whom he respected, before he dismissed her.

*"I accept the defendant invested time, energy and financial resources to try to remedy the toxic relationship between Ms McCarthy and Mr Pearce," Magistrate Grogin said."*

43. This was a significant case as it was the first prosecution brought before a Court pursuant to section 20 of the PID Act . Of note is the fact that Mr Kear resigned as SES Commissioner as a direct consequence of the ICAC investigation and findings. With respect to a prosecution arising from one of the corrupt findings he was acquitted in the court on ostensibly the same set of facts but subject to the burden of proof beyond a reasonable doubt. It was reported in the press that SES Acting Deputy Commissioner, Mr Mark Morrow, expressed concern that he gave a record of interview with 2 ICAC investigators during the ICAC inquiry, the transcript of which comprised 88 pages of transcript and yet ICAC only provided a 21-page statement to the DPP. The Magistrate ordered ICAC to furnish to the Court the original 88-page transcript of the record of interview.
44. There have been increasing expressions of concern communicated to me that ICAC seems to be able to choose which material it forwards on to the DPP or any other appropriate authority rather than all material gathered during its investigation, whether inculpatory or exculpatory. I add that these have yet to be investigated by my office, so no conclusions as to their validity should be drawn.
45. The second matter arose from ICAC's investigation of Ryde Council in Operation Cavill. Mr John Booth, Managing Editor of the Weekly Times was prosecuted for providing false and misleading evidence to the ICAC during its investigation in

Operation Cavill. In April this year, Magistrate Greenwood in the Local Court found Mr Booth not guilty. Mr Booth commented after his acquittal that: *“It is just disappointing that so many innocent and honourable citizens can be so maligned and discredited by the likes of ICAC which is supposed to represent the welfare of the community.”*

46. In its Report in Operation Cavill, ICAC did not make a corrupt conduct finding against Mr Booth. However, it determined that Mr Booth had lied to ICAC during the public inquiry as he claimed that a Mr O’Grady was responsible for organising and placing certain advertisements promoting councillors for re-election and yet had not mentioned this fact during his compulsory examination. It was not possible for ICAC to obtain a statement from Mr O’Grady as he passed away prior to the public inquiry.

47. ICAC’s investigation in Operation Cavill also recommended that the DPP consider prosecuting 5 Councillors, including Jeff Salvestro-Martin, for breaches of s.96E of the *Election Funding, Expenditure and Disclosures Act 1981* (the “EFED Act”) relating to the payment for advertising. The Councillors argued that the total cost of the advertising was \$4180 and their one-sixth share was thus \$696.66. ICAC rejected this submission and determined that each was in breach as the total cost of advertising was over \$1000. Some time after the publication of the Report in Operation Cavill, one of the Councillors sought clarification from the Electoral Commission as to the correct position. In a letter dated 26 October 2015, the Electoral Commission confirmed the following:

*“Where each candidate or group pay an equal share of the cost of the advertising to the printer or advertiser the amount paid by each candidate or group is to be disclosed as electoral expenditure.*

*Each candidate or group is not required to disclose the full cost of the advertising but rather the amount of expenditure paid by the candidate or group.*

*In this scenario no candidate or group is making or accepting an indirect campaign contribution as no person or entity is paying for electoral expenditure for advertising that was to be incurred by another person or entity.’*

48. Mr Salvestro-Martin was dumped as the Labour candidate for the seat of Bennelong prior to the September 2013 federal election as a direct consequence of the ICAC public inquiry in Operation Cavill. Ultimately no charges were preferred against him nor was he found to be corrupt.

49. The above persons may be seen as examples of how an ICAC public inquiry can have a significant negative impact on a person’s reputation, career and personal/family life. Notwithstanding the exoneration of Mr Booth and Mr Kear in court, the findings in the ICAC report will remain on the record as will the suggestion that the Ryde Councillors breached the EFED Act.

50. The Commissioner has publically stated that the position of ICAC is as follows: *“Whilst we accept that there is a genuine public interest in whether or not prosecutions emerge from our investigations, I think I should indicate that, as I said, the commission’s activities are focused on exposing corruption and doing something by way of addressing policies and procedures that prevent its furtherance in the public sector. We general do not consider the number of successful prosecutions that arise from inquiries as any relevant indicator of our success. However, we accept that there is a public interest in it”*.(p.22 Transcript of Evidence of the ICAC Commissioner, the Hon Megan Latham, at ICAC Committee hearing 7 August 2015).
51. ICAC’s position must be considered in light of the matters to which I have referred above, as only recent examples of persons who complain that they have had their reputations destroyed by the process of an ICAC public inquiry and yet ultimately have been found to have been neither corrupt nor guilty of a criminal offence. These people have no recourse to repair the impact of the ICAC public inquiry and it is likely that their names will always be associated negatively with an ICAC inquiry. The more so by reason of the perpetual archiving of public and social media. To this end, I recommend that there be the introduction into the legislation of an “Exoneration Protocol”, which would provide that in circumstances where there is an absence of a criminal conviction arising from any prosecution based upon the same or similar or cognate facts as warranted the making by the ICAC of a finding of serious corrupt conduct, the person against whom the finding was made may make an application to the Supreme Court for an Order expunging the records of the ICAC or to have the findings set aside. The ICAC would of necessity be a party to such proceedings.

## **F – SOME OTHER MODELS**

52. Before considering the types of matters that should be considered in the light of my recommendations, it is desirable briefly to summarise cognate models that exists in this country and in Hong Kong.

### **Hong Kong ICAC:**

53. The Hong Kong ICAC (“HK ICAC”) was established in February 1974 as a response to the rampant corruption in the then British colony. It is regarded as one of the most successful models in existence in fighting corruption and has become almost a template for anti-corruption agencies around the World. However, the HK ICAC functions very differently to the NSW ICAC as noted below:
- It investigates corruption in both the public and private sector.
    - In the 2015 calendar year, HK ICAC received a total of 2,798 complaints of which 767 related to the Government sector (221 Police and 546 Other Government departments). Thus about 73% of its work related to corruption in the private sector.

- It has the power to conduct its own prosecutions.
    - This power is fettered by the legislative requirement that the consent of the Secretary for Justice must be obtained for prosecution of any offence listed in part 2 of the Prevention of Bribery Ordinance but in practice the HK ICAC seeks the advice of the Department of Justice before commencing any prosecution. (pp 35-36 of HK ICAC Annual Report 2014).
  - It has far greater powers than that of NSW ICAC, including the power to arrest people and a witness protection program to encourage whistleblowers.
  - It does not hold public inquiries.
  - Its budget is about 30 times that of NSW ICAC.
    - In 2014 it had a budget of about \$754 million and a staff of 1358 compared with NSW ICAC, which had a budget of \$28 million (actual expenditure of \$25.88 million) and a full-time staff of about 126. This means that it has the resources to investigate the bulk of its complaints and to conduct successful prosecutions.
    - In the 2015 calendar year, HK ICAC prosecuted 207 persons and there were 260 completed prosecutions with 213 persons convicted of which 90 were Government servants. In the 2014 reporting period, HK ICAC received 2362 corruption complaints of which 1556 were pursuable complaints, representing 66%.
  - There are many more layers of checks and balances to ensure the HK ICAC is operating effectively and within its powers. It is overseen by 4 committees, comprised of community members.
    - The committees are: the Advisory Committee on Corruption; the Operations Review Committee; the Corruption Prevention Advisory Committee and the Citizens Advisory Committee on Community Relations. Each committee has its own specific and discrete function.
54. Ultimately the HK ICAC is directly accountable to the Chief Executive and the ICAC Commissioner reports to the Executive Council on major policy issues. There is also an ICAC Complaints Committee which monitors and reviews all non-criminal complaints against the ICAC or its staff. There is no equivalent of the NSW Inspector of ICAC.

