



Office of the Inspector of the
Independent Commission Against Corruption

Annual Report for the period ending 30 June 2017



Office of the Inspector of the
Independent Commission Against Corruption

19 October 2017

The Hon. John George Ajaka, 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, hereby furnish to each of you for presentation to the Parliament the Annual Report of the Inspector for the year ended 30 June 2017.

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,

Bruce McClintock
Inspector of the ICAC

Received by me and authorised
to be made public forthwith on

Thursday 19 October 2017

at P.O. Dan

President



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Independent Commission Against Corruption

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Inspector of the ICAC

Received by me and authorised
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Thursday, 19th October 2017
at 9:52 am
Shelley Hancock
Speaker

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PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS

1.1 FOREWORD AND PRELIMINARY OBSERVATIONS

I was appointed the Inspector of the Independent Commission Against Corruption on 1 July 2017, for a term of five years ending on 30 June 2022. My appointment is on a part-time basis. This Report relates to the year ended 30 June 2017, that is, a period prior to the commencement of my term as Inspector.

1.2 NEW LEGISLATION AND OTHER LEGAL DEVELOPMENTS

The past 18 months has seen a significant change in the structure of the Commission. Following the ICAC Parliamentary Joint Committee's inquiry into my predecessor's *Report to the Premier: the Inspector's review of the ICAC*, which was published on 12 May 2016, the *Independent Commission Against Corruption Amendment Bill 2016* was introduced and subsequently passed on 16 November 2016. The most significant change to ICAC as a consequence of the passing of that legislation was the introduction of a 3-Commissioner model, so that the Commission now consists of a Chief Commissioner and 2 other Commissioners appointed by the Governor. In addition, the amendments also provided for the requirement that certain decisions, such as the decision to conduct a public inquiry, can only be authorised by the Chief Commissioner and at least one other Commissioner.

As at 30 June 2017, the new Chief Commissioner and Commissioners had not been appointed, although subsequently they have been.

1.3 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. A Committee of the NSW Parliament comprising representatives of all political parties and independent members called "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.

“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 Joint 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.

1.4 INSPECTOR'S POWERS UNDER THE ICAC ACT

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.

PART 2: OTHER RELEVANT LEGISLATION

2.1 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 NO. 52 (GIPA ACT)

The *Government Information (Public Access) Act 2009* ("GIPA Act" or "GIPA") came into force on 1 July 2010 replacing the Freedom of Information Act 1989. Information concerning the Inspector and the ICAC's statutory functions are exempt from being released under an access application made under the *GIPA Act*.

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

Under Schedule 2 of the *GIPA Act* an access application made for access to any information relating to the auditing, complaint handling, investigative and reporting functions of the Inspector of the ICAC will not be granted.

Applications for access to information made in respect of the Inspector's administrative functions (for example, human resources policies and practices) may be granted. Such applications will be assessed on a case by case basis.

In compliance with section 125 of the *GIPA Act* the Inspector advises that there were no access applications made under the *GIPA Act* to the Inspector during the current reporting period.

As required under section 20 of the *GIPA Act*, Publication Guidelines, have been published by the Inspector. These Publication Guidelines are available on the Office of the Inspector of ICAC website: www.oiiicac.nsw.gov.au.

The Publications Guidelines provide information about the Inspector's functions and the structure of the Office and other matters as required by section 20, namely:

- The ways in which the functions of the Inspector affect members of the public
- Any arrangements which exist to enable members of the public to participate in the formulation of the Inspector and the Office's policies and the exercise of the Inspector's functions
- The various kinds of government information held by the Office
- The kind of government information held by the Office that the Inspector makes or will make publicly available
- The kinds of information that are or will be made available free of charge or those for which a charge will be imposed.

Under section 7(3) of the *GIPA Act*, the Inspector advises that he has conducted an annual review of his program to proactively release information which is in the public interest. All information which is publicly available is contained on the Office website.

In compliance with section 7(a) of the *GIPA Regulation* the Inspector advises that the web site content was reviewed to assess what, if any, further information could be pro-actively released. Furthermore, the Inspector reviewed all categories of administrative information which is published in previous Annual Reports and audit reports to assess what, if any, further information could be pro-actively released. Whilst no new information was released, existing information was updated to ensure currency and relevance. It is a process of ongoing review.

2.2 THE PUBLIC INTEREST DISCLOSURES ACT 1994 (PID ACT)

The Public Interest Disclosures Act 1994 (“the *PID Act*”) provides for public servants and other public officials to report serious wrong doing in public sector agencies on a confidential basis. Under the *PID Act* complaints or allegations made by public servants and public officials are called disclosures. The *PID Act* provides for public servants and public officials making disclosures to be protected against actual or potential reprisals.

