



**Report of an Audit into the Exercise by the  
Independent Commission Against Corruption  
of its Powers under  
Sections 21, 22, 23, & 35  
of the Independent Commission  
Against Corruption Act 1988**

**April 2013**

**by  
The Inspector of the  
Independent Commission Against Corruption**



**Report of an Audit into the Exercise by the  
Independent Commission Against Corruption  
of its Powers under  
Sections 21, 22, 23, & 35  
of the Independent Commission  
Against Corruption Act 1988**

**April 2013**

**by  
The Inspector of the  
Independent Commission Against Corruption**



**Contents**

- THE PURPOSE OF THE AUDIT ..... 1
- 1 THE INSPECTOR’S AUDIT FUNCTION..... 4
- 2 THE AMBIT OF THE AUDIT ..... 5
- 3 THE RELEVANT SECTIONS OF THE ICAC ACT..... 8
  - 21 Power to obtain information..... 8
  - 22 Power to obtain documents etc ..... 8
  - 24 Privilege as regards information, documents etc ..... 9
  - 26 Self-incrimination ..... 9
  - 30 Compulsory Examinations..... 10
  - 35 Power to summon witnesses and take evidence ..... 10
  - 37 Privilege as regards answers, documents etc ..... 12
  - 38 Declaration as to objections by witness ..... 13
  - 82 Offences relating to obtaining information ..... 13
  - 83 Offences relating to obtaining documents etc..... 14
  - 86 Failure to attend etc..... 14
  - 87 False and misleading evidence..... 15
- 4 ICAC’S SYSTEMS TO CONTROL AND REGULATE THE APPLICATION FOR AND USE OF NOTICES UNDER SECTIONS 21 AND 22 AND SUMMONSES UNDER SECTION 35 OF THE ICAC ACT..... 16
- 5 ANALYSIS OF THE USE OF THE POWERS ..... 21
  - 1. Notices under section 21 ..... 21
  - 2. Notices under section 21 and 22..... 22
  - 3. Notices under section 22 ..... 23
  - 4. Summonses under section 35 ..... 25
    - E09/0195/4/1 to 4 ..... 26
    - E09/0350/4/5 to 32 ..... 29
    - E11/0534/4/1 to 11 ..... 30
    - E11/0543/4/12 to 14 ..... 32
    - E11/0543/4/15..... 33
- 6 CONCLUSION ..... 36



## THE PURPOSE OF THE AUDIT

In order to carry out its statutory obligation to investigate allegations of serious and systemic corrupt conduct, the Independent Commission Against Corruption (the ICAC or the Commission) is vested with compulsory powers to seek and obtain information under sections 21, 22, 23 and 35 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act). It is the ICAC's use of these powers which is the subject of this audit.

Section 21 empowers the Commission, for the purposes of an investigation, by notice in writing served on a public authority or public official to require the authority or official to produce a statement of information.

Section 22 empowers the Commission, for the purposes of an investigation, by notice in writing served on a person (whether or not a public authority or public official) to require the person:

- (a) to attend, at a time and place specified in the notice, before a person (being the Commissioner, an Assistant Commissioner or any other officer of the Commission) specified in the notice, and
- (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

Section 23 provides that, for the purposes of an investigation, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time enter and inspect any premises occupied or used by a public authority or public official in that capacity, and inspect any document or other thing in or on the premises, and take copies of any document in or on the premises.

Section 35 authorises the Commissioner to summon a person to appear before the Commission at a Compulsory Examination or Public Inquiry at a time and place

named in the summons to give evidence, or to produce such documents or other things (if any) as are referred to in the summons, or both.

The use of these powers can impinge upon the civil rights of those persons affected. For example, a notice under section 22 to a person requiring information about another person can have a detrimental effect on the reputation of that other person, at least in the eyes of the recipient of that notice. The obligation to attend a Compulsory Examination under section 35 requires that person to give evidence on oath or affirmation, to answer self-incriminatory questions and limits her/his right to reveal the fact that she/he is under such an obligation.

However, there are circumstances in which the exercise of the compulsory powers by the ICAC provides evidence which enables the ICAC to stop past corrupt conduct, prevent future corrupt conduct and aids the prosecution of a person or persons involved in corrupt conduct.

The purpose of this audit is to examine a sample of cases in which the ICAC has used these powers:

- 1) to determine whether it has obeyed the terms of the legislation.
- 2) to examine the systems instituted and maintained by the ICAC to ensure that such use is limited to those circumstances where it is lawful and appropriate for the conduct of its statutory functions.
- 3) to determine whether such use has in fact been appropriate and effective to the conduct of its statutory functions.

This audit report will cover the following:

- 1) The Inspector's audit function
- 2) The ambit of the audit
- 3) The relevant provisions of the ICAC Act



- 4) ICAC's systems to control and regulate the application for and use of notices under sections 21 and 22 and summonses under section 35 of the ICAC Act
- 5) Analysis of the ICAC's exercise of the powers
- 6) Conclusions.

# 1 THE INSPECTOR'S AUDIT FUNCTION

Section 57B(1)(a) of the *Independent Commission Against Corruption Act 1988* (the ICAC Act or the Act) authorises the Inspector of the Independent Commission Against Corruption (the Inspector) to audit the operations of the ICAC for the purpose of monitoring compliance with the law of the State.

The Inspector's audit role must be read in the context of the Inspector's other functions prescribed under section 57B of the ICAC Act, namely sections 57B(1)(c) and (d).

Section 57B(1)(c) of the ICAC Act authorises the Inspector to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission.

Section 57B(1)(d) of the ICAC Act authorises the Inspector to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality and propriety of its activities.

Section 57B(2) states that the functions of the Inspector may be exercised on the Inspector's own initiative.