## Australian State Anti-Corruption Agencies

55. In Australia, Western Australia, South Australia, Victoria, Tasmania and Queensland all have anti-corruption agencies. These State counterparts to a large extent have similar powers and functions to the NSW ICAC but there are also some significant differences, to which I shall make reference. The **Victorian** Independent Broad-Based Anti-Corruption Agency (“IBAC”), the **West Australian** Corruption and Crime Commission (“WA CCC”) and the Queensland Crime and Corruption Commission (“QCCC”) investigate police complaints in addition to complaints about public authorities. They also have other significant functions which the NSW ICAC does not. For example the QCCC also helps recover the proceeds of crime and it provides the witness protection service for the State and the WA CCC also investigates organised crime. All these agencies are required to focus on “serious” corruption. In WA the Public Sector Commission deals with minor misconduct matters. All police misconduct matters are considered serious and are thus investigated by the WA CCC.
56. In **Western Australia** examinations are not open to the public. (s. 139 Corruption, Crime and Misconduct Act 2013 (WA)) but the WA CCC may “*open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.*” (s.140). This does not apply to organised crime investigations which are held in private.
57. In **Queensland**, a hearing for an investigation may be held in public if the QCCC considers opening the hearing will make the investigation to which the hearing relates more effective and would not be unfair to a person or contrary to the public interest. (s.177 Crime and Corruption Act 2001 (QLD). Of note is that although the CCC has the power to conduct its inquiries in public, it has not held a public inquiry since 2010.(p.14 IBAC Committee Report “Strengthening Victoria’s key anti-corruption agencies?” Report, February 2016).
58. In **Victoria**, an examination is not open to the public unless the IBAC considers on reasonable grounds that:
- (a) there are exceptional circumstances; and
  - (b) it is in the public interest to hold a public examination; and
  - (c) a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing. (s.117 Independent Broad-based Anti-Corruption Act 2011 (VIC))
- (I interpolate that this provision involves many difficult and “tricky” components; “exceptional circumstances”, “public interest”, and “unreasonable damage”.)



59. In **NSW**, ICAC may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.(s.31(1)) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:
- (a) the benefit of exposing to the public, and making it aware, of corrupt conduct,
  - (b) the seriousness of the allegation or complaint being investigated,
  - (c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),
  - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.(s.31(2))
60. In **South Australia**, there is the Independent Commissioner Against Corruption and the Office of Public Integrity.
- One of the primary objects of the SA Act is “*to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration)*” (s. 3(c) Independent Commissioner Against Corruption Act 2012 (SA).
61. In contrast to the other anti-corruption agencies in Australia, the **South Australian** Independent Commissioner Against Corruption (SA ICAC) does not hold public inquiries except for the purposes of exercising his/her function to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration (s. 7(1)(d)) or to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration (s. 7(1)(e)) or for the purpose of reviewing a legislative scheme related to public administration. (s.7(3)) Otherwise, examinations relating to corruption in public administration must be conducted in private (s.7(4)(a)(i)).
62. The **South Australian** Commissioner may make a public statement in connection with a particular matter if, in the Commissioner's opinion, it is appropriate to do so in the public interest, having regard to the following:
- (a) the benefits to an investigation or consideration of a matter under this Act that might be derived from making the statement;
  - (b) the risk of prejudicing the reputation of a person by making the statement;

- (c) whether the statement is necessary in order to allay public concern or to prevent or minimise the risk of prejudice to the reputation of a person;
- (d) if an allegation against a person has been made public and, in the opinion of the Commissioner following an investigation or consideration of a matter under this Act, the person is not implicated in corruption, misconduct or maladministration in public administration—whether the statement would redress prejudice caused to the reputation of the person as a result of the allegation having been made public;
- (e) the risk of adversely affecting a potential prosecution;
- (f) whether any person has requested that the Commissioner make the statement. (s.25 SA Act)

### **G – ACCOUNTABILITY OF STATE COUNTERPARTS**

63. There is no Inspector equivalent in **South Australia** but instead the Act provides for an annual review of the exercise of the powers of the Commissioner. The Attorney-General must before the end of each financial year appoint a person to conduct a review of the operations of the Commissioner and the Office of Public Integrity during the financial year. (s.46(1)). The Report must be presented to the Attorney-General on or before 30 September in each year. (s.46(4)).

The **Victorian Inspectorate** (“VI”) oversees IBAC and is governed by the Victorian Inspectorate Act, of which the objectives are:

- enhance the compliance of the Independent Broad-based Anti-Corruption Commission (IBAC) and IBAC personnel with the *Independent Broad-based Anti-corruption Commission Act 2011* and other laws
- assist in improving the capacity of the IBAC and IBAC personnel with regards to their duties, functions and powers
- monitor compliance by a Public Interest Monitor with the prescribed obligations
- provide for the independent oversight of the Victorian Auditor-General’s Office (VAGO)
- provide for the independent oversight of the ombudsman and their officers, chief examiner and examiners.

64. Like NSW ICAC, IBAC has the power to summons witnesses and the summons usually contains information in relation to the nature of the matters the person will be questioned about but may decline to do so if it believes on “*reasonable grounds that providing this information would be likely to prejudice the conduct or the investigation or would be contrary to the public interest*”. (s. 121) IBAC must within 3 days of issuing a summons to a witness, provide a written report to the VI containing the name of the person summoned and the reasons why the witness summons was issued. (s. 122 IBAC Act). However, IBAC need not provide reasons to the VI if IBAC determined to issue the summons without information pertaining to the nature of the matters. The Law Institute of Victoria (“LIV”) has recommended that the VI should have an oversight role with respect to decisions by IBAC not to disclose information in summonses and that there should be a requirement that it provides written reasons to the VI as to why the information was withheld. The LIV argues that this would provide accountability for IBAC’s decision and ensure that the power is being exercised fairly and appropriately.
65. Contrast the NSW ICAC Act provisions which states that the Commissioner may summon a person to appear before the ICAC at a compulsory examination or public inquiry at a time and place named in the summons. (s. 35(1) ICAC Act 1988). A person required to attend a compulsory examination is entitled to be informed, before or at the commencement of the compulsory examination, of the nature of the allegation or complaint being investigated (s.30(3)) but a failure to comply with that subsection does not invalidate or otherwise affect the compulsory examination (s.30(4)). Further the ICAC may (but is not required to) advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed as a result of the compulsory examination (s.30(6)).
66. Similarly, a person required to attend a public inquiry is entitled to be informed of the general scope and purpose of the public inquiry and the nature of the allegation or complaint being investigated before or at the time the person is required to appear at the inquiry (s.31(6)) but a failure to comply with subsection (6) does not invalidate or otherwise affect the public inquiry (s.31(7)).
67. Section 57B(3) of the NSW ICAC Act provides that the Inspector is not subject to the ICAC in any respect. Notwithstanding this, complainants have expressed concern about communicating with the Inspector as they are subject to a confidentiality order.
68. Section 44(3) of the IBAC Act states “Despite subsection (1) a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of making a complaint to the Victorian Inspectorate about the conduct of IBAC or of an IBAC officer”.

