

The Inspector of the Independent Commission against Corruption

By Gail Furness SC

On 1 July 2022 I was appointed Inspector of the Independent Commission against Corruption. The ICAC undoubtedly does very important and significant work, but is often the subject of criticism. My role, as an independent statutory officer, is to oversee the operations and conduct of the ICAC so as to ensure that it complies with the law and does not abuse the considerable powers which Parliament has vested in it. That is done by receiving complaints as well as conducting audits. Barristers who appear in, or those who advise people who are subject to the compulsory process of the ICAC, from time to time make complaints or draw matters to the Inspector's attention. I welcome those contacts.

The Inspector oversees the ICAC and its activities by:

- auditing the operations of ICAC for the purpose of monitoring compliance with the law of the State, and
- dealing with complaints about abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- dealing with conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by ICAC or officers of ICAC, and
- assessing the effectiveness and appropriateness of the procedures of ICAC relating to the legality or propriety of its activities.

The Inspector cannot review the ICAC's decision either to investigate or not investigate a complaint.

The Inspector can exercise her powers on her own initiative, at the request of the Minister, in response to a complaint and in response to a reference by the Joint Committee of Parliament (to which the Inspector reports) or any public authority or public official. The Inspector can hold inquiries and for that purpose, has the powers of a Royal Commission.

The Inspector typically receives complaints from people who have made complaints to the ICAC and are unhappy with the result (usually that no investigation was held),



representatives of people involved with investigations who are unhappy at their treatment and those concerned with the exercise of powers of the ICAC.

The first four examples of complaints, set out below have been the subject of Reports to Parliament with the last mentioned being reported in the Inspector's recent Annual Report.

First, the Inspector investigated whether in determining to hold a public inquiry into matters specified concerning Ms Berejiklian and in making the announcement of that public inquiry, ICAC had committed any act of 'maladministration' within the meaning of the ICAC Act. The Inspector was satisfied that the ICAC had a proper basis for determining to conduct a public inquiry into the matters referred to in the Media Release regarding the conduct of Ms Berejiklian.

Secondly, the circumstances in which officers of the ICAC obtained and executed a search warrant at the offices of the NSW ALP. Those circumstances included the extensive media coverage of the search and the source of the leak of that warrant. The Inspector determined that the matters raised did not amount to abuse of power, impropriety and other forms of misconduct or maladministration.

Thirdly, whether the interception and publication of a phone call by the ICAC from a person to the former Consul-General of Japan in Sydney amounted to a 'violation of Australia's obligations under international law and has the potential to jeopardise Australia's diplomatic relations with a close

trading and security partner'. The Inspector did not find that the ICAC or its officers had engaged in maladministration, however, did conclude that the Commission should have exercised more caution and discretion in its dealings with the intercepted call. The Inspector made various recommendations to the ICAC which were accepted and resulted in amendments to the Commission's Operations Manual Policy and Procedure.

Fourthly, transcript of evidence given in private to the Commission was uploaded to the Commission website and accessed by a number of people. The evidence, it was suggested, compromised the security of the then Premier. The Inspector found that human error was the cause of the breach. As a result of communication with the Inspector, the Commission reviewed its internal procedures.

Finally, the decision to vary the submissions timetable in an Operation so as to extend the time for submissions by counsel assisting. The Inspector suggested the Commission introduce steps into its procedure for monitoring the progress of counsel assisting so as to avoid circumstances in which a request for an extension is made close in time to the expiration of a timeframe. In response the Commission indicated that it formalised its procedure in its relevant Operations Manual procedure.

The Inspector also can conduct audits into the operations of ICAC for the purpose of monitoring compliance with the law of the State. I am currently auditing the operations of the ICAC for the purpose of monitoring its compliance with the *Work Health and Safety Act 2011* (NSW), and assessing the effectiveness and appropriateness of the procedures of the ICAC relating to the welfare of witnesses and others involved in the ICAC's investigation activities, pursuant to sections 57B(1)(a) and (d) of the ICAC Act. This follows the recent tragic suicide of a witness before the ICAC and similar events in other States.

I am also interested in exploring the time frames in which the Commission reports on its investigations as well as the Commission's information handling practices. **EN**

For more information about the functions and powers of the Inspector see www.oicac.nsw.gov.au