## 2 THE AMBIT OF THE AUDIT

By letter dated 15 January 2013 the Inspector wrote to the Commissioner in the following terms, omitting formal parts:

Pursuant to section 57B(1)(a) and (d) of the *Independent Commission Against Corruption Act 1988* (the Act), I propose to audit and assess the effectiveness and appropriateness of the procedures of the Commission in relation to the exercise of certain of its powers of compulsion (as enumerated below) during the period 1 September 2011 to 29 February 2012.

The proposed audit and assessment will examine the exercise of the Commission's powers:

- under s. 21 of the Act to require production of a statement of information;
- under s. 22 of the Act to require a person to attend and produce a document or other thing;
- under s. 23 of the Act to enter and inspect premises occupied or used by a public authority or public official in that capacity;
- under s. 35 of the Act to summon a person to appear before the Commission to give evidence at a Compulsory Examination. This does not include a Public Inquiry;

during the period 1 September 2011 to 29 February 2012.

In the course of this Audit I will examine:-

- the Commission's compliance with the formal and procedural requirements of these sections;
- the reasons behind the Commission's decisions to exercise these powers;
- the manner in which the Commission exercised these powers; and
- any other matters set out in section 57B of the Act.

For the purposes of this exercise, I would in the first instance like to review the Commission's files and records relating to:

- all notices pursuant to s. 21 and statements of information produced in response during the period 1 September 2011 to 29 February 2012;
- all notices pursuant to s. 22 and a description of the material, if any, produced in response during the period 1 September 2011 to 29 February 2012;

- all authorisations pursuant to s. 23 and a description of the material, if any, produced in response during the period 1 September 2011 to 29 February 2012;
- all summonses pursuant to s. 35 to appear at a Compulsory Examination to give evidence and/or produce documents or other things and a brief summary of what was revealed at that examination during the period 1 September 2010 to 31 March 2011; and
- all Policy and Procedure manuals relating to the exercise of powers under s. 21, 22, 23 and 35 of the Act in force during the period 1 September 2010 to 31 March 2011.

Upon reviewing the materials identified above, I may request further information from the Commission and/or its officers for the purpose of completing my audit and assessment.

I welcome any comments you may have on the proposed ambit of this audit and assessment.

By letter dated 24 January 2013 the Commission advised that during the relevant period, it issued:

- no section 23 notices
- 5 section 21 notices
- 3 combined sections 21/22 notices
- 295 section 22 notices
- 54 section 35 summonses.

At the same time it provided a binder containing copies of the notices together with supporting documentation and the statements produced in response to the section 21 notices. A separate binder containing copies of the 54 section 35 summonses together with supporting documentation was provided as well as copies of the Operations Manual Procedures 2 and 5 which deal with the exercise of powers under sections 21, 22, 23 and 35. Some 10 days later copies of the 295 section 22 notices and supporting documentation were provided.

The Commission advised that of the 54 section 35 summonses six were for the production of documents. One of them was not served. In the other five cases the documents were produced without the need to conduct a compulsory examination.

Compulsory examinations were not conducted in relation to eleven of the section 35 summonses to attend and give evidence.

### **3 THE RELEVANT SECTIONS OF THE ICAC ACT**

The salient powers are summarised earlier under the heading of “The Purpose of the Audit”. The details of the powers are set out in the following sections of the ICAC Act.

#### **21 Power to obtain information**

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information.

(2) A notice under this section must specify or describe the information concerned, must fix a time and date for compliance and must specify the person (being the Commissioner, an Assistant Commissioner or any other officer of the Commission) to whom the production is to be made.

(3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public official and may, but need not, specify the person or class of persons who may so act.

#### **22 Power to obtain documents etc**

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a person (whether or not a public authority or public official), require the person:

(a) to attend, at a time and place specified in the notice, before a person (being the Commissioner, an Assistant Commissioner or any other officer of the Commission) specified in the notice, and

(b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

(2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.

## **24 Privilege as regards information, documents etc**

(1) This section applies where, under section 21 or 22, the Commission requires any person:

- (a) to produce any statement of information, or
- (b) to produce any document or other thing.

(2) The Commission shall set aside the requirement if it appears to the Commission that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commission that the person consents to compliance with the requirement.

(3) The person must however comply with the requirement despite:

- (a) any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or
- (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

## **26 Self-incrimination**

(1) This section applies where, under section 21 or 22, the Commission requires any person:

- (a) to produce any statement of information, or
- (b) to produce any document or other thing.

(2) If the statement, document or other thing tends to incriminate the person and the person objects to production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act).

(3) They may however be used for the purposes of the investigation concerned, despite any such objection.

### **30 Compulsory Examinations**

(1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a Compulsory Examination.

(2) A Compulsory Examination is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.

(3) 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.

(4) A failure to comply with subsection (3) does not invalidate or otherwise affect the Compulsory Examination.

(5) A Compulsory Examination is to be conducted in private.

[Note: Section 17(2) requires the Commission to conduct Compulsory Examinations with as little emphasis on an adversarial approach as possible.]

(6) The Commission 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.

### **35 Power to summon witnesses and take evidence**

(1) The Commissioner may summon a person to appear before the Commission at a Compulsory Examination or Public Inquiry at a time and place named in the summons:

(a) to give evidence, or

(b) to produce such documents or other things (if any) as are referred to in the summons,

or both.

(2) The person presiding at a Compulsory Examination or Public Inquiry before the Commission may require a person appearing at the Compulsory Examination or Public Inquiry to produce a document or other thing.



(3) The Commission may, at a Compulsory Examination or Public Inquiry, take evidence on oath or affirmation and for that purpose:

(a) the person presiding at the Compulsory Examination or Public Inquiry may require a person appearing at the Compulsory Examination or Public Inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) the person presiding, or a person authorised for the purpose by the person presiding, may administer an oath or affirmation to a person so appearing at the Compulsory Examination or Public Inquiry.