69. In **Queensland**, the oversight body is the Parliamentary Crime and Corruption Committee, which is a standing committee of the Legislative Assembly with particular responsibility for monitoring and reviewing the commission's performance.(s.9 Crime and Corruption Act 2001 (QLD)). The Committee is aided by the Parliamentary Crime and Corruption Commissioner, who is an officer of the Parliament who helps the Parliamentary Crime and Corruption Committee in the performance of its functions.(s.10).
70. There is a similar provision in the QLD Crime and Corruption Act to s.44 of the IBAC Act, namely s.319 which provides:
- (2) A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse.
  - (3) It is a reasonable excuse for a person to disclose the existence of a confidential document if—
    - (a) the disclosure is made—
      - (i) for the purpose of seeking legal advice in relation to the document or an offence against subsection (2); or
      - (ii) for the purpose of obtaining information in order to comply with the document; or
      - (iii) for the purpose of making a complaint to the parliamentary committee about the document; or
      - (iv) in the course of the administration of this Act; and
    - (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document to anyone else unless the person has a reasonable excuse.
71. In contrast to the functions and powers of the NSW Inspector of ICAC, the Parliamentary Committee in QLD may, by notice, direct the Commission to investigate a matter involving corruption stated in the notice. The commission must investigate the matters stated in the direction diligently and in a way reasonably expected of a law enforcement Agency and report the results of its investigation to the committee.(s.294)
72. If the Parliamentary Committee receives a complaint, or has other concerns (including concerns arising out of a recommendation made by the Parliamentary Commissioner, about the conduct or activities of the commission or a commission officer; or is notified by the chairman, deputy chairman or chief executive officer of conduct of a commission officer that the chairman, deputy chairman or chief executive officer suspects involves, or may involve, improper conduct, the Committee (if it decides to

take action on the complaint, concern or notification (the *matter*), may do one or more of the following:

- (a) ask the Commission to give a report on the matter to the Committee;
- (b) ask the Commission to investigate and give a report on the matter to the Committee;
- (c) ask the police service or another law enforcement agency to investigate and give a report on the matter to the Committee;
- (d) ask the Parliamentary Commissioner to investigate and give a report on the matter to the Committee.
- (e) refer the matter to the Director of Public Prosecutions;
- (f) take other action the Committee considers appropriate.

73. The Parliamentary Committee may issue guidelines to the Commission about the conduct and activities of the Commission after consultation with the Commission on the proposed guideline. The Commission must comply with the guidelines. (s.296).

74. To a large extent the functions and powers of the Parliamentary Commissioner are similar to those of the Inspector of ICAC. However, the audit function is clarified legislatively as follows: The Parliamentary Commissioner has the functions, as required by the parliamentary committee to audit records kept by the commission and operational files and accompanying documentary material held by the commission, including current sensitive operations, including for the purpose of deciding the following—

- (i) whether the commission has exercised power in an appropriate way;
- (ii) whether matters under investigation are appropriate for investigation by the entity investigating or are more appropriately the responsibility of another entity;
- (iii) whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
- (iv) whether required authorisations for the exercise of power have been obtained;
- (v) whether any policy or procedural guidelines set by the commission have been strictly complied with. (s.314(2)a)QCCC Act)

75. The Parliamentary Commissioner is also able to conduct hearings in limited circumstances as follows:

If the Parliamentary Commissioner has used all reasonable means to obtain information about a matter from the CCC without success; and the Parliamentary Commissioner considers it appropriate to hold a hearing to obtain the information he may do so. The

Parliamentary Commissioner has the power to issue a Notice to which the person must comply. The person must answer any question put to him/her by the Parliamentary Commissioner, or produce a document or thing if required to do so by the Parliamentary Commissioner, who has the power to administer an oath for the purpose of the hearing. The witness is not entitled to remain silent or to refuse to answer a question or to fail to give an answer to the parliamentary commissioner's satisfaction; or to fail to produce the document or thing; on the basis of self-incrimination. However, if the person's answer or the document or thing might tend to incriminate the person, the answer, document or thing is not admissible in evidence against the person in a civil or criminal proceeding, other than (a) a proceeding for an offence about the falsity of the answer; or a disciplinary proceeding started against the person. (s.318)

76. In **Western Australia**, the WA CCC is oversighted by the Parliamentary Inspector whose functions and powers mirror to a large extent those of the NSW Inspector of ICAC and are set out in ss.195 and 196 of the Corruption, Crime and Misconduct Act 2003 (WA). The only significant difference is that the Act provides a regime for the Parliamentary Inspector to review the Commission's acts and proceedings with respect to its consideration of an allegation that concerns, or may concern, an officer of the Commission. The Parliamentary Inspector may notify the Commission that the matter is to be removed to the Parliamentary Inspector for consideration and determination and may:

- a) annul the Commission's determination and substitute another; or
- b) make any decision the Parliamentary Inspector might otherwise have made had the Parliamentary Inspector exercised an original jurisdiction; or
- c) make any ancillary order, whether final or provisional, that is remedial or compensatory.(s.196(7))

## **H – HEARINGS IN PUBLIC**

77. This is a matter of substantial concern (see jurisdictional comparison above).

78. Both in 2005 and 2015 the Parliament had the benefit of the McClintock and Gleeson/McClintock Reports in favour of the retention of that component of the ICAC investigatory process. Arguments against public hearings are founded upon what some might perceive to be the risk of unfair reputational damage, political grand-standing and other emotive terms. A former Commissioner of the ICAC the Hon. David Ipp AO QC was reported in an article in The Sydney Morning Herald dated August 2, 2014 in an interview with one Michaela Whitbourn as stating:

*"The whole raison d'être of ICAC is the exposure of corruption ... the idea of exposing corruption behind closed doors is oxymoronic."*

