



Annual Report 2010 - 2011

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

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

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September 2011

The Hon Donald Harwin MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Shelley Hancock MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Mr President & Madam 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 2011.

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/Executive Assistant.

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.

Appreciation is also expressed for the direction and assistance provided by the Committee on the Independent Commission Against Corruption and its conscientious staff.

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

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PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS

1 PRELIMINARY OBSERVATIONS

My three year term as the Inspector of the Independent Commission Against Corruption ("the Inspector" and "the ICAC" or "the Commission") commenced on 1 October 2008 and is due to end on 30 September 2011. Accordingly, this is my term's final Annual Report pursuant to section 77B of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act").

Clause 4(2) of Schedule 1A of the ICAC Act provides that a person may not hold the office of Inspector for terms totalling more than 5 years.

This report covers the period between 1 July 2010 and 30 June 2011, and is referred to as the "current reporting period".

During the hearing before the Parliamentary Committee on the ICAC leading to its review of the 2008-2009 Annual Report of the Inspector, I sought the Committee's view on the level of detail to be provided on the complaints received during the year under review, saying:

In my annual report I refer to complaints I have received, indicated various categories, and gave one or two examples of each. That was a departure from the practice of the prior Inspector, who included a summary of all of the complaints received. I would appreciate some guidance as to whether my abbreviated form is satisfactory.

In its Report No. 11/54 published in November 2010, the Committee responded:

- 1.11. The Committee is pleased with the level of detail, and the quality of, the Inspector's current reporting on complaints. The Committee does not consider it necessary for the Inspector to report on complaints by providing a detailed outline of each complaint received by his office. It is sufficient to provide statistics of the total number of complaints, and to indicate the categories that complaints received during the year fall into, as well as illustrating each category by providing a case study (as is the current practice). The Committee is satisfied that this complaint reporting format provides sufficient detail and analysis of complaints received by the Inspector.
- 1.12. Although the current level of reporting on complaints is adequate in terms of detail, the Committee's view is that changes in relation to complaints received by the Inspector may necessitate reporting in greater detail. Such changes may include an increase in the overall number of complaints received, or an increase in a particular category of complaints.
- 1.13. In examining such a change or trend, the Committee may wish to seek greater detail on complaints from the Inspector than is currently provided. Should the Committee decide that it wishes to receive further details regarding complaints, or an overview of complaints received by the office, it may raise the matter with the Inspector during future annual report

examinations. It is also open to the Committee to seek any additional information it may consider necessary on the Inspector's exercise of his Royal Commission powers to conduct formal inquiries under s 57D and his investigative powers under s 57C. The latter include powers to: require ICAC officers to supply information, produce documents, and attend to answer questions or produce documents; refer matters to other agencies for action; and make recommendations for disciplinary action or criminal prosecution.

During the same hearing I also sought the Committee's guidance on the way in which I should report the findings of audits, saying:

On the question of reports of audits, I was wondering whether, when I have done an audit and I find nothing untoward, I should give a report in relation to that, or should I include a reference to that within the annual report? It does not matter to me. I am quite happy to do anything, but I would like to abide by the guidance of the Committee.

In the same Report, the Committee responded:

1.20. The Committee also considers that it is more useful for the Inspector to continue to publish separate audit and annual reports for reasons of timeliness. Audit reports are published by the Inspector throughout the year, while annual reports are required to be tabled each year in October. The Inspector's audit work is an important part of the Office's role and the Committee is satisfied that the current reporting arrangements ensure that adequate details of completed audits are provided in a transparent, timely and comprehensive format.

These responses have been implemented.

Representations have in the past been made to the Government for amendments to the ICAC Act relating to the person(s) to whom Reports may be given by the Office of the Inspector as well as to the *Surveillance Devices Act 2007* (NSW) and to the *Telecommunications (Interception and Access) Act 1979* (Cth).

In the same Report the Committee made the following recommendations regarding these issues:

RECOMMENDATION 1: That the Premier, as Minister with responsibility for the administration of the *Independent Commission Against Corruption Act 1988*, consider bringing forward amendments to the Act, to clarify that:

Reports to Parliament

- The Inspector of the Independent Commission Against Corruption may report to Parliament, as he considers necessary, on any abuse of power, impropriety, maladministration and other forms of misconduct on the part of the ICAC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector.

