

Office of the Inspector of the
Independent Commission Against
Corruption



Complaints Handling Policy

September 2022

Document management

Publication details

Document Type(s) (Select all options that apply)	Yes/No
Policy	Yes
Procedures	No
Guidelines	No
Standard	No
Fact sheet	No

Responsible Branch	Document Owner	Document Reviewer
Office of the Inspector of the Independent Commission Against Corruption (OIICAC)	Inspector	Inspector

Publication (Select all options that apply)	Yes/No
Not for publication	No
Intranet	No
DPC website	No
Other (Please specify.)	OIICAC website

Approved by	Date of approval
Inspector Gail Furness SC	23 September 2022

Review record

Date	Action	Version
September 2020	First version of Policy and Procedure approved by Inspector McClintock SC.	V 1.0
April 2022	Biannual review. Information added about complaint review policy and Inspector's accountability.	V 2.0
September 2022	Policy updated in response to appointment of new Inspector of 1 July 2022. Approved by Inspector Furness SC.	V 3.0

Contents

1	Introduction.....	5
2	The Inspector’s Powers.....	5
3	What kind of complaints can the Inspector deal with?.....	6
4	What kind of complaints are outside the Inspector’s jurisdiction? (i.e. that the Inspector cannot deal with).....	6
5	Making a complaint.....	6
6	How does the Inspector deal with complaints?.....	8
7	Review of the Inspector’s decision about complaints.....	10
8	The Inspector’s Accountability.....	10
9	Review of this Policy.....	10

1 Introduction

- 1.1 The Inspector of the Independent Commission Against Corruption (the ICAC or Commission) is an independent statutory officer whose role is to oversee the operations and conduct of the ICAC to ensure that it complies with the law and does not abuse the considerable powers which Parliament has vested in it.
- 1.2 The Inspector is appointed by the Governor on the advice of the Executive and the Parliament's Committee on the ICAC is empowered to veto appointments.
- 1.3 The current Inspector is Gail Furness SC whose appointment commenced on 1 July 2022 and will expire on 30 June 2027.
- 1.4 The role of the Inspector is set out in Part 5A of the *Independent Commission Against Corruption Act 1988* (the Act). The legislation states that the Inspector is not subject to the ICAC in any way. The Inspector's Office is in different premises from those of the ICAC.
- 1.5 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.
- 1.6 This policy outlines the Inspector's complaint handling procedures in respect of the ICAC and its officers.

2 The Inspector's Powers

- 2.1 Section 57C of the ICAC Act grants the Inspector extensive powers to perform her functions. The Inspector
- a. may investigate any aspect of ICAC's operations or any conduct of officers of ICAC, and
 - b. is entitled to full access to the records of ICAC and to take or have copies made of any of them, and
 - c. may require officers of ICAC to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to ICAC's operations or any conduct of the officers of ICAC, and
 - d. may require officers of ICAC to attend before the Inspector to answer questions or produce documents or other things relating to ICAC's operations or any conduct of the officers of ICAC, and
 - e. may investigate and assess complaints about ICAC or the officers of ICAC, and
 - f. may refer matters relating to ICAC or officers of ICAC to other public authorities or public officials for consideration or action, and
 - g. may recommend disciplinary action or criminal prosecution against officers of ICAC.
- 2.2 For the purpose of conducting her functions, the Inspector may make or hold inquiries and in doing so the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by the *Royal Commissions Act 1923*.

3 What kind of complaints can the Inspector deal with?

- 3.1 The Inspector can deal with (by reports and recommendations)
- complaints of abuse of power, impropriety and other forms of misconduct on the part of the ICAC or officers of the ICAC
 - conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the ICAC or officers of the ICAC. Under the ICAC Act maladministration is defined as action or inaction of a serious nature that is
 - contrary to law, or
 - unreasonable, unjust, oppressive or improperly discriminatory, or
 - based wholly or partly on improper motives.

4 What kind of complaints are outside the Inspector's jurisdiction? (i.e. that the Inspector cannot deal with)

- 4.1 The Inspector **cannot** deal with the conduct of public agencies or public officials outside that of the ICAC, for example, employees of the Department of Community Justice, the police, local council employees, Councillors and Members of Parliament. The Inspector may deal with the conduct of any former officer of the ICAC, even if that person is now employed somewhere else. However, the Inspector can only deal with complaints about conduct when that person was an officer of ICAC.
- 4.2 The Inspector **cannot review** ICAC's decision either to investigate or not investigate a complaint unless the decision by ICAC relates to misconduct or impropriety or maladministration on the part of it or any of its officers. In such circumstances, the Inspector may examine the decision and the context in which it was made. The Inspector may then make comments and recommendations to ICAC or Parliament about ICAC's conduct in relation to the decision and decision-making process.
- 4.3 The Inspector has **no power** to consider the merits of any action or recommendation of ICAC unless it comes within the conduct referred to above.
- 4.4 The Inspector has **no power** to reverse or change any decision of ICAC, including a decision by ICAC not to investigate a matter.