(4) A witness who has been summoned to attend before the Commission shall appear and report him or herself from day to day unless the witness is excused from attendance or until the witness is released from further attendance by the person presiding at the Compulsory Examination or Public Inquiry.

(4A) The Commissioner may, by notice in writing, excuse a person who has been summoned to appear before the Commission and produce documents or other things from the required appearance on condition that the person (or a person acting on the person's behalf) produces those documents or things in accordance with any directions given by the Commissioner before the time of the required appearance.

(5) A person who, without being so excused or released, fails to appear and report shall be taken to have failed to appear before the Commission in obedience to the summons.

(5A) A person who, after being excused under subsection (4A) from the required appearance, fails to produce the documents or things concerned in accordance with the Commissioner's directions is taken to have failed to appear before the Commission in obedience to the summons.

(6) A Judge or Magistrate may, on the application of the Commissioner, issue any summons that the Commissioner is authorised to issue under this section.

(7) The purpose of subsection (6) is to enable the summons to be given the character of a summons issued by a judicial officer, for the purposes of the *Service*

*and Execution of Process Act 1901* of the Commonwealth and any other relevant law.

### **37 Privilege as regards answers, documents etc**

(1) A witness summoned to attend or appearing before the Commission at a Compulsory Examination or Public Inquiry is not entitled to refuse:

(a) to be sworn or to make an affirmation, or

(b) to answer any question relevant to an investigation put to the witness by the Commissioner or other person presiding at a Compulsory Examination or Public Inquiry, or

(c) to produce any document or other thing in the witness's custody or control which the witness is required by the summons or by the person presiding to produce.

(2) A witness summoned to attend or appearing before the Commission at a Compulsory Examination or Public Inquiry is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.

(3) An answer made, or document or other thing produced, by a witness at a Compulsory Examination or Public Inquiry before the Commission or in accordance with a direction given by the Commissioner under section 35 (4A) is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.

(4) Nothing in this section makes inadmissible:

(a) any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or

(b) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (2), or

(c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

(5) Where:

(a) an Australian legal practitioner or other person is required to answer a question or produce a document or other thing at a Compulsory Examination or Public Inquiry before the Commission or in accordance with a direction given by the Commissioner under section 35 (4A), and

(b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between an Australian legal practitioner (in his or her capacity as an Australian legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a Compulsory Examination or Public Inquiry before the Commission, the Australian legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

### **38 Declaration as to objections by witness**

The Commissioner or person presiding at the Compulsory Examination or Public Inquiry may declare that all or any classes of answers given by a witness or that all or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection by the witness, and there is accordingly no need for the witness to make an objection in respect of each such answer, document or other thing.

### **82 Offences relating to obtaining information**

A person shall not:

(a) without reasonable excuse, fail to comply with a notice served on the person under section 21, or

(b) in purported compliance with a notice served on the person or some other person under that section, knowingly furnish information that is false or misleading in a material particular.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

### **83 Offences relating to obtaining documents etc**

A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under section 22.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

### **86 Failure to attend etc**

(1) A person summoned to attend or appearing before the Commission at a Compulsory Examination or Public Inquiry shall not, without reasonable excuse, fail:

- (a) to attend before the Commission in accordance with the summons, or
- (b) to be sworn or to make an affirmation, or
- (c) to answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the Compulsory Examination or Public Inquiry, or
- (d) to produce any document or other thing in the person's custody or control which the person is required by the summons or by the person presiding to produce.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

(2) It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an investigation.

(3) A person who without reasonable excuse fails to comply with a condition, to which the release of the person under section 36(6) or 100A is subject, is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

## **87 False and misleading evidence**

(1) A person who, at a Compulsory Examination or Public Inquiry conducted by the Commission, gives evidence that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) Sections 331 and 332 of the Crimes Act 1900 apply to proceedings for an offence against this section in the same way as they apply to proceedings for an offence under section 330 of that Act.

## 4 ICAC'S SYSTEMS TO CONTROL AND REGULATE THE APPLICATION FOR AND USE OF NOTICES UNDER SECTIONS 21 AND 22 AND SUMMONSES UNDER SECTION 35 OF THE ICAC ACT

The procedures to be followed in relation to notices under sections 21, 22 and 23 and summonses under section 35 of that Act during the period under review are set out in the ICAC's Operations Manual, Procedure Number 2 approved 2 December 2010.

Under the heading "General Considerations" the manual states:

Issuing of ICAC Act notices and summonses must proceed on the basis of legally sound documentation and the provision of relevant and accurate information. In all cases consideration should be given to whether or not a coercive power need be exercised. These powers should be used with restraint and with an awareness of their effect on the work and lives of individuals and companies who must comply with such notices.

The manual points out that it is a fundamental requirement that the reason for each exercise of a formal power as well as the actual exercise of the power be legally and soundly based and recorded. To ensure this is done, the following mandatory process is prescribed:

- Where the Case Officer seeks the issuing of notice or summons, he/she will raise the task in MOCCA and send a written minute (or email) to the Case/Team Lawyer through the relevant Chief Investigator. The task entered in the ICAC database (MOCCA) will include timeframes for completion. The timeframe will generally be two working days.
- The Case Lawyer will be responsible for the preparation of all notices and summonses using the relevant legal macro.
- The Case Lawyer will submit the relevant documents to the relevant Commissioner or Assistant Commissioner through the Executive Director, Legal, under cover of a minute setting out the justification for the issue of the notice or

summons, identifying any likely contentious issues and, in the case of a summons, addressing the matters set out under point 3 of this Procedure (advising nature of allegations and scope and purpose). In case of urgency, an oral briefing may be provided in lieu of a written minute, however, the Case Lawyer should subsequently prepare a file note as a record of the reasons for issuing the notice on summons.

