

24 September 2009

Mr Peter Primrose MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Richard Torbay MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 77B of the Independent Commission Against Corruption Act 1988 (the ICAC Act), I, as the Inspector of the Independent Commission Against Corruption (the Inspector), hereby furnish to each of you for presentation to the Parliament the Annual Report of the Inspector for the year ended 30 June 2009.

This report has been prepared in accordance with the requirements of the ICAC Act.

Pursuant to section 78(1A) of the ICAC Act, I recommend that the report be made public forthwith.

Yours sincerely,



Harvey Cooper AM
Inspector

ACKNOWLEDGEMENTS

I would like to place on record my appreciation of the considerable assistance received during the year from:

- Ms Seema Srivastava, Executive Officer;
- Ms Felicity Cannon, Office Manager since 25 May 2009; and
- Mr Hamish Hill, Administrative Assistant.

I would also like to thank the following staff, employed in my office between August 2008 to February 2009 on a part-time contract basis:

- Mr Bonny Loo, Legal Officer; and
- Mr Daniel Webster, Legal Officer.

It is proper that I mention the prompt, courteous and efficient responses from the Independent Commission Against Corruption to my requests for information and documents.

My thanks also to the staff of the Department of Premier and Cabinet for providing administrative services and advice on human resources, information technology and corporate governance issues.

Table of Contents

1	PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS	1
1.1	Preliminary Observations.....	1
2	ROLE OF THE INSPECTOR	3
3	POWERS OF THE INSPECTOR	4
4	ANNUAL REPORTING REQUIREMENTS	4
5	OTHER RELEVANT LEGISLATION	4
5.1	Freedom of Information Act 1989 (NSW).....	4
5.2	Telecommunications (Interception and Access) Act 1979 (Cth).....	4
6	THE IMPACT OF RECENT LEGISLATION UPON THE ROLE AND POWER OF THE INSPECTOR	5
6.1	Telecommunications (Interception and Access) Act 1979 (Cth) (“the TIA Act”).....	5
6.2	The Surveillance Devices Act 2007 (NSW) (“the SD Act”).....	6
7	PART 2: THE OFFICE OF THE INSPECTOR OF THE ICAC	8
7.1	Premises and Structure.....	8
7.2	Budget & Finance.....	8
8	LIAISON AND COMMUNICATION	8
8.1	Liaison with the ICAC.....	8
8.2	Meetings between the Inspector and the Parliamentary Joint Committee on the ICAC.....	9
8.3	Other meetings/conferences undertaken by the Inspector.....	9
8.4	Website.....	10
9	PART 3: THE INSPECTOR'S STATUTORY FUNCTIONS	11
9.1	Audit of the ICAC's compliance with the <i>Listening Devices Act 1984</i>	11
9.2	Audit of the ICAC's applications for and execution of search warrants ..	11
10	COMPLAINTS	12
10.1	Overview.....	12
10.2	Categories.....	12
10.3	Case Studies.....	12
10.4	Analysis of complaints.....	14
10.5	Note on complaints which remained active as at 30 June 2009.....	14
10.6	Statistical Data.....	14
11	CONCLUDING COMMENTS	17

1 PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS

1.1 Preliminary Observations

This is my first Annual Report ("the report") to the Parliament as the Inspector of the Independent Commission Against Corruption ("the Inspector" and "the ICAC" or "the Commission") pursuant to section 77B of the *Independent Commission Against Corruption Act 1988* (the ICAC Act).

My term commenced on 1 October 2008.

The report covers the period between 1 July 2008 and 30 June 2009, which is referred to in the report as the "current reporting period". Mr Graham Kelly was the inaugural Inspector from 1 July 2005 until 30 September 2008. Therefore three months of the current reporting period relate to his term in office and where relevant have been reported as such.

At the time of commencing my term on 1 October 2008 my first objective was to understand the requirements of my statutory duties and to determine the best way of satisfying those requirements. This included consideration of staffing, financing, office administration and the location of the office.