5 Making a complaint

- 5.1 Any person can make a complaint to the Inspector. The Inspector generally receives complaints from:
- persons who are the subject of or affected by ICAC investigations
 - the families and staff of such persons, or
 - complainants who are dissatisfied with the Commission's decision not to investigate their complaint or allegation.
- 5.2 Public officials may complain orally or in writing. Other complaints should preferably be made in writing.
- 5.3 The Office will endeavour to assist a complainant to put their complaint in writing. This may include referring them to a community legal centre for assistance in making their complaint or accepting a complaint made on their behalf by a representative (such as an advocate, family member, legal or community representative, Member of Parliament or another organisation).

- 5.4 The Inspector accepts anonymous complaints and will assess the issues raised which are within her jurisdiction and where there is enough information provided. Most people do not make anonymous complaints and the Inspector encourages complainants to identify themselves.
- 5.5 Section 111D of the ICAC Act provides that a public official, within the meaning of the *Public Interest Disclosures Act 1994*, may complain to the Inspector about the conduct of the Commission, an officer or former officer of the Commission or an officer of the Inspector. If a complaint is assessed as being a public interest disclosure, then it will be handled in accordance with the Office's Public Interest Disclosures Policy which is available on the OIICAC website.¹
- 5.6 The Inspector may also receive complaints from the Parliamentary Committee on the ICAC (under section 57B(2)) and the ICAC will notify the Inspector of matters which comes to its attention which may involve conduct of an officer of the Commission that may fall within the principal functions of the Inspector.
- 5.7 The Inspector can undertake an investigation on the Inspector's own initiative pursuant to section 57B(2) of the ICAC Act.
- 5.8 Complainants should be aware that there are various criminal offences for providing false or misleading information to the Inspector in the exercise of her functions. Including for example, as provided for by section 80(c) of the ICAC Act.

Where to make a complaint

- 5.9 A complaint can be made in writing
- by email at oiicac_executive@oiicac.nsw.gov.au
 - by post at GPO Box 5341 Sydney NSW 2001
- 5.10 The Inspector's Office may be called on (02) 9228 3023.

What to include in a complaint

- 5.11 So that the Inspector can properly understand a complaint, the person complaining should provide as much specific and detailed information as they can. It will be of assistance if a complainant provides the following information
- What is your complaint against the Independent Commission Against Corruption (the ICAC) and/or its officers?
 - Do you believe that what is described in your complaint amounts to an abuse of power, impropriety, other forms of misconduct and/or maladministration?
 - When did the issues you complain of occur (Date/Year)?
 - What are the names of and positions held by the officers of the ICAC against whom you are complaining?
 - Is there a file number concerning any complaint that you made to the ICAC? If yes, please provide it.
 - What are the names and contact details of any witnesses who can give evidence to support your complaint?
 - Are there documents or video which supports your complaint and if so, can you send them or copies of them to the Inspector to examine?
 - Are you employed in the NSW public sector or any NSW local council?

¹ <https://www.oiicac.nsw.gov.au/protected-disclosures/>

- Do you wish to keep your identity confidential from the ICAC or any other persons (and if so from whom) and why?

6 How does the Inspector deal with complaints?

- 6.1 The Office will promptly acknowledge a complaint, usually within 5 business days of receipt. An acknowledgment will be sent to a complainant via email or mail.
- 6.2 The Inspector will assess and prioritise complaints according to the urgency and/or seriousness of the issues raised.
- 6.3 If the complainant does not want their identity known to ICAC, they should provide detailed reasons with their complaint. The Inspector will consider their reasons and the context of the complaint and will advise them of her decision, before acting on it.

Jurisdiction

- 6.4 When the Inspector receives a complaint, it is assessed to determine whether it raises allegations of abuse of power, impropriety, conduct amounting to maladministration or other forms of misconduct on the part of ICAC or officers of ICAC, which the Inspector is empowered to deal with.

Further material

- 6.5 If it does, further particulars may be sought from the complainant. In some circumstances the complainant may be interviewed.
- 6.6 Then, documents or other material relevant to the complaint may be sought from ICAC. Usually, ICAC will be asked for a response to the complaint.
- 6.7 Documents may also be sought from persons and agencies other than the ICAC.
- 6.8 The Inspector may, if necessary, obtain expert advice.

Assessment of further material

- 6.9 The Inspector then assesses all the material gathered. The time required to deal with a complaint will vary depending on the complexity of the issues raised and the volume of information that needs to be reviewed. The Inspector aims to determine most complaints within six weeks.

What factors does the Inspector take into account when assessing a complaint and any further material?

- 6.10 The Inspector will consider the following factors, together with any other factors or information considered relevant to the complaint:
- whether the complaint is within the Inspector's jurisdiction
 - whether there is or has been abuse of power, impropriety or any other form of misconduct or maladministration (as defined) within the meaning of section 57C of the ICAC Act
 - the seriousness of the issues raised and whether they raise concerns about public confidence in and integrity of the ICAC
 - the information available about the matters raised including the availability of witnesses and any documents
 - the age of the conduct complained about and the likelihood of uncovering relevant evidence on further investigation
 - whether the conduct has been the subject of other inquiries or investigations and the outcome of those inquiries or investigations.