79. The former Commissioner had stated his being disturbed at calls for a private hearings on the basis that one of the ICAC's "most important weapons" was the use of public exposure.
80. Strictly what the former Commissioner said as to an oxymoronic idea may be correct as a matter of language. My own view is that it does not necessarily follow that corruption will not be exposed at the conclusion of private hearings. Nor in my view does it follow that every public hearing is likely to induce people to come forward and give evidence.
81. I do not pretend to offer a solution to this vexing component of debate (particularly in relation to the current Senate Inquiry as to whether there should be a Commonwealth anti-corruption body established. I interpolate that I have considered submissions made by Transparency International Australia to the Select Committee in which there is an acknowledgment of the growing differences in the powers available to respective States' corruption bodies, not least in relation to the conduct of public hearings).
82. I am however comfortable to express my preference for non-public hearings at the end of which – in other words at the end of the whole investigation, if no corrupt conduct is found – nobody is hurt. Equally, if at the end, serious corrupt conduct is found (s.74BA)(1), it publicly can be exposed in relation to specified individuals and identified conduct.
83. I express my view that s.31 (1) and (2) of the Act in relation to public inquiries and the concept of "public interest" do not facilitate the resolution of the debate just as in my view they do not with abundant clarity identify the components of the public interest to which consideration must be given.
84. Transparency on the part of the ICAC and exposure of its reasons and the components of the public interest sought to be served by any step taken by the ICAC in the public interest, should provide appropriate safeguard. If there are still to be public hearings, then the ICAC should have regard to and specify the elements of the public interest to be served. It should also consider whether the public interest would be better served by reference by the ICAC to another public authority or the DPP.
85. The snapshot of the range of work with which the ICAC concerns itself, gives rise in my view to questions of proportionality, priority and similar issues not only in the selection of matters to investigate but whether there are components of the public interest that warrant attendant publicity.

86. Much involves the exercise of judgment by the decision makers in the ICAC. As it is said the devil is in the detail. Any public outcome of an investigation by the ICAC should be impeccable in its disclosure of the basis for initiation of the investigation, its conduct and the reasons for its outcome. That process should have nothing to fear from the light of day and its scrutiny at that time.

### **I – SOME CONSEQUENTIAL RECOMMENDATIONS THUS FAR**

87. **Recommendation:** That the examinations and inquiries conducted by ICAC be held in private.
88. **Recommendation:** Similar provision to that in Victoria: 1) re ICAC: that it must provide information to witnesses summonsed of the nature of the matters the person will be questioned about unless to disclose such information would be likely to prejudice the conduct or the investigation or would be contrary to the public interest. 2) re the Inspector-- the Inspector of ICAC must be informed within 3 days of issue of summons to witness, details of witness and reasons for summons. Further, detailed reasons must be provided to the Inspector as to why ICAC chose not to provide the information.
89. **Recommendation:** S. 30 and 31 should be amended. There should be a requirement that a witness is informed of the general scope and purpose of the inquiry (whether compulsory examination or public inquiry) and there be no provision that a failure to do so does not invalidate or affect the examination or public inquiry.
90. **Recommendation:** There should be a similar provision in the NSW ICAC act to that of s.44(3) of the IBAC Act (Victoria) and s.319(3) of the Queensland CCC Act so as to enable complainants to communicate their concerns about ICAC's conduct to the Inspector of ICAC (and others with reasonable excuse) without fear of being in breach of confidentiality orders.
91. **Recommendation:** Consideration be given to expanding the role of the Inspector to allow review of ICAC's decisions to NOT investigate a matter. Also to allow the Inspector to issue guidelines which must be followed by ICAC, in consultation with ICAC. Those guidelines would then be tabled in Parliament. (Similar to the Queensland provisions, although those functions are performed by the Parliamentary committee in Queensland. )



## **J – OTHER LEGISLATIVE AMENDMENTS**

92. **Section 112 – The ICAC Act**
93. Section 112(1) authorises the Commission to direct that evidence before it, contents of documents, identify of witnesses, the fact that someone has given or may give evidence, written submissions, and other matters shall not be published.
94. Section 112(1A) requires the Commission to determine before giving such a direction that it is necessary or desirable to do so in the public interest. Section 112(2) makes it an offence for any person to make a publication in contravention of s.112(1).
95. Given the responsibility the Inspectorate has to oversight matters raised in s.57B of the ICAC Act, it is appropriate that the Inspector should be exempt from any prohibition created by s.112(2) or alternatively can seek exemption from the prohibition.
96. This matter was referred by me in the Report I have provided under s.77A collateral to the Gleeson/McClintock Report.
97. The amendment would not compromise, in my view, in any way, matters of confidentiality or secrecy. As I said in my Report of June 2015 the South Australian legislation expressly provides that there is no obligation to maintain secrecy or other restriction on the disclosure of information ... for the purposes of a complaint (s.50). (see p.13 of my earlier Report).
98. **Notices to Produce (Section 22)**
99. A notice issued under s.22, or purportedly so, played a prominent part in the Operation Hale. The Parliamentary Committee and I take it the DPC has the legal opinion obtained by me for the purposes of the preparation of the Hale Report. I do not propose to rehearse the matters in that opinion. I think it vital that consideration be given to the terms of s.22 of the ICAC Act relating to Notices to Produce both in terms of the time and place for production and whether or not there should be a requirement that such a notice should identify by reference to either a name, an operation, or a short statement of facts for the information of the recipient of the notices as a matter of fairness of some indication of the purpose the exercise constituted by the service of a notice to produce. There is an interesting analysis of questions of balance by Sperling J in *Morgan v The ICAC* (unreported) NSWSC 31 October 1995.

100. In *Morgan v the ICAC* – unreported NSWSC 31<sup>st</sup> October 1995

Justice Sperling noted (at p.16) that in respect of a number of past cases (*decided by other Judges*) involving ICAC or the Royal Commission considerations by Courts were noted such as that these bodies “*Investigate allegations rather than try them, that proceedings before such a Commission are therefore not a trial in the usual sense and are not adversarial.*”

His Honour disagreed with the view expressed by other Judges and observed:

*“To say that the Commission investigates allegations of corruption is not a complete statement of its functions. It is also to be observed that the Commission takes evidence and evaluates that evidence for the purpose of deciding whether it should make a finding of corruption. Such a finding may be extremely damaging to reputations and indirectly to financial interests.”*

*As in the case of the criminal law, a balance has to be struck. From the standpoint of an ‘affected person’, an inquiry by the Commission is analogous to a criminal trial because the outcome may be a finding no less damaging than conviction for many criminal offences.”* (emphasis added)

His Honour went on to note how in the criminal law the balance of interest is struck by a body of legal principle coming from both the statutory and the common law. His Honour contrasted those legal principles against the loss of privileges in respect of the Commission such as the abolition of the right to silence, such as the loss of privilege against self-incrimination, such as the absence of any need for the Investigator to disclose his hand and so on.

101. I recommend the following:-

That a notice under s.22 of the ICAC Act should only be granted by:

- 1) by a Commissioner or Assistant Commissioner in circumstances where a particular investigation is nominated; for example: “Operation Smithsonian”;
- 2) in circumstances where the nominated document or thing might reasonably be regarded as to leading to a chain of inquiry that might advance the nominated inquiry;
- 3) where a party upon whom the s.22 Notice to Attend and Produce is served be provided with a reasonable time to respond to the requirements as set out in the Notice;
- 4) That a reasonable time also includes a sufficient time for the party upon whom the Notice to Attend and Produce is served to obtain relevant legal advice and initiate setting aside procedures.