In addition to the Inspector on a part time basis, the staff has comprised the Executive Officer and an Office Manager.

Prior to 1 October 2008 the position of Office Manager had been advertised and applications had been received. I decided to defer consideration of the applications until early 2009 so that I would have a better idea of what was required of that position. Following two recruitment processes a new Office Manager, Ms Felicity Cannon commenced duties on 25 May 2009.

In its report No 4/54 of October 2008 the Parliamentary Joint Committee on the ICAC made three recommendations relevant to my office. These were:

1. That the Office of the Inspector of the Independent Commission Against Corruption be relocated to the McKell building in the central business district of Sydney, and if this location is not available, that the Inspector arrange for a move to another appropriate site as soon as practicable (Recommendation 1 at p. 2).
2. That the Office of the Inspector of the Independent Commission Against Corruption revise its format for the presentation of complaint statistics, as outlined in paragraph 1.11 of this report (Recommendation 2 at p. 5).
3. That the Inspector of the Independent Commission Against Corruption put forward a submission to Treasury for an increase in funding to enable his Office to undertake more in-depth and wide-ranging audits of the Independent Commission Against Corruption, pursuant to section 57B (1) of the *Independent Commission Against Corruption Act 1988* (Recommendation 3 at p. 6).

The following comments are made in respect of the abovementioned recommendations respectively:

1. Discussions have taken place with officers of the Department of Premier and Cabinet (the DPC) regarding the relocation of the office. I have rejected the option of relocating the office to the McKell building as I consider the location is unsuitable for our purposes in terms of its distance to central amenities as well as its surrounding environment.

Senior staff of the DPC have expressed a view to my office that in the current environment of fiscal constraint the relocation of the office will incur a significant and unjustifiable financial expenditure and therefore cannot proceed unless a cost neutral or low cost solution can be found. The only office space which appears to meet this criteria from the DPC's perspective to which I am agreeable is Bligh House, which is at 4-6 Bligh St, Sydney NSW 2000. Several floors in Bligh House are presently occupied by the corporate service units of DPC. DPC have indicated that no vacant space is currently available, however should space become available within any one of the floors in the future, they will be open to discussing the relocation of the office at that time.

I propose to review other low cost options for alternative accommodation over the next financial year but my ability to implement any solutions will depend upon the available funds in the OIICAC budget in 2009/2010.

2. The format for the reporting of statistical information has been revised.
3. In the current economic situation, any increase of funding is unlikely. The budget for 2008/2009 was \$600,000. This was a reduction of 6.25% percent from the previous year's budget of \$640,000. The DPC has advised that the budget for 2009/2010 is confirmed as \$600,000, being no change to the previous corresponding period.

2 ROLE OF THE INSPECTOR

The Inspector's role and functions are prescribed under Part 5A of the ICAC Act.

Under section 57A of the ICAC Act the Inspector is appointed by the Governor. The Parliamentary Joint Committee on the Independent Commission Against Corruption ("the Committee") is empowered to veto the proposed appointment which is required to be referred to the Committee by the Minister.¹

"The Minister" referred to above, and below under section 57B(2) of the ICAC Act, is the Premier of New South Wales.

The principal functions of the Inspector are set out in section 57B(1) of the ICAC Act. These are to:

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

The definition of maladministration is set out under section 57B(4) of the ICAC Act as follows:

...action or inaction of a serious nature that is:

- (a) contrary to law, or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) based wholly or partly on improper motives.

Section 57B(2) of the ICAC Act enables the Inspector to exercise the prescribed statutory functions on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector, or in response to a reference by the Committee or any public authority or public official. Section 57B(3) of the ICAC Act provides that the Inspector is not subject to the Commission in any respect.

Under section 77A of the ICAC Act the Inspector may make special reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector. Under section 77B of the ICAC Act the Inspector is required to report annually to Parliament. Both of these reports are to be made to the Presiding Officer of each House of Parliament.

¹ Schedule 1A Clause 10 of the *Independent Commission Against Corruption Act 1988*.