- The Inspector may report to Parliament on any of his statutory functions, as considered necessary and, in doing so may utilise the special reporting provisions at section 77A of the Act.

Reports to other parties

- Reports made by the Inspector under sections 57B(1)(b) and (c) in relation to complaints or matters that are not of a sufficiently serious or systemic nature to warrant being made to Parliament, can be provided to complainants, affected parties and other relevant individuals, as considered necessary by the Inspector for the purpose of resolving the complaint or matter in question.

RECOMMENDATION 2: That the Attorney General write to the Commonwealth Attorney General to request an amendment to the *Telecommunications (Interception and Access) Act 1979* (Cth) that would enable the Inspector of the Independent Commission Against Corruption to access telecommunications interception material for audit purposes, consistent with his functions under the *Independent Commission Against Corruption Act 1988*.

RECOMMENDATION 3: That the Attorney General, as Minister with responsibility for the administration of the *Surveillance Devices Act 2007*, consider bringing forward amendments to the Act to clarify that the prohibitions on the communication or publication of protected information should not 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*.

At the time of writing this Report steps are underway to implement Recommendations 1 and 3. I am not aware whether action is being taken on Recommendation 2.

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 of NSW. The 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.

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

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.

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 Government Information (Public Access) Act 2009 No 52

The *Government Information (Public Access) Act 2009* (GIPA) came into force on 1 July 2010 replacing the *Freedom of Information Act 1989*.

In summary, GIPA provisions exempt access to information relating to the Inspector and the ICAC's key statutory functions.

Under Schedule 1 of GIPA, an access application cannot be made for access to any information relating to the ICAC's corruption prevention, complaint handling, investigative or reporting functions.

Under Schedule 2 of GIPA an access application cannot be made for access to any information relating to the auditing, complaint handling, investigative and reporting functions of the Office of the Inspector of the ICAC.

The effect of these exemptions is that the Inspector cannot release information concerning either his statutory functions or the ICAC's corruption prevention, complaint handling, investigative or reporting functions. Applications for access to information can be made in respect of the Inspector's administrative functions, for example human resources. Such applications will be assessed on a case by case basis.

There were no GIPA applications during the current reporting period.

The website of the Office of the Inspector provides a link to its Publication Guidelines under section 20 of the GIPA Act as adopted in December 2010.

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 OTHER LEGISLATION UPON THE ROLE AND POWER OF THE INSPECTOR

In my Annual Reports for 2008-2009 and 2009-2010 I pointed out that amendments to *Telecommunications (Interception and Access) Act 1979 (Cth)* (“the TIA Act”) and *the Surveillance Devices Act 2007 (NSW)* (“the SD Act”) impacted upon my ability to undertake audits of the ICAC’s exercise of its powers and were in conflict with the Inspector’s prescribed functions under section 57B (1)(a) of the ICAC Act.

During June 2011 I received correspondence from the Department of Premier and Cabinet indicating that amendments are being made to the ICAC Act to overcome the problems in the SD Act. At the time of writing I am awaiting notification that the amendments have been enacted.

Any amendment to the TIA Act is for the Commonwealth Government. As pointed out in my 2009-2010 Annual Report I was advised on 25 January 2010 by the Commonwealth Attorney General’s Department that my suggested amendments would not be made to the TIA Act.

This means that I am precluded from conducting an audit of the ICAC’s applications for and use of information from warrants and intercepts made under the provisions of the TIA Act.

I regard the Inspector’s role as having been 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 NSW Ombudsman, those obligations are limited to ensuring compliance with legal requirements and the keeping of records. The NSW Ombudsman does not test if the ICAC’s powers are being exercised appropriately. Thus, a warrant and interception under the TIA Act could proceed undetected for purposes unrelated to the objectives of the ICAC. It is for this reason, among others, that the exercise by the Inspector of powers of audit have been considered by the NSW legislature to be so important.

PART 2: THE OFFICE OF THE INSPECTOR OF THE ICAC

7 ADMINISTRATION

7.1 Premises

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

7.2 Staff

The instrument appointing the Inspector provides that the position is “part time”. Generally, the Inspector has worked two days per week.