- All documents should be linked to the relevant task in Trim/MOCCA. Previously the link was to the ICS. Once signed, the notice or summons together with the supporting minutes(s) is to be given to the Property Manager. The Property Manager will register the notice or summons and retain the supporting minute(s) on file with a copy of the notice or summons.

A person required to attend a Compulsory Examination pursuant to section 30 of the ICAC Act is entitled to be informed, before or at the commencement of the examination, of the nature of the allegations or complaint being investigated. In each case in preparing the relevant summons and covering minutes, the Case Lawyer should give consideration and provide advice as to whether the information required should be provided in or with the summons. As a general rule such information should be included unless to do so might prejudice the investigation.

The procedures go on to specify:

- the requirements for service of the notice or summons
- recording the return date
- the custody of documents obtained as a result of the exercise of these powers
- the summoning of members of parliament and of prisoners
- the method of dealing with claims of privilege under sections 24, 26 and 37(5) of the ICAC Act
- interstate service under the *Service and Execution of Process Act 1992 (Cth)*

The Commission's procedure number 5 states that the Commission may conduct a Compulsory Examination for the purpose of its investigations if it is satisfied it is

in the public interest to do so. A Compulsory Examination must be conducted in private. A Public Inquiry is conducted in public but the Commission may determine to hold part of the inquiry in private if it considers it to be in the public interest to do so.

The primary purpose of a Public Inquiry or Compulsory Examination is to assist the investigation process by ascertaining factual evidence of what actually occurred.

They also have a wider purpose in examining how corrupt conduct occurred with a view to identifying any systems weaknesses which may lead to recommendations for change. Such material can be an important part of the Commission's corruption prevention work.

Generally, the decision whether an investigation should proceed to Compulsory Examination will be made by the Commissioner.

Recommendations to conduct a Compulsory Examination can be made through the Strategic Investigation Group (SIG) or by a minute to the Commissioner or Deputy Commissioner from the Case Lawyer submitted through the Executive Director, Legal and after consultation with the relevant investigation team members.

The criteria for determining whether to conduct a Compulsory Examination in preference to a Public Inquiry or whether any part of a Public Inquiry should be conducted in private may include:

- maintaining the integrity of the investigation (it may be prejudicial to the investigation to publicly divulge the fact that the Commission is conducting an investigation, to identify the witnesses or make known the extent of evidence obtained);
- protection of reputation from anticipated but untested or unverified evidence;
- whether information is being sought at a preliminary stage to define the issues for investigation and determining whether further investigative effort is required;
- the need to protect the identity of a witness or an informant;



- the requirements of section 18(2) of the Act which requires that where there are proceedings for an indictable offence conducted by or on behalf of the Crown, in order to ensure that the accused's right to a fair trial is not prejudiced, the Commission must, to the extent it thinks necessary, ensure that, as far as practicable, the investigation is conducted in private during the currency of the proceedings;
- any application made by, or on behalf of, those appearing before the Commission that it is in the public interest for the evidence to be taken in private; and
- whether the hearing involves closing submissions. Section 31(2) of the Act provides that the Commission may decide to hear closing submissions in private.

In determining whether to conduct a Public Inquiry Section 31 of the ICAC Act requires the Commission to consider the following:-

- The benefit of exposing to the public, and making it aware, of corrupt conduct
- The seriousness of the allegation or complaint being investigated
- Any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry)
- Whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

A Hearing Plan (in the approved format) must be prepared by the Case lawyer prior to arranging for a Compulsory Examinations and prior to all public enquiries.

It should identify the instances of alleged corrupt conduct and details of how each witness is relevant to that conduct. It should also identify any contentious issues.

In preparing the Hearing Plan, the Case Lawyer is to consult with the Case Investigator and, if applicable, relevant Chief Investigator and any Corruption Prevention officer assigned to the investigation to ensure that all relevant investigation and corruption prevention issues are covered in the Hearing Plan. Where Counsel Assisting has been engaged he/she should also be consulted.

The plan is to be submitted to the presiding Commissioner through the Executive Director, Legal for approval.

A Hearing Security Report is to be prepared for each Compulsory Examination where any risk is identified by the Case lawyer and updated on a daily basis.

It is the responsibility of the Case Lawyer to provide the presiding Commissioner with a brief of evidence.

As is set out later in this Report, these Procedures constitute an impressive system of controls over the use of the Commission's compulsory powers by requiring the participation of a number of its officers in the approval and preparation process and the need for the facts and reasons supporting the request for the exercise of the power to be clearly documented.

## 5 ANALYSIS OF THE USE OF THE POWERS

To prevent publication of any information which could prejudice ongoing investigations, the description of the facts of each case has been considerably abbreviated.

Each of the notices under section 21, combined section 21/22 and section 22 has been considered. Each was for the purpose of an investigation then being conducted by the Commission. In each matter the Case Officer had sent a written memorandum or minute to the Case/Team Lawyer through the Chief Investigator. The Case Lawyer then submitted the relevant documents to the relevant Commissioner or Assistant Commissioner through the Executive Director, Legal, under cover of a minute setting out the justification for the issue of the notice and, in appropriate cases, identified any likely contentious issues.

The following case studies provide examples of the use of the exercise of the powers under sections 21 and 22.

### 1. Notices under section 21

There were five such notices. A typical example is in file number E11/0534/1/2.

The Commission was investigating allegations that between 2005 and 2010 a named person had provided cash payments and other benefits to members of a Local Aboriginal Land Council in return for the exercise of their official functions favourable to his proposals. The named person had given evidence about his dealings with the Land Council. The purpose of the notice under section 21 as well as further notices under section 22 was to provide information as to whether the payments made to two further named persons were paid in connection with the exercise of their official functions. The Commission's investigators were seeking details relating to the payment of money to assist them in the continued investigation.

The notice is dated 8 February 2012 and was served by e-mail on that day. A detailed reply was received by the ICAC on 16 February 2012.