3 POWERS OF THE INSPECTOR

Section 57C of the ICAC Act establishes the powers of the Inspector. The Inspector may investigate any aspect of the Commission's operations or any conduct of any officers of the Commission.

Section 57D of the ICAC Act empowers the Inspector to make or hold inquiries for the purposes of the Inspector's functions. Under section 57D(2) any inquiry made or held by the Inspector under this section provides the Inspector with the powers, authorities, protections and immunities of a Royal Commissioner as conferred by Division 1 of Part 2 of the *Royal Commission Act 1923* (NSW), with the exception of section 13 of that Act. There have been no inquiries held pursuant to section 57D to date.

4 ANNUAL REPORTING REQUIREMENTS

The Inspector is neither a Department nor a Department Head for the purposes of the *Annual Reports (Departments) Act 1985* (NSW). The requirements placed by that Act on those bodies therefore do not apply to the preparation of an annual report by the Inspector.

Similarly, the provisions of the *Annual Reports (Statutory Bodies) Act 1984* (NSW) do not apply since the Inspector is not a person, group of persons or body to whom Division 3 of Part 3 of the *Public Finance and Audit Act 1983* (NSW) applies; nor is the Inspector or the Office prescribed as a statutory body by the *Annual Reports (Statutory Bodies) Act 1984* (NSW). As noted earlier in this report, however, section 77B of the ICAC Act requires the Inspector to report annually to Parliament.

5 OTHER RELEVANT LEGISLATION

5.1 Freedom of Information Act 1989 (NSW)

Under Schedule 2 of the *Freedom of Information Act 1989* (NSW) ("the FOI Act") the Office of the Inspector is exempt from the provisions of the FOI Act in respect of operational auditing, complaint handling and investigative and reporting functions.

5.2 Telecommunications (Interception and Access) Act 1979 (Cth)

The Inspector is included as an "eligible authority" for the purposes of the *Telecommunications (Interception and Access) Act 1979* (Cth) ("the TIA Act").

In accordance with sections 96 (1) and 159 (1) of the TIA Act, the Commonwealth Attorney-General's Department was advised by the Inspector that there was nil usage of the provisions of the TIA Act during the current reporting period.

6 THE IMPACT OF RECENT LEGISLATION UPON THE ROLE AND POWER OF THE INSPECTOR

The following discussion describes how the two pieces of legislation listed below prevent my ability to undertake audits of the ICAC's exercise of powers and are in conflict with the Inspector's prescribed functions under section 57B (1) (a) of the ICAC Act.

In the interests of ensuring a coherent regime for public accountability, I am including suggested amendments to overcome the current prohibitions on my power to act under that section.

6.1 Telecommunications (Interception and Access) Act 1979 (Cth) ("the TIA Act")

A principal function of the Inspector under section 57B (1) (d) of the ICAC Act is "to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities."

To enable this to be done the Inspector is required under section 57B (1) (a) of the ICAC Act "to audit the operations of the Commission for the purpose of monitoring compliance with the law of the state."

Under section 57C of the ICAC Act, the Inspector:

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission,
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them,
- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission.

Pursuant to these powers I advised the Commissioner in March 2009 of my intention to conduct an audit of the ICAC's applications for and use of information from warrants and intercepts made under the provisions of the TIA Act. The Commissioner's response was to advise that that the TIA Act places stringent restrictions on access to material prepared for or obtained under its warrant provisions and he was of the view that the provisions of the material to the Inspector for the purpose of general audits could be outside the scope of the exception in the TIA Act that allows access by the Inspector.

In April 2009 the Commission obtained advice on this issue from a senior officer of the National Security Law and Policy Division of the Commonwealth Attorney-General's Department and provided me with a copy. This advice concluded that

the TIA Act would enable the Commission to provide the Inspector with applications for telecommunications interception warrants where there is a targeted inspection into an allegation of misconduct or corruption but not for undertaking a general audit to ascertain if misconduct had occurred.