The staffing structure consists of Ms Seema Srivastava, Executive Officer and Ms Felicity Cannon as Office Manager/Executive Assistant to the Inspector. These two staffing positions are held under the *Public Sector Employment and Management Act (2002)* (“the PSEM Act”).

Ms Srivastava was on extended leave from August 2009 to February 2011. Since her return in February the Executive Officer and Office Manager work four and five days per week respectively and the Inspector works two days per week. This staffing has been at an appropriate level to keep all work up to date and, where necessary, the Inspector and the Executive Officer have increased their working days.

The Inspector is also authorised under the ICAC Act to employ such other staff as he may require either under the PSEM Act or otherwise.

All employees, permanent and temporary, are required to undergo extensive security vetting prior to commencement of employment.

7.3 Budget & Finance

The Inspector is an independent statutory officer. The Office of the Inspector is a cost centre within the DPC. In 2010-2011 the OIICAC budget was \$600,000 – the same as the previous year's budget.

The administration of the budget is handled by the Department of Premier & Cabinet (DPC) which, each month, issues to the Office of the Inspector a detailed

operating statement. In addition, it issues a similar statement for the full financial year ending 30 June 2011.

The statement for the period from 1 July 2010 to 30 June 2011 shows a total expenditure of \$319,192, falling within the set budget. This compares with a total expenditure of \$307,116 in the prior year. The increase in outgoings was mainly due to the four months during which Ms Srivastava resumed work. It is expected that the next financial year's expenses will rise due to the resumed staffing levels but remain within the estimated budget.

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 Commissioner. The MOU has been updated from time to time as required. The most recent MOU was executed on 21 December 2009.

8.2 Liaison with the Parliamentary Committee on the ICAC

On 27 August 2010 the Inspector appeared before the Parliamentary Committee on the ICAC to review the Annual Report 2009-2010. Following from the meeting, the Committee provided the guidance and made the recommendations set out earlier in this Report.

Meetings/conferences undertaken by the Inspector

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

- 1) On 12 July 2010, 30 September 2010, 23 November 2010, 17 February 2011, 16 March 2011, 9 June 2011 and 21 June 2011, the Commissioner of the ICAC, the Hon David Ipp AO QC, to discuss ongoing operational and policy issues.
- 2) On 28 July 2010, the ICAC's Management Team to introduce and familiarise new members of the Committee on the ICAC with the operational processes of the ICAC and its interaction with the Office of the Inspector.

- 3) On 27 August 2010, a public hearing of the Committee on the ICAC for an examination of the Inspector's 2008-2009 Annual Report and other related matters.
- 4) On 21 October 2010, Ms Amanda Fazio, President of the Legislative Council and the Hon Richard Torbay MP, Speaker of the Legislative Assembly to present Parliament with the Inspector's 2009-2010 Annual Report.
- 5) On 2 November 2010, Committee on the ICAC Chairman Mr Richard Amery, Committee member, Mr Greg Donnelly, and Committee staff, Ms Carly Sheen and Ms Dora Oravec, to tour premises of the Inspector's office and familiarise with its operational processes.
- 6) On 4 November 2010, attended the Institute of Public Administration Australia (IPAA) National Conference at Manly NSW.
- 7) On 16 November 2010, Mr Peter Moss, Inspector of the Police Integrity Commission to discuss ongoing operational and policy issues.
- 8) On 15 December 2010, Ms Amanda Fazio, President of the Legislative Council and the Hon Richard Torbay MP, Speaker of the Legislative Assembly to present Parliament with the Inspector's report of an audit of applications for and execution of search warrants.
- 9) On 25 January 2011, Dr Louise Clery, Manager, Corruption Prevention, Education and Research to discuss matters relating to the creation of an anti-corruption body in Tasmania.
- 10) On 9 March 2011, a Victorian delegation consisting of the Hon Andrew McIntosh, Minister for Corrections and Minister for Crime Prevention, Adviser Mr Perry Wood, Mr Graham Hill, Executive Director, Premier & Cabinet and Mr Tony Cook, Deputy Secretary, Premier & Cabinet to discuss the establishment of an anti-corruption commission in Victoria.
- 11) On 11 May 2011, The Hon Don Harwin, President of the Legislative Council and The Hon Shirley Hancock, Speaker of the Legislative Assembly to present the Inspector's Report of an Audit of Applications for and Execution of Surveillance Device and Retrieval Warrants.
- 12) On 15 June 2011, at its invitation, the Inspector travelled to Melbourne to address the Consultation Panel appointed by the Minister responsible for the establishment of the proposed anti-corruption commission in Victoria, the Hon Andrew McIntosh MP. The Panel comprised The Hon Stephen Charles QC (Chair), His Hon Gordon Lewis AM (Deputy Chair), Mr Peter Harmsworth AO; and Ms Gail Owen OAM. Subsequently, the Inspector met the Hon Andrew McIntosh MP, Attorney General of the State of Victoria.