In its report on its investigation into the conduct of officers of the Wagonga Local Aboriginal Land Council and others published on 27 September 2012 the Commission said:

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 31 notices under section 22 of the ICAC Act (requiring the production of documents) and two notices under section 21 of the ICAC Act (requiring the production of statements of information);
- interviewed and/or obtained statements from a number of witnesses;
- executed two search warrants to obtain information relevant to the investigation;
- conducted 13 compulsory examinations.

The use of the notices contributed to the collection of evidence to support the findings in the Report that five people had engaged in corrupt conduct by making payments and providing other financial benefits in order to facilitate negotiations in relation to a joint venture agreement between the Wagonga LALC and the Medich Group. Statements were made pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution for offences of corruptly receiving benefits contrary to section 249B(1) of the *Crimes Act 1900* (the Crimes Act) and offences of misconduct in public office.

## **2. Notices under section 21 and 22**

An example of the type of information sought appears in the course of the ICAC's investigation of the activities of named senior public officers in relation to the granting of certain benefits. The activities being investigated had occurred between about 2007 and January 2012. On 25 January 2012 the Principal Lawyer through the Executive Director Legal recommended to the Assistant Commissioner the serving of a lengthy section 21/22 notice requiring statements of information and documents held by a public instrumentality in relation to the

persons who were reasonably suspected of having some information relative to the matter being investigated. A notice was issued to the Director General of the relevant department on 25 January 2012. Two schedules of documents were required. By letter dated 14 February 2012 the government instrumentality responded providing portion of the material required and pointing out the difficulties in providing some of the older material and seeking time to comply. More time was granted by the ICAC and the material was duly provided.

### **3. Notices under section 22**

There were 295 such notices all of which have been reviewed. As stated earlier, all were for the purpose of an investigation then being conducted by the Commission. In each matter the Case Officer had sent a written memorandum or minute to the Case/Team Lawyer through the Chief Investigator. The Case Lawyer then submitted the relevant documents to the relevant Commissioner or Assistant Commissioner through the Executive Director, Legal, under cover of a minute setting out the justification for the issue of the notice and, in appropriate cases, identified any likely contentious issues.

It is not considered necessary to summarise the circumstances leading to each notice. They follow the general pattern where the service of one notice provides information leading to the need to seek further information by the service of a further notice. As pointed out earlier in the investigation of Wagonga Local Aboriginal Land Council, 31 notices under section 22 were served as part of the means of obtaining evidence.

A further example of the usefulness of section 22 notices appears in the Commission's "Report of its Investigation into the Recruitment of Contractors and other Staff by a University of Sydney IT Manager" published on 24 October 2012. In its Report the Commission says:-

“During the course of the investigation the Commission:

- obtained documents from various sources by issuing 34 notices under section 22 of the ICAC Act (requiring the production of documents)
- interviewed and/or obtained statements from a number of persons, including university employees and contractors to the university
- conducted two compulsory examinations.”

The Commission examined allegations relating to the use of a private recruitment business, Succuro and then Succuro Recruitment Pty Ltd, to recruit information technology (IT) contractors and staff for the University of Sydney (“the University”) between late 2006 and June 2010. It was alleged that between January 2007 and August 2008, Attila (“Todd”) Demiralay, the manager of an IT unit at the University, used Succuro because his wife, Virginia Kantarzis, was an employee of that business. It was also alleged that from August 2008 to June 2010, Mr Demiralay continued to use that business because he and Ms Kantarzis had an interest in the company (Succuro Recruitment Pty Ltd) that was formed to take control of the business. Between 2006 and 2010, Succuro and Succuro Recruitment Pty Ltd received payments totalling \$1,578,625 from the University.

Chapter 5 of the Report contains findings that Mr Demiralay engaged in corrupt conduct by:

- using Succuro and Succuro Recruitment Pty Ltd to recruit contractors and staff for the University despite the conflict of interest caused by his wife’s employment with Succuro and, from August 2008, by his and his wife’s financial interest in Succuro Recruitment Pty Ltd;
- engaging George Tshipidis, his brother-in-law, to work at the University despite the conflict of interest caused by their family relationship ;
- falsely recording that he had considered other candidates when engaging a close friend, Adrian Buxton, to work at the University;
- recommending that the University employ a candidate, Gerard Hunt, provided by Succuro Recruitment Pty Ltd (which resulted in the payment of a fee to the company), despite the conflict of interest caused by Mr Demiralay having a financial interest in that company.

Chapter 6 of the Report sets out the Commission's corruption prevention response to the conduct and issues disclosed during the investigation.

Some of the section 22 notices assisted the Commission's investigation of allegations that Councillor Jack Au of Auburn City Council accepted payments from a developer, Ms Liang in return for providing assistance with her development application.

The Commission's "Report of its Investigation into the Payment of \$4,500 to a Councillor of Auburn City Council" published 14 June 2012 states:-

"During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 11 notices under section 22 of the ICAC Act (requiring production of documents)
- interviewed and/or obtained statements from eight persons
- conducted two compulsory examinations."

In the light of all of the evidence, the Commission made findings of fact that, some time prior to 3 March 2010, Mr Au accepted \$4,500 from Ms Liang as a reward for having used his position as a Councillor to assist her with her development application by arranging meetings with council officers and maintaining contact with them concerning progress with determining the application, and also as an inducement to use his position as a Councillor to help expedite council determination of her application. Such conduct could adversely affect, either directly or indirectly, Mr Au's honest or impartial exercise of his official functions and therefore came within section 8(1)(a) of the ICAC Act. It was also conduct which, on his part, constitutes or involves a breach of public trust and therefore comes within section 8(1)(c) of the ICAC Act.

#### **4. Summonses under section 35**

All of the documents relating to the issuing of the 54 Summonses under section 35 have been considered. All were for the purpose of furthering an investigation

then being conducted by the Commission. All of the required steps stipulated in the ICAC's Operations Manual described in section 4 of this Report were followed.