The difficulty that now confronts the Inspector is that it is prohibited by the current wording of paragraph (eb) of section 68 of the TIA Act from conducting such an audit.

The Inspector's role was created to provide a means of monitoring the extensive and intrusive powers of the ICAC so as to ensure that its use of those powers are appropriate for achieving its objectives.

The obtaining of a warrant and subsequent interception pursuant to the TIA Act are normally unknown to the person(s) who is the object of the warrant and interception. It is therefore only in rare circumstances that a complaint would be received from such a person(s).

Although the TIA Act places obligations upon the Ombudsman, those obligations are limited to ensuring compliance with legal requirements and the keeping of records. The Ombudsman does not check to see whether the ICAC's powers are being exercised appropriately. Thus, a warrant and interception under the TIA Act could proceed undetected for purposes not appropriate to the objectives of the ICAC but for personal purposes unrelated to those objectives. It is for this reason, among others, that the exercise by the Inspector of its powers of audit have been considered by the NSW legislature to be so important.

To overcome this problem I suggest the amendment of section 68 (eb) of the TIA Act by adding words to the effect:

"or audit pursuant to section 57B of the *Independent Commission Against Corruption Act 1988* (NSW)" between the words "investigation" and "by".

6.2 The Surveillance Devices Act 2007 (NSW) ("the SD Act")

Under section 39 of the SD Act, *protected information* means:

- (a) any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (b) any information relating to:
 - (i) an application for, issue of, existence or expiry of, a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
 - (ii) an application for approval of powers exercised in an emergency without a warrant under section 31 or under an emergency authorisation; or
 - (iii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation; or
- (c) any information obtained from use of a surveillance device as referred

to in section 7 (4).

Section 40 prohibits the communication or publication of protected information. The section does set out certain circumstances in which protected information may be communicated. The relevant exceptions to the prohibition are set out in subsections (5), (6), and (7), which state:

- (5) Without limiting subsection (4), protected information may be communicated or published by a law enforcement officer to any person with the consent of the chief officer of the law enforcement agency of which the officer is a member.
- (6) A chief officer may consent to the communication of protected information under subsection (5) only if satisfied that it is necessary or desirable in the public interest for the protected information to be communicated to the person concerned and that the public interest in communicating the information outweighs any intrusion on the privacy of the person to whom it relates or of any other person who may be affected by its communication.
- (7) In deciding whether to give consent the chief officer must take into consideration the manner in which the protected information will be dealt with after it is communicated to the person concerned.

The ICAC Commissioner comes within the definition of "chief officer".

Under these subsections the Commissioner is given the power to determine whether protected information will be communicated to the Inspector. This, in effect, revokes the powers of the Inspector under section 57C of the ICAC Act.

To avoid any problems that could arise out of the inconsistency between the terms of these two acts it is suggested that a new subsection be inserted following upon subsection 7 to the following effect:

“nothing in subsections (5) (6) and (7) shall be deemed to restrict the powers of the Inspector of the Independent Commission Against Corruption as contained in the Independent Commission Against Corruption Act 1988.”

The effect of such an amendment would be to allow the Inspector of the ICAC to conduct an audit of the ICAC's exercise of its powers under the SD Act to determine whether such powers have been exercised appropriately.

In fairness it should be mentioned that the Commissioner has enabled an audit of the Commission's use of listening devices pursuant to warrants issued under the SD Act by making a determination that it is in the public interest to provide "protected information". Whilst this action is appreciated, it is contrary to the spirit, if not the letter, of section 57C of the ICAC Act.

7 PART 2: THE OFFICE OF THE INSPECTOR OF THE ICAC

7.1 Premises and Structure

The Office of the Inspector of the ICAC (the OIICAC or the Office) is located at Redfern. The contact details are:

Postal address: GPO box 5341, Sydney, NSW, 2001
Telephone: (02) 8374 5381
Facsimile number: (02) 8374 5382
E-mail: InspectorICAC@OIICAC.nsw.gov.au

The Office's staffing structure consists of two permanent positions, these being the Executive Officer and the Office Manager recruited under the *Public Sector Management Act 2002* (the PSM Act). The Inspector is authorised under the ICAC Act to employ such other staff as he may require either under the PSM Act or otherwise.