The Inspector is an eligible authority to whom a public disclosure can be made under the *PID Act*.

Pursuant to section 6D(1) of the *PID Act* the Inspector has developed policies and procedures for receiving, assessing and dealing with public interest disclosures. These policies and procedures as well as the Inspector’s Statement of Commitment to the *PID Act* are available for viewing on the Office’s website at www.oiiac.nsw.gov.au.

The following information, relevant to the current reporting period, is provided pursuant to section 31 of the *PID Act* and clause 4 of the *Public Interest Disclosures Regulation 2011*:

- a) The number of public officials who have made a public interest disclosure to the Inspector – 0

- b) The number of public interest disclosures received by the Inspector relating to each of the following:
 - i. corrupt conduct only– 0
 - ii. maladministration and/or corruption– 0
 - iii. serious and substantial waste of public money or local government money (as appropriate)– 0
 - iv. government information contraventions- 0
 - v. local government pecuniary interest contraventions- 0

2.3 TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979 (CTH) (TIA ACT)

The Inspector is included as an “*eligible authority*” for the purposes of the *Telecommunications (Interception and Access) Act 1979* (Cth) (“*TIA Act*”). In accordance with reporting requirements under 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 relevant provisions of the *TIA Act* during the current reporting period.

PART 3: THE OFFICE OF THE INSPECTOR OF ICAC

ADMINISTRATION

3.1 PREMISES

The contact details are:

Postal address: GPO Box 5341, Sydney, NSW, 2001

Telephone: (02) 9228 5260

E-mail: oiicac_executive@oiicac.nsw.gov.au

3.2 STAFF

The staffing structure of the Office consists of two part-time employees– an Executive Support Officer and a Principal Legal Advisor.

On 30 June 2017, John Nicholson SC retired as Acting Inspector of the ICAC and my term as Inspector commenced on 1 July 2017.

3.3 BUDGET AND FINANCE

The Office of the Inspector is a cost centre within the NSW Department of Premier and Cabinet (DPC).

The statement for the period from 1 July 2016 to 30 June 2017 shows a total expenditure of \$460,693. This compares with a total expenditure of \$587,283 in the prior year. The budget for the 2016-2017 year was \$499,134. The budget for 2017-2018 is \$827,226.

Inspector's remuneration: An annual retainer of \$10,000 and a daily rate of \$1,870.

Assistant Inspector's remuneration: A daily rate of \$1,910.

PART 4: LIAISON AND COMMUNICATION

4.1 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 purpose of the MOU is to ensure that communications between the Inspector’s office and the ICAC are conducted at an appropriate level.

The MOU was executed on the 29th of May 2015 with minor revisions to that which preceded it.

There has been one meeting between the Acting Inspector and the Acting Commissioner.

4.2 MEETINGS/CONFERENCES UNDERTAKEN BY THE INSPECTOR AND ACTING INSPECTOR

Date	With Whom	Where	Purpose
8 September 2016	ICAC Parliamentary Joint Committee	NSW Parliament	Committee inquiry into the Inspector's Report to the Premier re ICAC
4 October 2016	Western Australia Parliamentary Joint Committee on the Corruption and Crime Commission- Chairman Nick Goiran MLC, Adele Farina MLC and Peter Watson MLA.	Office of the Inspector of ICAC	Discuss issues and obtain view of Inspector to assist the WA Committee's 2 inquiries- the ability of the WA CCC to charge and prosecute and the appointment process of the WA CCC Inspector.
22 March 2017	ICAC Parliamentary Joint Committee	NSW Parliament	Review of Inspector's 2014-2015 and 2015-2016 Annual Reports and Review of Acting Inspector's Special report in Operation Dewar.
12 May 2017	Senate Select Committee on a National Integrity Commission	Portside Centre, Kent Street, Sydney	Public hearing on the creation of a National Integrity Commission

4.3 WEBSITE

The Inspector's website is managed by the Office. The website address is www.oiiacac.nsw.gov.au. The website of the Office of the Inspector of the ICAC is regularly updated and contains all relevant statutory and other information for members of the public.

PART 5: THE INSPECTOR'S STATUTORY FUNCTIONS

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

The ICAC is invested 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"). In addition there is the power to apply for and execute search warrants under Division 4 of part 4 of the ICAC Act and Division 4 part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. 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.

5.2 AUDITS CONDUCTED IN THE PERIOD 1 JULY 2016 TO 30 JUNE 2017

No formal audits were conducted during the reporting period.

5.3 COMPLAINTS [Sections 57(1)(b) and 57(1)(d)]

The Inspector is authorised to deal with complaints of abuse of power, impropriety, maladministration and other forms of misconduct 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.