102. I further recommend that a new s.22A be introduced into the ICAC Act providing that if a document or thing has been produced to the Commission pursuant to a s.22 Notice to Attend and Produce:

- 1) Where documents or things are produced to ICAC the person nominated to produce the documents should be given a receipt identifying each of the documents or things produced.
- 2) The Commission may retain the document or other thing if and for so long as its retention by the Commission is reasonably necessary for the purposes of the investigation nominated in the Notice to Produce;
- 3) If retention of the document or other thing by the Commission is not or ceases to be reasonably necessary for such purposes, the Commission shall cause it to be delivered to:
  - a) The person who appears to the Commission to be entitled to possession of the document or other thing, or
  - b) The Attorney General or Director of Public Prosecutions with a recommendation as to what action should be taken in relation to the document or other thing; provided that any such delivery must be notified to the person who appears to the Commission to have been otherwise entitled to possession of the document or thing before or at the time of any such delivery.

#### **K – GENERAL ISSUES**

103. The circumstances of this Report are such that I should not be required to revisit fundamental philosophical and jurisprudential issues in relation to the structure of the ICAC. It is inquisitorial to a very great extent and as I have remarked elsewhere that process is alien not only to members of the profession generally but to members of the public to whom the adversarial system more likely than not is of some familiarity.

104. In the first Annual Report for the ICAC in October 1989 at pp 6-7 the then first Commissioner a Mr Temby QC said:

*“In conclusion the purpose of any investigation is to discover the truth. That differs from what happens in the courts of law. There justice is dispensed according to law. The courts decide on the basis of evidence which the parties choose to place before them. Judges are not charged with the responsibility of ascertaining exactly what did happen: that is simply not their function. Once the Commission decides to investigate a matter, that is what we must do. As a matter of duty the task of ascertaining the true facts must be carried through to the point where nothing significant remains to be explored. Often at the outset we know only a certain amount – enough to warrant use of our statutory powers. We cannot say where the evidence will lead us. That is dictated by the evidence – the objective facts and circumstances as they are discovered. If that leads us into areas where we are unwelcome, then we must press on despite indirect threats at best and fulminations at worst. Corrupt practices tend to exist in dark*

*corners. It must be expected that perpetrators will not appreciate the light of exposure being cast upon them.*

105. I would add the following clarification: that in the adversarial system it is the parties that nominate the matters at issue between them and thereby require the judge to make findings of fact constrained by the defined issues and apply the appropriate law. These inquisitorial aspects however have been well settled as identifying the structure of the ICAC. Additionally, of course, a matter that the ICAC stresses is that public hearings are but part of a continuing process of the investigation. Public hearings, it is argued, may lead to people coming forward or information otherwise being provided that the private inquiries fail to disclose and would lead to the better definition of the ambit of a particular inquiry being conducted by the ICAC.
106. For myself I cannot see any “middle ground”. I do see, and have referred it to, areas of practical reform to make the inquisitorial system fairer in fact without derogating from any utility in coming to the truth on the basis that that procedure provides the Commission with a rationally based body of information on which to make any findings or to indeed decline to do so.
107. These present features of the structure and function of the ICAC have given rise to difficulties, practicably and conceptually, in the areas of “merits review” and circumstances where a person referred to the DPP is ultimately acquitted. At present there are expressions of concern as to when or whether there will be finality (or closure) for a person branded as “corrupt” yet acquitted of criminality. (See however recommendation 15 as to an “exoneration protocol” which is discussed at paragraph 51).
108. The question of merits review has been considered in the past by Mr McClintock especially in his Report of 2005 at p.136. The reality still is that there is no “appeal” in the general understood meaning of that word from a finding of “serious corrupt conduct”.
109. I add that the areas referred to above have recently and thoroughly been considered by the Independent Panel established in 2015 and whilst there is nothing I can usefully add to what was said in either. It will be a matter for the recipient of this Report to decide whether or not yet again to have these matters revisited and reconsidered.
110. It is interesting however in this context to refer back to Operations Dewar and Cavill above (p.11).

111. **The vocabulary of corruption**

112. Paragraph 2A of the principal Act provides in subs.(a)(i) as a principal object of the Act to be carried out by the ICAC as an independent and accountable body “to investigate expose and prevent corruption involving or affecting public authorities and public officials.”

113. Nowhere in the Statute does the word “minimise” appear. It has become however a word used with frequency in the vocabulary of corruption fighting and the promotion of integrity. In 1992 the Commission’s Annual Report p.(viii) referred to “minimising corruption and opportunities for it”.

114. Within the ICAC Code of Conduct dated May 2015 in her introduction the Commissioner refers to “in investigating and working to minimise corrupt conduct ...”. The word has never appeared in s.13 of the Act relating to the principal functions which are directed more to a concept of the reduction of the likelihood of the occurrence of corrupt conduct.

115. It is unfortunate that the word “minimise” has crept into the vocabulary as it of course inevitably contains an admission that there exists corruption and if it cannot be investigated, exposed and prevented then the best that can be hoped for in relation to public authorities and public officials is that it be “kept to a minimum”. This does not speak well for the State of New South Wales in my respectful view. It is probably too late now. The word has been around since the beginning though never within the Statute so far as I am aware.

116. It is my view that it should no longer be used.

117. **Staffing of the ICAC**

118. In the Annual Report of the ICAC of 1989 Mr Temby QC the first Commissioner (in addition I must add to using the phrase “minimise official corruption”) stated the following and in my view very important principal.

*“However the Commission believes that successful outcomes will not be maintained without the vitality which will flow from infusions of new talent from time to time, and accordingly a degree of staff turnover should be sought. To put much the same proposition in another way, individuals can grow stale with the passage of time, and it is best if they move on before that happens. The ICAC must not be allowed to become just another reasonably successful agency.”*

119. Schedule 1 to the ICAC Act contains provisions relating to Commissioners and Assistant Commissioners. The Commissioner's term is limited to a period of five years and an Assistant Commissioner is able to hold that Office for nine years.
120. By reason of what the Solicitor for the Commission describes as an "administrative creation" during the period Ms Moss was Commissioner, the Office of "Deputy Commissioner" was established. There is no reference in the legislation to such an Office and the Deputy Commissioner has acted as an Assistant Commissioner and as such has been entitled to hold Office for nine years. This was brought about by the enactment of a general piece of legislation in 2012, *Statute Law (Miscellaneous Provisions) Act (No. 2) 2012 No. 95*.
121. The appointment of such an important and no doubt necessary officer to be described as a "Deputy Commissioner", that is a person to whom one is to assume the Commissioner can "depute" matters should be the matter of statutory provision in the ICAC Act itself rather than be in existence as a result of an administrative creation years ago.
122. The principle enunciated by Mr Temby is one that should not be overlooked and there should be a level of fluidity and vitality in the staffing of such powerful bodies as the ICAC the more so when the legislature has limited to but five years the term of the Commissioner.
123. Consideration should be given to this and no doubt the ICAC may contribute to any deliberation.
124. As to the relationship between the Commission and the Parliament this became contentious during 2015 and the Committee has had the benefit of an opinion as I understand it from the Solicitor-General. I have not seen that opinion. Section 64 is to my mind tolerably clear in its terms and I have never found myself confronted by it as a barrier to providing candid and relevant information to the Parliamentary Committee.
125. As to the relationship between the Inspector and the Commissioner evidence has been given as to the existence of a Memorandum of Understanding and steps recently have been taken to try to put in place a regime which provides for the Inspector to be informed of all matters being dealt with by the Commission. Such a regime is in place as between the Inspector and the Police Integrity Commission.