7.2 Budget & Finance

The Inspector of the Independent Commission Against Corruption is an independent statutory body allocated an annual budget. In 2008 – 2009 this was fixed at \$600,000 – a reduction of 6.25% from the previous year's budget of \$640,000.

The administration of the budget is handled by the Department of Premier and Cabinet (DPC) which, each month, issues to the Office of the Inspector a document entitled "Detailed Operating Statement". In addition it issues a similar statement for the financial year ending 30 June.

The statement for the period from 1 July 2008 to 30 June 2009 shows a total expenditure of \$454,665.

As has occurred in previous years, the Office continued to receive a range of support services from the DPC on a fee for service basis in areas such as information technology, payroll administration, human resources and payments of accounts.

8 LIAISON AND COMMUNICATION

8.1 Liaison with the ICAC

Liaison with the ICAC is conducted in accordance with the terms of a Memorandum of Understanding ("MOU") agreed between the Inspector and the ICAC. The MOU provides for liaison between the Inspector and the Commissioner and for liaison between the Executive Officer to the Inspector and the Deputy

Commissioner of the ICAC. The MOU is updated as required and re-executed annually.

Meetings between the Inspector and the Parliamentary Joint Committee on the ICAC

On 1 December 2008 the Parliamentary Joint Committee on the ICAC met with the Inspector to conduct a review of the 2007-2008 Annual Report and Audit Reports of the Inspector. The transcript of the meeting is available from the website of the NSW Parliament at the following website address:

<http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/E0A8527F678CE67DCA257524000359FE>

8.2 Other meetings/conferences undertaken by the Inspector

During the current reporting period Inspector Graham Kelly attended or met with the following:

1. On 3 July 2008 a public hearing of the Committee for an examination of the Inspector's 2006-7 Annual Report and other related matters.
2. On 31 July 2008, 28 August and 27 September 2008 with the Commissioner of the ICAC, the Hon Jerrold Cripps QC, to discuss ongoing operational and policy issues.

During the current reporting period Inspector Harvey Cooper AM attended or met with the following:

3. On 30 October 2008, 18 December 2008, 18 March 2009 and 13 May 2009 with Commissioner Cripps to discuss ongoing operational and policy issues.
4. On 17 October 2008 with the Inspector of the Police Integrity Commission, Mr Peter Moss QC to introduce themselves to each other in their respective roles and to discuss various operational and policy issues.
5. From 5 – 7 November 2008 at the 7th National Investigations Symposium held in Manly, NSW.
6. From 19 – 21 November 2008 at the Public Sector Governance conference held in Canberra.
7. On 26 November 2008 with members of the Tasmanian Parliamentary Joint Select Committee on Ethical Conduct who were on a study tour in NSW. A briefing on the Inspector's role was provided at this meeting.
8. On 3 February 2009 with the Director General of DPC, Mr John Lee and his Chief of Staff, Mr Michael Petrie, regarding OIICAC staffing and budget.
9. On 11 March 2009 at the ICAC's celebration of the 25th anniversary of its establishment.
10. On 31 March 2009 met with representatives of the Office of the Ombudsman.

11. On 12 May 2009 met with representatives of the Office of the Director General of DPC regarding staffing and relocation of the office premises.

12. From 24-26 June 2009 at the International Conference on Anti-Corruption, Good Governance and Human Rights in Paris, France.

8.3 Website

Since its launch in 2006 the Office's website, www.oiiac.nsw.gov.au, continues to enjoy a high level of use, doubling over the previous two reporting periods at a rate of 50%.