Of the 54 summonses, six were for the production of documents. One of these was not served. In the other five cases the documents were produced without the need to conduct a compulsory examination (see section 35(4A)). Compulsory examinations were not conducted in relation to eleven of the summonses to attend and give evidence.

The following case studies provide examples of the exercise of the powers under section 35.

#### **E09/0195/4/1 to 4**

Four of the summonses arose in the same operation where the Commission was investigating allegations that a public officer had improperly assisted persons tendering for work from the public instrumentality which employed that officer. The hearing plan approved by the Presiding Commissioner on 26 September 2011 states that the Commission was investigating allegations that Colin McCallum, an officer of the University of New England (UNE) improperly assisted Quad Services Pty Ltd and other parties in tendering for UNE work and awarded contracts to them in return for benefits. The first summons is dated 26 September 2011 and is addressed to Colin McCallum and was served on 28 September requiring his attendance at a compulsory examination at 10 am on 14 October 2011.

On 19 December 2011 the Presiding Commissioner approved the Public Inquiry Hearing Plan in this case. On the same day approval was given for summonses for compulsory examinations of Colin McCallum, Martin McLean and Neville Magi so that a number of issues which had arisen since the last compulsory examination could be examined. The further summons to appear and give evidence at a compulsory examination at 10 am on 18 January 2012 addressed to Colin McCallum was dated and served on 19 December 2011.



This summons addressed to Martin McLean to appear and give evidence was issued on 19 December 2011 and served the following day requiring his attendance for an examination at 11:30 am on 18 January 2012.

This summons addressed to Neville Magi to appear and give evidence is dated 19 December 2011 and was served the following day. It requires attendance at a compulsory examination at 2 pm on 18 January 2012.

The Commission's "Report of its Investigation into the Conduct of a University of New England (UNE) Procurement Officer and UNE Contractors" published 30 August 2012, states:

"During the investigation, the Commission:

- obtained documents from various sources by issuing 34 notices under section 22 of the ICAC Act (requiring the production of documents).
- lawfully executed eight search warrants to obtain information relevant to the investigation.
- interviewed and/or took statements from a number of persons.
- conducted four compulsory examinations."

The evidence obtained from these sources tended to support the allegation that Mr McCallum exercised his official functions favourably towards some UNE contractors in circumstances where he received benefits from those contractors.

The Report includes the following findings that Colin McCallum engaged in corrupt conduct by:

- accepting free hospitality from Quad Services, which he knew at the time was contrary to the UNE code of conduct and which he knew by at least December 2009 was influencing him to act in favour of Quad Services
- arranging to have Quad Services issue invoices to UNE between February 2007 and May 2009, which came to approximately \$29,000, that falsely described the costs associated with the van used by Quad Services and a five per cent administration fee as "external cleaning" so that Quad Services would obtain money from UNE

- deliberately failing to disclose his conflict of interest arising from his acceptance of
- free hospitality from Quad Services when completing his conflict of interest declaration on 18 January 2010.

A further part of the Report includes findings that Mr McCallum engaged in corrupt conduct by:

- accepting free hospitality from Sydney Night Patrol (SNP), which he knew at the time was contrary to the UNE code of conduct and the gifts and benefits policy
- arranging to have SNP issue invoices to UNE totalling about \$19,400 that falsely described the costs associated with a Toyota Yaris as “alarm service” work so that SNP could obtain money from UNE that he knew UNE would not otherwise pay, and approving payment of those invoices.

A finding was also made that Martin McLean of SNP engaged in corrupt conduct by causing SNP to issue invoices to UNE, which he knew falsely described the costs associated with a Toyota Yaris as “alarm service” work for the purpose of obtaining money for SNP.

Chapter 4 of the report concerns Mr McCallum’s dealings with UNE contractor, Prosys Services Pty Ltd (Prosys Services), which received approximately \$2.4 million from UNE between 2004 and 2012 for security access system work.

This chapter contains findings that Mr McCallum engaged in corrupt conduct by:

- accepting free meals and alcohol from Prosys Services
- entering into an agreement with Prosys Services Pty. Ltd. whereby he engaged Prosys Services to undertake work for UNE, for which UNE would pay Prosys Services \$7,000, in return for Prosys Services contributing \$7,000 towards a private New England Rugby Union (NERU) function, and approving payment of an invoice in furtherance of the agreement.

A finding was also made that Neville Magi of Prosys Services engaged in corrupt conduct by entering into an agreement with Mr McCallum whereby Mr McCallum engaged Prosys Services to undertake work for UNE, for which UNE would pay Prosys Services \$7,000, in return for Prosys Services contributing \$7,000 towards a NERU function, and causing Prosys Services to send UNE a quote dated 11

November 2008 and an invoice dated 25 November 2008 in furtherance of that agreement.

### **E09/0350/4/5 to 32**

These summonses arose in the course of the same operation. The Compulsory Examination Hearing Plan approved on 1 September 2011 reveals that the Commission was conducting an investigation into an allegation that a person engaged by a public instrumentality had received corrupt benefits from a company in return for ensuring that it was successful in winning a tender to provide services to the public instrumentality. Three people were in a position to give evidence relevant to this investigation. Three summonses were signed and served requiring attendance at differing times on 9 September 2011.

By minute dated 12 September 2011 from the Senior Lawyer to the Deputy Commission a request was made for the issue of four section 35 summonses in connection with the same investigation. Recent enquiries had revealed that certain cheques drawn on behalf of a company that had received contracts were banked into the accounts of the target of the investigation. Following upon information obtained from previous section 22 notices and compulsory examinations it was considered that further examination of these four people would shed light of the circumstances surrounding the payment of the cheques. It was recommended that the summonses addressed to some of the persons to provide all documents relating to their overseas travel, and to one of them requiring production of documents relating to cheques paid. This minute was duly approved. The summonses were duly issued and served.