126. It is my view that the relationship between the Office of Inspector and the ICAC will operate with greater harmony in the following circumstances. That the Inspector be informed first, of those matters which the Commission declines to investigate and the reasons for so doing, and, secondly, and more importantly the Inspector be informed of *all matters* actively the subject of consideration for investigation or under investigation, the operational name, and the progress thereof. Such a course will not interfere in any way with the secret and sensitive operational aspects of the Commission's functions. There is no basis for presuming that any operational aspect of the Commission's investigations will be compromised by the mere fact that the Inspector knows of them from the beginning, as it were.

A handwritten signature in black ink, appearing to read 'David Levine', written in a cursive style.

The Hon. David Levine AO RFD QC

Inspector: ICAC

12 May 2016

## APPENDIX

### **Past ICAC Investigations: January 2006 to date**

#### **1.Operation Hunter** (February 2006)

This investigation concerned allegations that Faraj Harb, an officer of the Local Court Registry at Penrith, sought money from defendants in proceedings before the Court and others in return for assistance in relation to those proceedings.

#### **2.Operation Derwent** (April 2006)

Investigation into the allegation that confidential information in a draft Cabinet minute, prepared by the Roads and Traffic Authority, was provided to a motorway consortium by a contractor employed by the Sydney Harbour Foreshore Authority.

#### **3.Operation Inca** (June 2006)

Investigation into the conduct of Correctional Services officers in relation to the alleged cover-up of an assault of an inmate at Parramatta Correctional Centre.

#### **4.Operation Odin** (August 2006)

Investigation into allegation that a Burwood Council Mayor and former Mayor, were bribed to approve development applications.

#### **5.Operation Cadmus**(September 2006)

Investigation into allegations that a Department of Corrective Services employee and others engaged in corrupt conduct in relation to the case management of community service orders (“CSOs”), namely submitting false information as to times worked in CSO timesheets.

#### **6.Operation Aztec** (October 2006)

Investigation into the conduct of a former employee of Home Purchase Assistance Authority (“HPAA”) and 2 real estate agents and others in relation to the sale of surplus properties by the HPAA and the Dept of Housing. Public official involved made a personal net profit totalling about \$74,000. Houses were sold for under market value for the benefit of purchasers and others and without authority of HPAA.

#### **7.Operation Quilla** (December 2006)

Investigation of allegations that a Roads and Traffic Authority (“RTA”) employee and a contractor defrauded the RTA in relation to payments for provision of traffic “tidal flow” services and RailCorp in relation to payments for traffic management services during rail shutdowns. The total amount defrauded amounted to about \$563,000.



**8.Operation Bligh** (March 2007)

Investigation and systems review of corruption risks for Department of Education and Training and NSW Board of Studies associated with HSC take-home assessment tasks. Focus was on the provision of tutoring services by a private tutoring business.

**9.Operation Persis** (June 2007)

This investigation concerned allegations that a RailCorp employee received corrupt rewards from contractors in return for awarding RailCorp air-conditioning maintenance to the contractors.

**10.Operation Pelion** (August 2007)

This investigation concerned allegations that a compliance officer at Parramatta City Council received corrupt rewards in connection with the exercise of his official functions.

**11.Operation Sirona** (September 2007)

This investigation concerned allegations that a Roads and Traffic Authority officer and others engaged in corrupt conduct in relation to issuing drivers licenses.

**12.Operation Torrens** (November 2007)

This investigation concerned the alleged corrupt manipulation of contract procurement by a former Bankstown and Strathfield Council officer and a contractor, in particular the forging of false quotes and creation of dummy quotes.

**13.Operation Berna** (December 2007)

This investigation concerned the allegation that a property developer attempted to bribe a Wollongong City Council Manager by offering him \$30,000 to favourably treat a proposal to purchase and develop a Council car park. Also an allegation that the Council Manager attempted to solicit a bribe from the developer.

**14.Operation Greenway** (January 2008)

This was an investigation concerning the allegation that a Department of Housing officer was in a scheme with 2 tenants to corruptly solicit and receive cash payments from prospective tenants to fast-track their applications.

**15.Operation Monto** (August, September, November and December 2008)

This investigation involved allegations that RailCorp employees and contracted acted fraudulently and/or engaged in bribery in relation to the procurement of goods and services. There were 8 reports in total arising from this investigation.

**16.Operation Atlas** (March, May and October 2008)

This investigation involved allegations that former and current official of Wollongong City Council and developers engaged in corrupt conduct in relation to the assessment of development applications and a range of other matters. The Report was published in 3 parts.

**17.Operation Mirna** (December 2008)

This investigation concerned allegations that project managers and others engaged in corrupt conduct in relation to the awarding and management of NSW Fire Brigades capital works and maintenance projects.

**18.Operation Bellin** (February 2009)

This investigation concerned allegations that 2 people paid money to a Westmead public school teacher to help ensure entry into a selective high school for their child.

**19.Operation Capella** (February 2009)

This investigation involved the allegation that 2 people engaged in corrupt conduct by giving corrupt benefits to a Ku-ring-gai Council officer, who was involved in assessing planning applications re a subdivision and development of a property owned by a company associated with the 2 people.

**20.Operation Bauer** (June 2009)

This investigation concerned allegations that 2 business owners offered cash payments to 2 Warringah Council employees in order to facilitate council building inspection approval of their business premises.

**21.Operation Tambo** (September 2009)

ICAC investigated whether an officer of TransGrid showed corrupt favour to another person and his company in return for the provision of benefits and whether persons working for that company defrauded TransGrid in the process of tendering for and performing contractual work for TransGrid, which was worth over \$7million.

**22.Operation Chaucer** (September 2009)

ICAC investigated allegations that a former RailCorp employee and his associates engaged in corrupt conduct by attempting to solicit \$200,000 over 4 years in return for awarding a RailCorp security guard an auditing services contract.

**23.Operation Argyle** (November 2009)

ICAC investigated allegations that a former Sydney Ferries Corporation Chief Executive Officer engaged in corrupt conduct by misusing the Corporation's corporate credit card for his personal benefit in the amount of over \$237,000 in a period of about 2 ½ years.

**24.Operation Columba** (December 2009)

ICAC investigated allegations that persons from various registered training organisations engaged in corrupt conduct and conduct liable to allow, encourage or cause the occurrence of corrupt conduct in relation to the delivery of training, the conduct of assessments and the issue of certificates connected with approved security industry training courses.