The website contains information about of the Inspector's role and functions and includes information about complaint handling. The website also provides links to the websites of the following agencies and services:

- The ICAC;
- The Parliamentary Joint Committee on the ICAC;
- The NSW Ombudsman;
- The Police Integrity Commission (provides details about the Inspector of the Police Integrity Commission);
- LawAccess;
- Privacy NSW (Office of the Privacy Commissioner);
- The Department of the Premier and Cabinet.

Unfortunately, due to problems with an outsourced service provider, the DPC, which hosts the OIIAC's website, has not been able to provide my office with usage statistics for the current reporting period. The DPC has indicated that this problem is being rectified and that I will be able to report on this in the future.

9 PART 3: THE INSPECTOR'S STATUTORY FUNCTIONS

SECTION 57B(1)(a): AUDITING THE OPERATIONS OF THE ICAC

Three audits were undertaken during the current reporting period. The third was not completed during the reporting period due to an urgent complaint requiring immediate investigation. The two completed reports were:

9.1 Audit of the ICAC's compliance with the *Listening Devices Act 1984*

On 29 July 2008 Mr Kelly presented his report on the audit of the ICAC's compliance with the *Listening Devices Act 1984* (NSW) to the Presiding Officers of the Houses of Parliament. The audit report was tabled in the Parliament on the same day. The report concluded that the ICAC had complied with the law in exercising powers to obtain warrants for, and in the use of, and in reporting on listening devices under the *Listening Devices Act 1984*.

A copy of the report can be found by following the link below:

http://www.oicac.nsw.gov.au/_data/assets/pdf_file/0009/31014/OIICAC_Report_of_an_audit_of_the_ICACs_compliance_with_the_Listening_Devices_Act_1984.pdf

9.2 Audit of the ICAC's applications for and execution of search warrants

On 26 March 2009 I presented my report on the audit of the ICAC's applications for and execution of search warrants to the Presiding Officers of the Houses of Parliament. The audit report was tabled in the Parliament on the same day. In the report I concluded that:

- each search warrant was applied for only in circumstances where a belief was reasonably formed in the light of information available from other sources that the application was soundly based;
- in all cases it had been appropriate to apply for and execute the search warrant in the light of the information then available;
- in all but those cases where execution was not undertaken or where execution revealed no evidential material, the issue and execution of the search warrant were effective in locating material which contributed to the findings and recommendations made by the Commission in its published reports;
- there was no evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or its officers;
- 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.

A copy of the report can be found by following the link below:

http://www.oicac.nsw.gov.au/_data/assets/pdf_file/0016/43306/Report_of_an_audit_of_applications_for_and_execution_of_search_warrants_by_the_ICAC.pdf

10 COMPLAINTS

SECTIONS 57B(1)(b) AND 57B(1)(c):

10.1 Overview

Between 1 July 2008 and 30 June 2009 35 complaints were made to me, adding to 21 complaints carried over from previous reporting periods.

There is one complaint of significant complexity which I would like to highlight from the outset. In December 2005 the Parliamentary Joint Committee referred a complaint made by Mr Peter Breen, MLC, concerning the conduct of ICAC officers concerning a search warrant executed on Mr Breen's parliamentary office on 3 October 2003. The investigation of the complaint required a significant expenditure of the Inspectorate's resources and resulted in a detailed and thorough report. The report was presented by Inspector Kelly to the Presiding Officers of both Houses of Parliament on 24 September 2008 as a special report pursuant to section 77A of the ICAC Act. A copy of the report can be found at the following website address: <http://www.oicac.nsw.gov.au/reports>.

10.2 Categories

The complaints under consideration during the current reporting period fell into four categories:

- complaints which were out of jurisdiction;
- allegations of maladministration;
- allegations of misconduct by officers of the ICAC; and
- those complaints which were withdrawn.

10.3 Case Studies

Out of Jurisdiction

An example received during the current reporting period was a complaint made against police officer.

Maladministration

The majority of complaints under consideration involved matters in which the ICAC declined to investigate or to make a finding of corruption. In effect the complainant sought an appeal against the decision of the ICAC. When assessing such complaints I obtained the ICAC's files concerning the complaint in order to ascertain whether there was any evidence of the ICAC engaging in the type of misconduct prohibited by the ICAC Act.