Outcome

- 6.11 After the assessment the Inspector will usually deal with the complaint in one of two ways
- by letter to the complainant notifying them of the outcome of their complaint, any action taken and the reasons for her decision or
 - by a report to Parliament which may or may not include a recommendation concerning the conduct of ICAC or one of its officers.
- 6.12 If a complaint is determined to be outside of the Inspector's jurisdiction, the Office will inform the complainant of any other appropriate external review options available to them (for example, any relevant Ombudsman or the Law Enforcement Conduct Commission).
- 6.13 The Inspector will record a summary of every complaint received and the outcome of her assessment of the complaint in her Annual Report.

Recommendations and reports

- 6.14 The Inspector's principal functions include making reports and recommendations about complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission and conduct amounting to maladministration. The Inspector has the power to make Special Reports and Annual Reports to the NSW Parliament under Part 8 of the ICAC Act. Without affecting the Inspector's power to make a report under Part 8, the Inspector may at any time make a recommendation or report concerning any matter relating to the functions of the Inspector that the Inspector considers may effectively be dealt with by recommendation or report and provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person (section 57B(5) of the ICAC Act).
- 6.15 Section 79A of the ICAC Act provides that a person about whom an adverse finding is to be made in a report by the Inspector has an opportunity to respond to the proposed adverse finding and that any report prepared by the Inspector includes a summary of the substance of the person's response that disputes the adverse finding if the person requests the Inspector to do so.
- 6.16 The Inspector must not include in the report any information in the person's response that would identify any person who is not the subject of an adverse finding, unless the Inspector
- a. is satisfied that it is necessary to do so in the public interest, and
 - b. is satisfied that doing so will not cause unreasonable damage to the reputation, safety or well-being of a person who is not the subject of an adverse finding, and
 - c. includes in the report a statement that the person identified is not the subject of any adverse finding (section 79A(2) of the ICAC Act).
- 6.17 Where the Inspector proposes to submit a Special Report to Parliament, it is the Inspector's usual practice to provide a copy of the draft report to the person/s or organisation that are the subject of the report even if there are no proposed adverse findings about them. In most circumstances where those named persons and/or organisation do provide a reply that is then referred to and/or included in the final report that is submitted to Parliament.
- 6.18 The Inspector's Annual Reports and Special Reports can be accessed on the OIICAC website [Reports webpage](https://www.oiiac.nsw.gov.au/reports/).²

² <https://www.oiiac.nsw.gov.au/reports/>

7 Review of the Inspector's decision about complaints

- 7.1 The Inspector's powers in relation to complaints made to her Office about ICAC are discretionary. Therefore, the Inspector cannot be required to investigate or take any other action in relation to a complaint received. The Inspector also cannot be required to review a decision that she has made about a complaint.
- 7.2 While the Inspector cannot be required to do so, as a matter of policy, a request to review a decision will be considered. However, a review will only be conducted if the person requesting it indicates clearly how or why the Inspector's decision was inappropriate or unreasonable and/or provides new information of substance that is relevant to the decision to be reviewed.
- 7.3 On occasions, complainants continue to send correspondence to the OIICAC after the Inspector has determined their complaint and/or a request for review in relation to it. Such correspondence is read. However, if it does not provide new information or seek to make a fresh complaint about a matter not already dealt with, the Inspector may determine that any future correspondence of that kind will be filed without a response. If such a determination is made, the Inspector will notify the complainant.

8 The Inspector's Accountability

The Committee

- 8.1 In the performance of her functions, the Inspector is accountable to a joint parliamentary committee known as the Parliamentary Committee on the Independent Commission Against Corruption (the Committee). The ICAC also reports to this Committee. The functions of the Committee relevant to the Inspector are, under section 64 of the ICAC Act, to:
- monitor and review the exercise of the ICAC and the Inspector's functions.
 - report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the ICAC and the Inspector.
 - examine each annual and other report of the ICAC and the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.
 - examine trends and changes in corrupt conduct and practices and methods relating to corrupt conduct and report to both Houses of Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the ICAC and the Inspector.
- 8.2 Section 64(2) of the ICAC Act, however, prohibits the Committee from investigating a complaint which has been investigated by the Inspector or the ICAC. The Committee also cannot reconsider the findings, recommendations, determinations or other decisions of the Inspector or the ICAC in relation to a particular investigation or complaint.
- 8.3 Further information about the Committee is available on the NSW Parliament website.³

9 Review of this Policy

- 9.1 This policy is approved by the Inspector. It will be reviewed from time to time to ensure that it reflects current laws and best practice principles. Any review will also consider any feedback that may be received from complainants, the ICAC and the Committee.

³ <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=174>

OFFICIAL

OFFICIAL