**25.Operation Segomo** (March 2010)

ICAC investigated allegations that a barrister with a number of other persons engaged in corrupt conduct by providing false information to judicial officers, conspiring to deliberately inflate legal costs in a costs claim lodged with the Attorney-General's Department and representing to his clients and others that in return for payment to public officials in the justice system, those public officials would act favourably in their interests.

**26.Operation Calpurnia** (March 2010)

ICAC investigated allegations of corrupt conduct arising from an audio recording by Michael McGurk re corrupt conduct by senior public officials in relation to a proposed development and a rezoning.

**27.Operation Centurion** (May 2010)

ICAC investigated whether a person engaged in corrupt conduct by giving a benefit to a Strathfield Council employee as an inducement for facilitating negotiations for a licence agreement for a Council property.

**28.Operation Coral** (June 2010)

ICAC investigated allegations of corruption involving a former Housing NSW officer and his associate. This includes a failure to disclose an interest in Dept of Housing contracts awarded to companies in which he and his associated had an interest and from which they benefitted financially.

**29.Operation Corsair** (June 2010)

ICAC investigated allegations that a teacher employed by the NSW Department of Education and Training and others engaged in corrupt conduct by misusing TAFE resources for their personal gain.

**30. Operation Corinth** (July 2010)

ICAC investigated allegations that a member of NSW Parliament and members of her electorate office staff falsely claimed payments from Parliament with respect to Sitting Day Relief entitlement and Electorate Mailout Account. The amount involved was around \$7,600.

**31.Operation Cicero** (July 2010)

ICAC investigated whether a Corrective Services Officer and others supplied contraband to inmates of John Morony Correctional Centre.

**32.Operation Avoca** (August 2010)

ICAC investigated whether a person engaged in corrupt conduct by offering a payment to secure employment at Woollahra Municipal Council.

**33.Operation Vargas** (September 2010)

ICAC investigated allegations that a Manager Legal Branch of the Maritime Authority and other officers misused resources of the authority for Manager's personal benefit.

**34.Operation Kanda** (September 2010)

ICAC investigated conduct of a Site Manager, Campus Infrastructure Services, University of Sydney, in failing to disclose conflict of interest re allocation of cleaning contracts to a company jointly owned by her and her husband.

**35.Operation Halifax** (November 2010)

ICAC conducted an investigation into the lobbying of public officials and public authorities in NSW and the related procedures and regulatory system.

**36.Operation Syracuse** (December 2010)

ICAC conducted an investigation into whether an MP and members of her electorate office staff falsely claimed payments from NSW Parliament with respect to Sitting Day Relief entitlement.

**37.Operation Challenger** (December 2010)

ICAC investigated an allegation that a Manager of City Services at Canada Bay City Council accepted payments from contractors engaged to conduct work on behalf of the Council in return for showing favour to those contractors in the course of his work with the Council.

**38.Operation Siren** (March 2011)

ICAC investigated whether various Sydney Water Corporation (“SWC”) inspectors sought corrupt payments or rewards from contractors in relation to the performance of their duties. ICAC also investigated whether a SWC Property Asset Manager engaged in corrupt conduct in dealings with another person and associated companies.

**39.Operation Magnus** (April 2011)

ICAC investigated whether a former General Manager of Burwood Council, and other Council officers, engaged in corrupt conduct in the course of their administration of staff and use of resources at the Council.

**40.Operation Danby** (May 2011)

ICAC investigated an allegation that a Strathfield Council’s Community Services Manager solicited a payment of \$10,000 from another person for his own benefit.

**41.Operation Churchill** (June 2011)

ICAC investigated allegations that a Willoughby City Council employee corruptly exercised his official functions in favour of various business owners within the Council area in return for financial and other benefits.

**42.Operation Charity** (August 2011)

ICAC investigated allegations that persons fraudulently obtained money from the funds of the Royal Hospital for Women and Royal North Shore Hospital by submitting false requisitions and invoices from companies in which they were a shareholder and for which no services were provided.

**43.Operation Carina** (November 2011)

ICAC investigated allegations that an employee of a company which was providing valuation services to the Valuer General of the Land and Property Management Authority (“LPMA”) engaged in corrupt conduct in relation to the misuse of the authority’s Spatial Information Exchange computer database.

**44.Operation Napier** (December 2011)

ICAC investigated allegations that a LPMA chief executive officer committed the NSW Government to the purchase of property at Currawong, Pittwater, knowing that he did not have the requisite authority to do so and that the then Minister of Lands sought to authorise the purchase, knowing that he did not have the authority to do so.

**45.Operation Vesta** (December 2011)

ICAC investigated allegations that a Sydney Harbour Foreshore Authority (“SHFA”) officer acted in conflict with his official duties when dealing with a particular person and members of his family in relation to properties which were owned by the SHFA and were leased by that person’s business at a time when the officer was or anticipated being involved with the person and his family in private business.

**46.Operation Barcoo** (January 2012)

ICAC investigated an allegation that a Project Manager with the Department of Education and Training (“DET”) engaged in corrupt conduct by improperly causing officers of the DET to appoint persons employed by or connected with a company operated by that officer, in order to benefit financially from those appointments.

**47.Operation Barrow** (June 2012)

ICAC investigated an allegation that an Auburn City Councillor accepted a cash payment from a property developer to secure his assistance to expedite approval for a development application she had lodged for a restaurant/karaoke bar.

**48.Operation Crusader** (August 2012)

ICAC investigated allegations that a Campus Services Manager at the University of New England (“UNE”) corruptly solicited and received benefits for himself and others in return for improperly favouring 3 companies in the awarding of UNE contracts and for approving payment of false invoices submitted by those companies. ICAC also investigated the allegation that that Manager corruptly arranged for the payment for the hire of UNE sports facilities for the use of New England Rugby Union by providing false and misleading information to other UNE employees.

**49.Operation Petrie** (September 2012)

ICAC investigated allegations that a former chairperson and a former co-ordinator of the Wagonga Local Aboriginal Land Council (“WLALC”) received corrupt benefits from a person in return for facilitating negotiations between the WLALC and that person and associated companies.

**50.Operation Citrus** (October 2012)

ICAC investigated allegations that a University of Sydney IT Manager engaged in corrupt conduct by using a business that employed his wife and later operated through a company in which he and his wife had a financial interest, to recruit contractors and staff for the university, without disclosing his financial interest in the business.

**51.Operation Jarek** (October 2012)

ICAC investigated allegations that staff from a number of local councils and other authorities engaged in corrupt conduct by accepting gift vouchers and other gifts from suppliers as an inducement to continue placing orders with their companies or as a reward for placing orders with the companies. ICAC also investigated allegations that staff from 2 local councils engaged in corrupt conduct in relation to false invoices to those 2 councils.

**52.Operation Drake** (January 2013)

ICAC investigated allegations that a Corrective Services activities officer working at Long Bay Correctional Complex Metropolitan Special Programs Centre, trafficked mobile phones and accessories, sports shoes, steroids and other contraband into the complex over 3 years in return for corrupt payments from inmates, their family members or their associates.