An example of such a complaint appears in file C0808121. In July 2008 a complaint was received by email alleging corrupt conduct by officers of a named

local government agency and requesting the Inspector to direct the ICAC to conduct an inquiry into certain alleged conduct of these officers. In early August 2008 the Inspector wrote to the complainant advising that he could not assist her as he did not have the power to deal with complaints concerning officers of the named local government agency and could not, in any event, direct the ICAC to hold or not hold inquiries. Between August 2008 and November 2008 the complainant continued to communicate with the Inspector raising various allegations of corrupt conduct by named officers of the local government agency and also making allegations against the ICAC.

To enable an assessment of the allegations against the ICAC the Inspector invited the complainant to meet with him to provide details of the complaint. An appointment was made but cancelled by the complainant who refused to provide details either in writing or in person. Further correspondence was exchanged between the Inspector and the complainant between November 2008 and January 2009. In January 2009 the Inspector wrote to the complainant advising that he would be unable to deal with the complaint any further given the lack of information about the allegations made. This issue was not responded to by the complainant however in February 2009 further allegations were made by the complainant against the ICAC. In March 2009 the Inspector wrote to the complainant advising that as no details had been provided in respect of these allegations the allegations could not be assessed and therefore he would not be taking any further action. In April 2009 the complainant wrote making further allegations about the named local government agency. In April 2009 the Inspector advised the complainant that he had no jurisdiction to deal with these complaints.

Misconduct

In June 2009 the ICAC referred a complaint to the Inspector which alleged impropriety and misconduct against one its officers. After assessing the complaint I determined that the complaint warranted investigation. At the conclusion of the investigation, which included interviewing witnesses, examining documents and video material, I determined that the allegations made by the complainant against the named ICAC officers had not been substantiated. In late June 2009 I wrote to the ICAC and the complainant advising of this view and that I would not be taking any further action in respect of the complaint.

Withdrawn

In October 2008 a complaint was received about unreasonable delay by the ICAC in assessing a complaint made to it. In October 2008 the Inspector made enquiries with the ICAC regarding the complaint. This resulted in the ICAC clarifying the status of the complaint with the complainant. In November 2008 the Inspector wrote to the complainant advising that he had made enquiries with the ICAC and confirmed the complainant's recent advice to the Office that he was withdrawing his complaint.

10.4 Analysis of complaints

The bulk of complaints received were based on the complainants' disagreement with the ICAC's decision not to investigate their complaint. They typically went on to say that this was due to one or more of the following:

- Maladministration, including improper assessment;
- Abuse of power; and
- Corruption.

In the four complaints investigated during the current reporting period, the following allegations were made: in one case, it was an unlawful assault; in another dishonest conduct was alleged; in the case of Mr Breen abuse of power was alleged and in the fourth complaint there were allegations of bias and lack of procedural fairness.

10.5 Note on complaints which remained active as at 30 June 2009

One complaint was received in late June 2009 shortly before I went on leave.

The second complaint had not been finalised during the reporting period because the complainant refused to provide details of his complaint unless I agreed to meet with him in private without the meeting being recorded as per my Office's usual practice and without any members of my staff being present. Immediately prior to going on leave I wrote to the complainant advising that on my return I would seek to ascertain whether or not the complainant still maintained this position.

10.6 Statistical Data

The tables following present statistical information concerning complaint handling in accordance with the categories of information requested by the Committee in its "Report No. 4/54 October 2008, Review of the 2006 – 2007 Annual Report and Audit Reports of the Inspector of the Independent Commission Against Corruption" (p. 4).

There are, however, some deviations from the categories recommended by the Committee. This has occurred where I have formed the view that to supply information for the categories requested would present an inaccurate profile of the OIICAC's operations or that alternative categories of information would provide a more accurate picture of OIICAC's effectiveness in complaint handling. One or two of the categories were also based on assumptions about the complaint handling process which do not accord with the practice in my office so these were also not responded to. Wherever such deviations have occurred, I have provided an accompanying explanation.