8.3 Website

The website (www.oiiac.nsw.gov.au) contains information about the Inspector's role and functions and complaint handling and reporting methods. All of the published Reports are available. The website also provides links to the websites of the following agencies and services:

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

The website provides a link to OIIAC's Publication Guidelines under section 20 of the Government Information (Public Access) Act 2009 as adopted in December 2010.

As appears in the following table, there were 7,215 hits on the Inspector's website, being an average of 601 per month. The IT Division of the Department of Premier and Cabinet has advised that the spike in the number of hits during June 2011 may have occurred because a U.S. based internet security company, as part of its marketing, was testing for gaps in security.

Website Hits - Full year statistics	
	Total hits
Jul-10	346
Aug-10	411
Sep-10	635
Oct-10	465
Nov-10	368
Dec-10	533
Jan-11	492
Feb-11	686
Mar-11	662
Apr-11	625
May-11	676
Jun-11	1316
Total hits	7215
Total average hits	601

PART 3: THE INSPECTOR'S STATUTORY FUNCTIONS

9 AUDITING THE OPERATIONS OF THE ICAC [Section 57B (1)(a)]

In order to carry out its statutory obligation to investigate allegations of serious and systemic corrupt conduct, the ICAC 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 further empowered to apply for and execute surveillance device warrants pursuant to the *Surveillance Devices Act 2007* ("the SD Act"). Such warrants include listening device, data surveillance, optical surveillance and tracking surveillance.

The use of these powers can impinge upon the civil rights of those persons affected. A person can be the object of scrutiny by a surveillance device without his or her knowledge. This means that he or she lacks the opportunity to complain of any unjustified use of such a device.

With this in mind, during the reporting period I conducted audits of:

1. applications for and execution of search warrants. Report published December 2010.
2. the Commission's execution of controlled operations. No report was produced as no such operation took place during the period covered by the audit.
3. applications for and execution of surveillance device warrants and retrieval warrants. Report published April 2011.

A copy of each report can be found at <http://www.oicac.nsw.gov.au/reports>.

The audits examined a sample of cases in which the ICAC has used these powers in order to:

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

Pursuant to section 57B (2) of the ICAC Act, during the course of each audit I assessed whether there were grounds for reporting the existence of evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or officers of the Commission.

Pursuant to section 57B (1)(b), during the course of each audit I also assessed whether 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 assessed 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 revealed the following:

- Each exercise examined was applied for and used as one of the tools authorised by the Act to enable the Commission to carry out its statutory functions;
- Each took place only in circumstances where a belief was reasonably formed in the light of information available from other sources that it was soundly based;
- In all cases it was appropriate in the light of the information then available.
- In the majority of the cases the exercise of the powers 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.

10 COMPLAINTS [Sections 57B (1)(b) AND 57B (1)(c)]

10.1 Overview

As the Inspector of the ICAC I can deal with complaints of abuse of power, impropriety and other forms of misconduct only on the part of the ICAC or its officers or former officers. I can deal with complaints concerning maladministration only on the part of the ICAC or its officers or former officers. 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.

I have no power to deal with complaints against other bodies. Furthermore, I have no power to compel the ICAC to investigate or not to investigate a particular complaint nor can I tell the ICAC how an investigation should be conducted.

Consequently, when I am considering a complaint my focus must be on whether the conduct of ICAC amounts to misconduct of the type described above. In the

course of looking at this focus I do consider the conduct of those against whom complaints to the ICAC were initially made, but only in the context of whether there was evidence of corruption on which the ICAC could have taken more action than it did and, if it could, whether its failure to do so amounts to such misconduct.