There is no power for the Inspector to deal with complaints against other bodies. Furthermore, there is no power for the Inspector to compel the ICAC to investigate or not to investigate a particular complaint nor is there power to tell the ICAC how an investigation should be conducted.

A substantial proportion of complaints involve matters in which the ICAC declined to investigate or make a finding of corruption. In effect the complainant seeks to appeal against the decision of the ICAC. When assessing such complaints the Inspector's objective is to determine whether there was any evidence of the ICAC engaging in the type of misconduct prohibited by the *ICAC Act*. Consequently, when considering such complaints the focus must be on whether the conduct of ICAC amounts to misconduct or maladministration of the type described above. In the course of looking at this focus, the conduct of those against whom complaints to the ICAC were initially made is considered, 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 or maladministration.

Each complaint received is assessed and a decision is made as to whether it is out of jurisdiction, whether there is any substance to the complaint and, whether it warrants investigation.

5.4 PERIOD 1 JULY 2016 TO 30 JUNE 2017: NEW MATTERS

There have been 16 new complaints received in the reporting period. This compares with 33 in the last reporting period.

Of the 16 new complaints received in the reporting period, 10 were closed and 6 have been carried over to the 2017/2018 reporting period. One of those which were carried over was closed and then reopened on receipt of further information.

Of the 10 closed:

- 7 were complaints about ICAC deciding in each instance not to investigate the complaint. The then Inspector or Acting Inspector (the Inspector) was satisfied that in all those matters, the ICAC officers involved in the assessment of the allegations considered all the material provided by the particular complainant and that after proper consideration of its powers and taking into account the law with respect to what amounts to corrupt conduct, it formed the view that there were insufficient details to support the allegations of corrupt conduct. The Inspector was also satisfied that ICAC made its determination within a reasonable period of time and noted that whilst the complainants may feel aggrieved by the ICAC's decision not to investigate or that the complainant does not agree with it, is not sufficient for the Inspector to make an adverse recommendation or report about the ICAC or its officers.
- 2 did not invoke the Inspector's jurisdiction and no action was taken beyond informing the complainants of same.
- 1 was a previous complaint on which the Inspector had made an earlier decision. This complaint invoked the Inspector's jurisdiction but the complainant withdrew his complaint. No further action was warranted and the file was closed.

5.5 MATTERS CARRIED OVER FROM THE 2015-2016 REPORTING YEAR

There were 15 matters carried over from the previous reporting period. Of those carried over, 11 were closed.

Of the 11 closed:

- 1 did not activate the Inspector's jurisdiction. The author of the communication made general comments about ICAC by way of submissions for the consideration of the Inspector.
- 10 were complaints about ICAC deciding in each instance not to investigate the complaint. The Inspector was satisfied that in all those matters, the ICAC officers involved in the assessment of the allegations considered all the material provided by the particular complainant and that after proper consideration of its powers and taking into account the law with respect to what amounts to corrupt conduct, it formed the view that there were insufficient details to support the allegations of corrupt conduct. The Inspector was also satisfied that ICAC made its determination within a reasonable period of time and noted that whilst the complainants may feel aggrieved by the ICAC's decision not to investigate or that the complainant does not agree with it, is not sufficient for the Inspector to make an adverse recommendation or report about the ICAC or its officers.

5.6 MATTERS CARRIED OVER FROM THE 2014-2015 REPORTING YEAR

There were 28 matters from the 2014-2015 reporting period which were carried over to the 2016-2017 reporting year. 16 of those matters have now been closed. In all 16 matters the Inspector's jurisdiction was activated but the complaints were not upheld.

There are 12 matters from the 2014-2015 reporting year which remain open. These relate to Operations Jasper, Acacia, Spicer and Credo. The existence of legal proceedings, both civil and criminal, delayed resolution of some of those matters.

The Report in Operation Spicer was published in June 2016 and it was only after then that an assessment could be made of the complaints in relation to that Operation.

PART 6: CONCLUSION

It is appropriate to make some short remarks about events since I commenced my term as Inspector so that Parliament is aware of the current status of outstanding matters. As at 1 July 2017, there were 23 outstanding complaints. I have resolved or closed the files in respect of 15 of those complaints. In relation to the remaining 8 I have taken steps, for example, by requiring the provision of further information by the ICAC or the complainant.

I am aiming to resolve the outstanding complaints by year end and I look forward to reporting on them to Parliament whether by way of Special Report or by the next Annual Report. Once the outstanding complaints are resolved and the new Chief Commissioner and Commissioners have had adequate time to settle in to their roles I intend to undertake a number of audits of the ICAC's operations in the exercise of my functions under section 57B(1)(a).

Finally, I have commenced discussions with the Commission concerning a revision of the Memorandum of Understanding.

B. R. McClintock

Bruce McClintock SC

Inspector ICAC

October 2017