By minute dated 20 September, 2011 from the Senior Lawyer to the Deputy Commissioner a request was made for the issue of a section 35 summons addressed to a further person. This person had taken over the position of finance manager from a person in respect of whom approval had already been given to serve a section 35 summons. The evidence indicated that the preference given to a particular contractor continued after the appointment of this person. This

request was approved and, pursuant to the approval, a summons was signed on 20 September 2011, served the following day requiring the presence at the commission at 2 PM on 23 September 2011.

By minute dated 12 December 2011 addressed to the Assistant Commissioner a hearing plan was presented proposing to call three witnesses to give evidence at a compulsory examination on 20 December 2011. All were public officials employed by a government instrumentality. It was anticipated that they would give evidence regarding the circumstances surrounding the receipt of gifts and benefits from a corporation. The recommendation was approved and three section 35 summonses were signed on 12 December 2011 requiring attendance on 20 December 2011.

By minute dated 3 February 2012 approval was sought for eight summonses under section 35 in relation to the same investigation. Approval was granted. Three of the examinations were not conducted. One had to be cancelled because this witness was overseas and it was considered preferable for strategic reasons to examine all three witnesses on the same day.

On 27 February 2012 approval was granted for the issue of two section 35 summonses directed to two men in respect of whom there was evidence that they had received benefits from persons representing a government agency in return for awarding work. The summonses were signed on 27 February 2012 and served on 29 February requiring attendance on 6 and 8 March 2012 respectively.

Three further summonses were issued to replace those previously cancelled.

#### **E11/0534/4/1 to 11**

This file provides an example of the use of compulsory examinations leading up to the Commission's Report. The Commission was investigating allegations that Fortunato Gattellari and Ronald Medich provided cash payments and other financial benefits to members of Local Aboriginal Land Councils to ensure that the

members of the councils gave favourable consideration to proposals by them to develop land owned by the Councils.

The witness summoned lived in the State of Queensland and so application was made to the Supreme Court by summons for leave to serve the section 35 summons out of the State of New South Wales. An order was made by that court on 25 October 2011 on the condition that the notice not be served after 5 pm on 26 October 2011. With the consent of the recipient of the summons it was served by e-mail. Under sections 35(6) and (7) the summons must be signed by a judicial officer to enable service under the *Service & Execution of Process Act 1901 (Cth)*.

By minute dated 24 October 2011 to the Commissioner it was recommended that the notice and summons be issued. A draft hearing plan was submitted. That hearing plan sets out the details of the operation; the nature of the allegations, section 30 (3); the public interest criteria section 30 (1); the context in which the allegations are being investigated include the relevant background information; the names of the 12 witnesses intended to be called and the proposed dates and times of their evidence; the elements of corruption to be established through each witness and the relevance of those elements to the allegations. In addition the strategies to be used to elicit relevant evidence were set out. The documents to be provided to witnesses were identified. Other issues such as the fact that Mr Gattellari was then in custody awaiting a committal hearing on charges laid by the police force and that security arrangements had to be put in place to have him brought to the Commission from the correctional facility where he was then held. The estimated cost is set out. That hearing plan was agreed to by the Acting Chief Investigator, reviewed by the Executive Director, Legal, and approved by the Commissioner.

Pursuant to this approval the following summonses under section 35 were served:-

E11/0534/4/1	To Ronald Binge - Compulsory examination did not take place
E11/0534/4/2	To Ronald Mason
E11/0534/4/3	To Vanessa Mason
E11/0534/4/4	To Vivienne Mason

E11/0534/4/5 To Troy Stever  
E11/0534/4/6 To Glenis Kelly  
E11/0534/4/7 To Gilson Saunders - Compulsory examination did not take place  
E11/0534/4/8 To Mark Donohue  
E11/0543/4/9 To Kenneth Foster  
E11/0543/4/10 To Michael Darcy  
E11/0543/4/11 To Ron Medich requiring attendance at 12 pm on 4 November 2011. This summons was not served but was replaced by further Summons E/11/0446/4/15.

A memorandum in file E11/0543/4/15 notes:

"There will also be to further compulsory examinations held on this day. Ron Binge (Lucky Gattellari's associate) was summoned to appear on Monday, 31 October 2011 but did not attend because his flight from Queensland was cancelled. Gilson Saunders (former Gandangara Local Aboriginal Land Council Chairperson) was summoned to appear on Thursday, 3 November 2011 but did not appear due to illness. Both witnesses and their representatives have been advised that they are required to attend compulsory examinations next Wednesday, 7 December 2011."

#### **E11/0543/4/12 to 14**

By memorandum dated 24 October 2011 the Senior Lawyer of the Commission sought approval for the service of three summonses under section 35 to be served on three nominated law firms. Evidence indicated that those firms may have acted on transactions involved in the investigation. Approval was given the same day. Pursuant to section 35 (4A) each of the persons nominated in the summons to appear were excused from personal attendance on condition that they produce the documents or things in accordance with the directions may in their respective summonses.

Pursuant to this approval the following summonses under section 35 were issued:-

**E11/0543/4/12** Richard Bartelesi & Associates  
**E11/0543/4/13** Heard McEwan Legal  
**E11/0543/4/14** Not served as information obtained prior to service - records no longer with that firm.

**E11/0543/4/15**

With a memorandum dated 1 December 2011 from the Senior Lawyer to the Commissioner was a hearing plan for the compulsory examination of Senad Kaminic. Evidence had been obtained that he was present during a number of conversations of relevance to the investigation. Approval was sought for the service of a summons under section 35. Approval was given. The Summons was served on 2 December 2011 requiring examination on 7 December.