Each complaint received is assessed and a decision is made as to whether it is out of jurisdiction, whether there is no substance to the complaint and, therefore, does not warrant investigation; or whether there is a real possibility that the complaint may be substantiated,

In the latter case the following steps are taken:

- 1) The documents provided by the complainant and the ICAC file are examined;
- 2) The complainant and any other person nominated by him/her may be interviewed;
- 3) With the consent of the interviewee the interview is recorded;
- 4) A copy of the recording is retained in the file of the Office of the Inspector and a further copy is given to the interviewee;
- 5) The recording is transcribed. A copy of the transcription is retained in the Inspector's file and a further copy is given to the interviewee who is afforded the opportunity to correct it;
- 6) All of the information is then considered and the complainant is advised in writing of the decision of the Inspector.

The majority of complaints 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 and, in many cases, interviewed the complainant.

10.2 Categories

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

- complaints which were out of jurisdiction;
- complaints warranting investigation;
- complaints not warranting investigation; and
- complaints which were withdrawn.

10.3 Statistical Data

Table 1

Matters received and/or finalised within the current reporting period

	2010-11	2009-10
Total complaints under consideration within the current reporting period	42	40
Complaints carried over from previous reporting periods	3	2
Total complaints finalised within the current reporting period *	41	37
New matters received in current reporting period	38	38
Complaints open at end of reporting period	1	3

* 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

	2010-11	2009-10
Complaints assessed as outside jurisdiction	14	14
Complaints assessed as not warranting investigation after preliminary examination	4	9
Complaints referred back to ICAC	2	1
Complaints investigated	20	12
Complaints not assessed (withdrawn)	2	1

Table 3

Outcomes for complaints finalised within the current reporting period

	2010-11	2009-10
Complaints sustained *	0	0
Complaints not sustained	41	36
Number of complaints resulting in systemic changes	0	0

* In three cases, recommendations made by the Inspector to the Commission that further enquiries be conducted were acted upon.

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

	2010-11	2009-10
Complaints received by mail	11	7
Complaints received by e-mail	17	17
Complaints received by facsimile	1	1
Complaints received by telephone	9	13

Table 5**Turnaround times for complaints finalised**

	2010-11	2009-10
Complaints finalised within 6 months	41	36
Average time taken to finalise complaints (days)	n/a*	n/a*

*Rather than calculating the average time in which complaints are finalised, the actual time spent is set out below. This approach is taken as 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**

	2010-11	2009-10
Complaints finalised in 0-7 days	16	14
Complaints finalised in 8-31 days	15	15
Complaints finalised in 32-60 days	5	2
Complaints finalised in 61-90 days	2	3
Complaints finalised in 91-180 days	0	1
Complaints finalised in over 180 days	0	0

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

	2010-11	2009-10
Complaints finalised in 0-7 days	16	14
Complaints finalised in 8-31 days	16	16
Complaints finalised in 32-60 days	6	2
Complaints finalised in 61-90 days	3	3
Complaints finalised in 91-180 days	0	2
Complaints finalised in over 180 days	0	0

The only complaint received during the reporting period which was not concluded before the year end was received on 28 June 2011.

Table 6

This additional table provides information with respect to a number of general enquiries which my office received during the current reporting period. These enquiries were not complaints but sought information 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 forwarded to the appropriate agencies.

Enquiries and other correspondence

	2010-11	2009-10
Enquiries	9	7
Redirected complaints	1	5

10.4 Case Studies

Examples of the complaints dealt with during the reporting period are set out below.

Out of Jurisdiction

1. The complainant alleged maladministration on the part of the ICAC for not investigating a complaint of harassment by a number of private and public officials and police officers. The Inspector interviewed the complainant who could not identify the persons alleged to have harassed her as public officials. As there is no jurisdiction for the Inspector to deal with complaints against police officers, the complainant was given the contact details of the Police Integrity Commission (PIC).
2. The complainant alleged that NSW police officers had supplied drugs to, and recruited, young girls to become prostitutes and provided two videos containing interviews with two alleged victims. The Inspector advised it was out of his jurisdiction and provided the complainant with contact details of the PIC.
3. The complaint related to the removal of the complainant's son from his custody by officers of the Department of Community Services. The case was currently pending in the Children's Court. The Inspector advised the matter was outside his jurisdiction and suggested that the complainant retain legal representation in the matter.