Table 1**Matters received and/or finalised within the current reporting period**

	2008-09
Total complaints under consideration within the current reporting period	56
Complaints carried over from previous reporting periods *	21
Total complaints finalised within the current reporting period **	54
New matters received in current reporting period	35
Complaints open at end of reporting period	2

* Reported as 19 in previous reporting period: 2 complaints reclassified

** Consists of: complaints investigated and concluded; complaints assessed and determined as not warranting investigation; complaints assessed and determined as not being within jurisdiction; and complaints referred back to the ICAC.

Table 2**Complaints finalised**

	2008-09
Complaints assessed as outside jurisdiction	15
Complaints assessed as not warranting investigation. This includes all complaints except those investigated.	50
Complaints subject to preliminary or informal investigation	*
Complaints referred back to ICAC	4
Complaints investigated	4
Complaints not assessed	*

* Statistics have not been provided for these categories as all complaints are assessed and I do not conduct preliminary or informal investigations. An assessment is completed once I have formed a prima facie view that either, there are further matters which need to be examined or that there is no substance to the complaint. Where I have formed the view that a complaint has further matters to be examined because there is a real possibility that the complaint may be substantiated, this stage of complaint handling is then categorised as an investigation.

Table 3**Outcomes for complaints finalised**

	2008-09
Complaints sustained	0
Complaints not sustained	54
Number of complaints resulting in systemic changes	0

Table 4**Method of receipt for complaints received within the current reporting period**

	2008-09
Complaints received by mail - includes 3 complaints referred by third party	12
Complaints received by e-mail	11
Complaints received by facsimile	3
Complaints received by telephone	9
Total complaints	35

Table 5**Turnaround times for complaints finalised**

	2008-09
Average time taken to assess complaints	n/a*
Complaints finalised within 6 months	44
Average time taken to finalise complaints (days)	n/a*

*Rather than calculating the average time in which complaints are finalised, the actual time spent is set out below. The reason for my taking this approach is that averages can create a distorted or misleading picture of what has occurred.

Additional Information**Table 5 (i)****Turnaround times to finalise complaints received and closed in the current reporting period**

	2008-09
Complaints finalised in 0-7 days	9
Complaints finalised in 8-31 days	9
Complaints finalised in 32 -60 days	6
Complaints finalised in 61-90 days	3
Complaints finalised in 91 - 180 days	6
Complaints finalised in over 180 days	0

Table 5 (ii)**Turnaround times to finalise all complaints closed in the current reporting period
Including those carried over from previous period.**

	2008-09
Complaints finalised in 0-7 days	9
Complaints finalised in 8-31 days	10
Complaints finalised in 32 -60 days	8
Complaints finalised in 61-90 days	3
Complaints finalised in 91 - 180 days	14
Complaints finalised in over 180 days	10

Table 6

This is an additional table which I have provided about the number of general enquiries which my office received during the current reporting period. These enquiries were not complaints but included matters such as my role and functions. My office also received a number of complaints which were clearly intended for other complaint handling agencies, for example the ICAC, but these complaints were incorrectly addressed and received at my office. These complaints were sent on to the appropriate agencies.

Enquiries and other correspondence

	2008-09
Enquiries	10
Redirected complaints	4

11 CONCLUDING COMMENTS

The nine months of the reporting period during which I have been the Inspector were mainly spent in understanding the requirements of the job and the minutiae of the Office's procedures as well as in recruiting staff.

The turnaround time for complaint handling I consider satisfactory, but I am disappointed that I have completed only one audit and partially completed another. The second audit would have been completed but for an urgent referral of a complaint from ICAC which required immediate investigation and report before I took leave commencing on 16 June 2009.

I look forward to making further improvements to my office's efficiency in handling complaints whilst ensuring that complaints handling and my other statutory duties receive the careful consideration they deserve.

Harvey Cooper AM
Inspector