In its Report “Investigation into the Conduct of Officers of the Wagonga Local Aboriginal Land Council and Others” published on 27 September 2012, the Commission states:

“During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 31 notices under section 22 of the ICAC Act (requiring the production of documents) and two notices under section 21 of the ICAC Act (requiring the production of statements of information)
- interviewed and/or obtained statements from a number of witnesses
- executed two search warrants to obtain information relevant to the investigation
- conducted 13 compulsory examinations.”

Findings were made in the Report that Mr Gattellari, Mr Mason, Mr Foster, Vanessa Mason and Mr Medich engaged in corrupt conduct. Chapter 2 of the report contains findings that Mr Gattellari engaged in corrupt conduct by making payments and providing other financial benefits to Mr Mason totalling approximately \$38,300 and to Mr Foster totalling approximately \$31,300 in order to facilitate negotiations in relation to a joint venture agreement between the Wagonga LALC and the Medich Group.

Chapter 2 also contains findings that Mr Mason engaged in corrupt conduct by accepting payments and other financial benefits from Mr Gattellari totalling approximately \$38,300 as an inducement to use his position as chairperson of

the Wagonga LALC to facilitate negotiations with the Medich Group, and as a reward for having used his position as chairperson of the Wagonga LALC to assist the Medich Group by facilitating negotiations in relation to a proposed joint venture agreement.

Chapter 2 also contains findings that Mr Foster engaged in corrupt conduct by accepting payments and other financial benefits from Mr Gattellari totalling approximately \$31,300 as an inducement for Mr Foster to use his position as coordinator of the Wagonga LALC to facilitate negotiations with the Medich Group in relation to the joint venture agreement.

Statements were made pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) that the Commission was of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Mason and Mr Foster for offences of corruptly receiving benefits contrary to section 249B(1) of the *Crimes Act 1900* (the Crimes Act) and offences of misconduct in public office.

In chapter 3 of the Report, findings are made that Mr Gattellari engaged in corrupt conduct by making payments totalling approximately \$127,746 to Vanessa Mason and her company, Emandem Enterprises Pty Ltd (Emandem Enterprises), in order to facilitate negotiations between the Wagonga LALC and Water View Developments in relation to proposed long-term leases to Water View Developments, and as an inducement for her to continue to use her position as CEO of the Wagonga LALC to assist Mr Gattellari and Water View Developments in the future.

Chapter 3 also contains findings that Vanessa Mason engaged in corrupt conduct by accepting payments totalling approximately \$127,746 made by Mr Gattellari to her and Emandem Enterprises as a reward for her having used her position as CEO of the Wagonga LALC to facilitate negotiations between the Wagonga LALC and Water View Developments in relation to proposed long-term leases to Water



View Developments, and as an inducement for her to continue to use her position as CEO of the Wagonga LALC to assist Mr Gattellari and Water View Developments in the future.

Chapter 4 of the report contains findings that Mr Medich engaged in corrupt conduct by facilitating the provision of financial benefits to Wagonga LALC decision-makers in order to assist negotiations with the Wagonga LALC relating to the joint venture agreement and the proposed long-term leases.

Statements were made pursuant to section 74A(2) of the ICAC Act that the Commission was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of persons for offences of corruptly receiving benefits contrary to section 249B(1) of the Crimes Act and an offence of misconduct in public office.

Chapter 5 of the report sets out the Commission's review of the corruption risks present at the time of the corrupt conduct in this matter, as well as its corruption prevention response to changes made to the *Aboriginal Land Rights Act 1983* ("the Land Rights Act") since this conduct took place and makes recommendations.

## 6 CONCLUSION

As pointed out in Part 3, the powers vested by the ICAC Act in the Commission under consideration in this Report are wide ranging and extensive and supported by significant sanctions.

These powers impinge upon what are generally considered to be the normal civil rights of the members of our society. However they are considered necessary to combat the evils arising from the presence of corrupt conduct on the part of public officials or authorities.

Accordingly in conducting this audit I have looked at each exercise of the powers to determine whether it has been taken for the purposes of an investigation into suspected corruption on the part of a public official or authority and, whether it was reasonable in all the circumstances balancing on the one hand the rights of the individual and, on the other hand, the need to protect society from the damage which results from corruption on the part of public officials or authorities.

The Commission has instituted and maintained a detailed and impressive system of controls designed to achieve this balance in its procedures. It achieves this goal by requiring the participation of a number of its officers in the approval process and the need for the facts and reasons supporting the request for the exercise of the power to be clearly documented.

Examination of the documentation indicates that each exercise of the powers has been appropriate and well founded.

Pursuant to section 57B(2) of the ICAC Act, I have looked to see if there are grounds for reporting the existence of evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or its officers.

Pursuant to section 57B(1)(b). I have also looked to see if there were grounds for reporting the existence of evidence of maladministration including unreasonable invasions of privacy and action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives under section 57B(1)(c).

In addition I have attempted to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities (section 57B(1)(d)).

Examination of the exercise of each of the powers examined reveals the following:

- Each of the notices under sections 21 and 22 and the summonses issued under section 35 of the ICAC Act were applied for and used as one of the tools authorised by the Act to enable the Commission to carry out its statutory functions.
- Each notice and summons was issued only in circumstances where a belief was reasonably formed in the light of information available from other sources that its issue was soundly based and necessary to support an investigation.
- In all cases it was appropriate to issue and act upon the notice or summons in the light of the information then available.
- Apart from those cases where a summons was not served, the issue and service of each notice or summons was effective in obtaining information which contributed to the investigations of the Commission.
- There was no evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or officers of the Commission.

- There was no 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.
- The procedures of the Commission relating to the legality or propriety of its activities are effective and appropriate.

A handwritten signature in blue ink, appearing to read 'H Cooper', with a long horizontal flourish extending to the right.

**His Honour Harvey Cooper AM**  
**Inspector**  
**April 2013**