**53.Operation Stark** (March 2013)

ICAC investigated allegations that a former University of Technology (“UTS”) employee engaged in corrupt conduct in his dealing with UTS contractors including by soliciting and accepting money or other benefits from contractors in exchange for allocating them work, or using his position to influence the allocation of UTS work to them.

**54.Operation Jarilo** (July 2013)

ICAC investigated allegations that Lucky Gattellari and Ron Medich offered rewards and inducements to the former NSW Minister for Energy to arrange meetings with state energy executives.

**55.Operation Indus** (July 2013)

ICAC investigated the circumstances in which Moses Obeid provided the Hon Eric Roozendahl MLC with a motor vehicle in 2007.

**56.Operation Acacia** (August 2013)

ICAC investigated the circumstances surrounding the issue of an invitation to Doyles Creek Pty Limited to apply for, and allocation of, an exploration license.

**57.Operation Jasper** (September 2013)

ICAC investigated the circumstances surrounding a decision made in 2008 by the the then Minister for Primary Industries and Minister for Mineral Resources, the Hon Ian Macdonald MLC, to open a mining ares in the Bylong Valley for coal exploration, including whether the decision was influenced by the Hon Edward Obeid MLC.

**58.Operation Tilga** (September 2013)

ICAC investigated allegations concerning the process relating to the supply of security services to several NSW public authorities.

**59.Operation Torino** (September 2013)

ICAC investigated allegations concerning the possession and supply of steroids and other matters involving a Corrective Services NSW Officer.

**60.Operation Nickel** (January 2014)

ICAC investigated allegations that a former heavy vehicle competency-based assessor acting on behalf of Roads and Maritime Services solicited benefits ( cash payments) from applicants for heavy vehicle licenses, and conducted fraudulent heavy vehicle assessments.

**61.Operation Dewar** (May 2014)

ICAC investigated allegations that the then NSW State Emergency Services (“SES”) Commissioner, Murray Kear, took detrimental action against a Deputy Commissioner in reprisal for making allegations to him that another SES Deputy Commissioner had engaged in corrupt conduct and that he showed favour to that Deputy Commissioner. There were also allegations that the SES Commissioner made false statements to ICAC.

**62.Operation Cavill** (June 2013)

ICAC investigated allegations of corrupt conduct by a former Mayor of Ryde Local Council and other Councillors, including misconduct in public office and blackmail.

**63.Operation Cyrus** (June 2014)

ICAC investigated the conduct of Edward Obeid and others in relation to Circular Quay retail lease policies.

**64.Operations Cabot and Meeka** (June 2014)

ICAC investigated the conduct of Edward Obeid and others in relation to influencing the granting of water licenses and the engagement of Direct Health Solutions Pty Limited.

**65.Operation Verdi** (July 2014)

ICAC investigated allegations that a former Chancellor of the University of New England provided confidential and/or sensitive information, that he acquired in the course of his official functions in connection with the sale of the University-owned Tattersalls Hotel, to his business associate, or otherwise made use of the information, for the benefit of himself and another.

**66.Operation Spector** (October 2014)

ICAC investigated allegations that a former RailCorp Manager corruptly solicited and received about \$1.6million from various RailCorp subcontractors and employees and that his sister, an employee of Housing NSW, corruptly solicited and received funds in the amount of about \$180,000 from other Housing NSW employees.

**67.Operation Credo** (Awaiting publication of Report)

ICAC investigated allegations that persons with an interest in Australian Water Holdings Pty Limited (“AWH”) obtained a financial benefit thorough adversely affecting the official functions of Sydney Water corporation and also whether public officials and others were involved in the falsification of a Cabinet Minute relating to a public/private partnership proposal made by AWH intended to mislead the NSW Government Budget Cabinet Committee and to obtain a benefit for AWH.

**68.Operation Spicer** (Awaiting publication of Report)

ICAC investigated allegations that certain members of Parliament and others corruptly solicited, received and concealed payments from various sources in return for certain members of parliament and others favouring the interests of those responsible for the payments. It is also alleged that certain members of Parliament and others solicited and failed to disclose political donations from companies, including prohibited donors, contrary to the *Election Funding, Expenditure and Disclosures Act 1981*.

**69.Operation Yaralla** (October 2014)

This was a referral to ICAC from Parliament and involved allegations about consultants with whom Sydney Local Health District had commercial dealings relating to Yaralla Estate matters. Concerns were that there were relationships between the consultant companies and members of the Liberal Party which may have led to corrupt conduct.

**70.Operation Jarah** (June 2015)

ICAC investigated allegations that former Ausgrid engineer solicited and received benefits totalling about \$252,651 from Ausgrid contractors and subcontractors in exchange for partially exercising his public official functions and that he also disclosed confidential information acquired in the course of his official functions.

**71.Operation Misto** (June 2015)

ICAC investigated allegations that a former IT Manager issued false invoices totalling \$146,165 over a period of 8 years to 3 separate universities (Sydney, Newcastle and Macquarie) whilst working at those universities.

**72.Operation Vika** (December 2015)

ICAC investigated allegations concerning corrupt payments related to the supply of catering and other products to the NSW Rural Fire Service (“RFS”).

**73.Operation Sonet** (March 2016)

ICAC investigated corruption allegations that an Acting Information and Communication Technology (ICT) Manager dishonestly obtained over \$1.7 million from the Department of Education and Communities TAFE South Western Sydney Institute.



**74.Operation Tunic** (March 2016)

The ICAC investigated allegations that a former Mine Subsidence Board (MSB) Picton office district manager received, or may have received, corrupt payments or other benefits as an inducement or reward for showing favourable treatment to 2 building contractors. ICAC also investigated allegations that the district manager revealed confidential MSB tender information to a company, and breached MSB financial delegations, policies and/or procedures relating to the awarding of contracts and the making of payments to that company.

**75.Operation Yancey** (Awaiting publication of Report)

ICAC investigated corruption allegations concerning the abuse of procurement processes by a Department of Justice Asset Management Branch deputy director capital works, in the awarding of contracts to refurbish NSW courthouses in 2013.

**76.Operation Elgar** (May 2016)

ICAC investigated allegations concerning a public official employed as the Head of Projects, ICT, at the University of Sydney that he corruptly exercised his official functions for the benefit of IT consulting service Canberra Solutions Pty Ltd. He also allegedly acted partially and dishonestly by engaging certain ICT contractors through Canberra Solutions, although this company was not a NSW Government-accredited C100 company as required under the university's directions for the recruitment of ICT contractors.

**77. Operation Ricco** (Current investigation)

The ICAC is investigating allegations that former City of Botany Bay Council chief financial officer Gary Goodman, and other Council employees, dishonestly exercised official functions to obtain financial benefits for themselves and others by causing fraudulent payments of more than \$4.2 million to be made by the Council through false invoicing to either themselves, or various entities. The ICAC is also investigating allegations that Mr Goodman solicited and received payments as an inducement or reward for showing favourable treatment to contractors. It is also alleged that Mr Goodman and other Council employees dishonestly exercised official functions to obtain financial benefits for themselves and others by using Council resources.