Maladministration

1. There were two complaints from the same complainant arising out of the same events. The first was a complaint of misconduct by ICAC in failing to make findings of corruption following an investigation of the allegedly corrupt activities of employees of a Local Government body. ICAC had referred the investigation of the activities of those employees to that body under section 53 of the ICAC Act and the Council had reported the results of its investigation to the ICAC which, in turn decided not to investigate further. The Inspector held that this decision did not amount to misconduct on the part of the ICAC.
2. The second complaint was that the ICAC and the Council (apparently at the instigation of the ICAC) was covering up the activities of the Council employees because, in response to the complainant's request for information about the investigation, the ICAC had responded "The Commission is not permitted under its governing legislation to release information relating to allegations of corrupt conduct to third parties. Nor will any discussions between the Council and the Commission be made public." This response, in the view of the Inspector, did not amount to misconduct.

However, in the meantime, a report was published in the local press purporting to give details of the allegations and investigations. The Inspector suggested to the Commissioner that because this publication placed a version of the facts (which may or may not be accurate in whole or in part) in the public domain, there is an argument in favour of disclosing some, if not all of the allegations and/or findings in order to overcome the suspicion of misconduct or cover-up by the ICAC and/or the Council. The Commissioner accepted this suggested and advised the Council that, as it undertook the investigation and the resultant report belongs to it, it is within Council's discretion as to what information arising out of that report it publicly discloses.

3. This complaint was that ICAC had not investigated a complaint that a Local Government body had corruptly approved a Development Application on land adjoining the complainant's property. After interviewing the complainant and reviewing the ICAC's file, the Inspector suggested to the Commissioner that the preliminary enquiries undertaken by his officers were not sufficiently thorough to rule out any corrupt conduct. This suggestion was accepted by the Commissioner. After receiving the results of those enquiries, the ICAC decided to take no further action. The Complainant alleged that this was misconduct on the part of the ICAC. Although the enquires revealed negligence on the part of one or more Council officers in the manner in which they dealt with the Application there was no evidence to show that it was corruptly motivated. Accordingly, the conduct of the ICAC in deciding to take no further action did not amount to misconduct.

4. This complainant alleged misconduct on the part of the ICAC in failing to investigate his complaint that he had been dismissed from his position with a Government Agency in reprisal for his making a Protected Disclosure regarding his superior officers. The Inspector conducted a lengthy interview of the complainant and his wife and considered a number of documents. A copy of the judgment of the Government and Related Employees Appeals Tribunal (GREAT) relating to the complainant's appeal against his dismissal was obtained. The reasons for judgment did not support the complaint. Accordingly the conduct of the ICAC in refusing to investigate the matter did not amount to misconduct.
5. This was a complaint to the ICAC of corruption on the part of police, Crown Prosecutor and Judges arising out of his conviction of wounding with intent to murder. The complainant's appeal to the Court of Criminal Appeal raising the allegations was dismissed. The ICAC determined to take no action on the complaint because the acts complained of did not amount to corruption and were a matter for the criminal appeal process. This finding did not amount to misconduct on the part of the ICAC.

Allegations of Misconduct by Officers of the ICAC

1. The Commission notified the Inspector of an allegation of misconduct on the part of one of its officers and asked whether the allegation should be investigated by it or by the Inspector. The Inspector referred the performance of the investigation to the Commission with the condition that it promptly report progress of the investigation. The Commission did so report on its findings and action taken. The conduct of the ICAC was approved.
2. The Commission notified the Inspector of allegations of misconduct on the part of a further officer. The Inspector permitted the investigation to be undertaken by ICAC with the proviso that the progress of the investigation be reported to him. The ICAC provided progress reports. The Inspector was satisfied that the matter was dealt with appropriately.
3. The complainant alleged unreasonable invasion of his and his family's privacy by the Commission's Investigators in conducting surveillance of him and of his family's home over a period of some months. The complainant believed that police officers could also be involved. The Inspector interviewed the complainant and, as a result of this and a review of Commission documents, found no evidence of misconduct on the part of the ICAC.
4. Adverse findings had been made by the Commission against the complainant in its published Report of its investigations. The complainant delivered a lengthy written complaint alleging misconduct, impropriety, abuse of power and maladministration on the part of the Commissioner in and about the investigation and Report. Amongst the allegations were:

- The Commissioner determined to hold a public enquiry for improper motives.
- Due to this motivation, the Commissioner deliberately and improperly ignored evidence which exculpated the complainant and disallowed some evidence.
- The Commission came to an arrangement with a witness, “not to be an affected person in exchange for making (and, it was submitted inventing) the allegation against the complainant prior to the Compulsory examination that day”.

The allegations were based solely upon the evidence adduced at the public hearing and the Report.

A careful examination of the evidence at the public hearing as well as of the Report demonstrated that the complaints were based, in part, on selection of pieces of evidence and ignoring the balance and in part on a misunderstanding of aspects of the law. All allegations made against the Commissioner and the Commission were held to be baseless and were, therefore, dismissed.

5. This complainant, who was the subject of adverse findings in a published Report of the Commission, alleged that the Commissioner acted improperly to protect others and that his conduct was based wholly or partly on improper motives. He further alleged that during the public hearing the Commissioner acted unfairly to him, that he allowed the ICAC to steal his intellectual property, that he unfairly allowed an opening address to be published in the media thereby causing damage to his reputation and that he erroneously made adverse findings against him. The Inspector interviewed the complainant at length on two occasions, considered in detail the evidence adduced at the public hearing as well as the reasons given in the Report together with the many documents produced by the complainant and found nothing to support the allegations.
6. The complainant, a former ICAC officer, alleged that a performance improvement program was motivated by a reaction to justified actions as a Union Representative rather than because of substandard work performance. It was further alleged that the audio recording of improvement program meetings was unlawful and that the manner of investigating disciplinary allegations was improper. The Complainant was interviewed when documents were produced. After consideration the Inspector found that the above complaints were not substantiated.
7. In addition, the complainant alleged instances of conflict of duty and improper disclosure of protected information involving other officers. Details of these complaints were referred to the ICAC for responses which were duly received. Those responses indicated that no further action was required by the Inspector.

Those complaints which were withdrawn

The complainant alleged failure on the part of the ICAC to investigate his complaint of inappropriate business relationships within a local government body. The Complainant subsequently withdrew his complaint.

11 CONCLUDING COMMENTS

As my three year term draws to a close I shall permit myself to make some parting observations.

Firstly, I express my appreciation to the respective Chairmen and members of the Parliamentary Committee on the ICAC for their courtesies to me.

Secondly, I express my appreciation to the Commissioner, the Hon David Ipp AO QC and to his officers for their cooperation. My requests for information or documents have been promptly met. My suggestions have been accepted.

Thirdly, it is pleasing to note that nothing has been established in audits and investigations of complaints which give rise to any comment adverse to the Commission.

Fourthly, I am pleased that my request for amendments to the *Surveillance Devices Act 2007* (NSW) made two years ago to enable me to conduct audits without reliance on the good will of the Commissioner, is now being implemented.

Fifthly, I am disappointed that my request for amendments to *Telecommunications (Interception and Access) Act 1979 (Cth)* has been refused. This means that the Inspector is precluded from conducting an audit of the ICAC's applications for and use of information from warrants and intercepts made under the provisions of that Act. 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).

And finally, a word about the complainants.

There were some who believe that anyone holding a point of view different from theirs is party to a large scale conspiracy. They are self perpetuating conspiracists participating in an ever increasing circle of conspiracy.

There were others who, whilst not happy with the Inspector's decision not to take action on their complaints, understood it.

But my sympathy goes to those who suffered a justifiable sense of injustice due to the way they have been treated by officers of public agencies. They suffered

because the conduct complained of, although hurtful, did not amount to corruption. I am not suggesting that the definition of “corruption” in the ICAC Act be expanded. I am just taking this opportunity to say that the plight of these people deserves sympathy.

Harvey Cooper AM
Inspector

September 2011