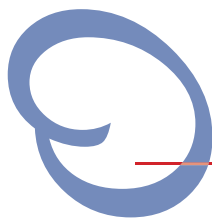




New South Wales



**Office of the Inspector**

**of the Independent Commission  
Against Corruption**

**Annual Report  
2005 - 2006**



October 2006

The Hon. Dr Meredith Burgmann MLC  
President  
Legislative Council  
Parliament House  
Sydney NSW 2000

The Hon. John Aquilina MP  
Speaker  
Legislative Assembly  
Parliament House  
Sydney NSW 2000

Dear Madam President & Mr Speaker,

In accordance with section 77B of the *Independent Commission Against Corruption Act 1988*, 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 2006.

The report has been prepared in accordance with the requirements of the *Independent Commission Against Corruption Act 1988* ("the Act").

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

Yours sincerely,

Graham Kelly  
Inspector

## ACKNOWLEDGEMENTS

I would like to place on record my appreciation of the considerable assistance I received during 2005-06 from:

- § The Commissioner of the Independent Commission Against Corruption, the Hon. Jerrold Cripps, QC, for his co-operation and responsiveness; and
- § The current staff of the Office of the Inspector of the ICAC for their support.

On behalf of my Office and myself I would also like to thank the following persons who rendered assistance at various times during 2005-06 from the NSW Premiers Department:

- § Dr Col Gellatly, Director General;
- § Mr Alex Smith, Deputy Director General;
- § Mr Emanuel Sklavounos, Acting Chief of Staff, Office of the Director General;
- § Mr David Roden, Director, Management Services and his staff; and
- § Ms Susan Hayes, seconded from the Premier's Department from August to November 2005 to act in the position of Executive Officer, helping to establish the Office.

My thanks also to:

- § Mr Mike Kaiser, Chief of Staff to the Premier;
- § Mr Anthony Lean of The Cabinet Office for his assistance and advice in connection with the initial establishment of the Office; and
- § Ms Jeannine Lake, seconded from January to May 2006 from the Attorney General's Department to act in the position of Office Manager, and Mr Michael Gleeson, Senior Project Officer, NSW Ombudsman's Office, seconded from May to July 2006.

## CONTENTS

---

|   |   |
|---|---|
| Preliminary Observations  | 1 |
| Role of the Inspector   | 1 |
| Powers of the Inspector   | 2 |
| The Office  | 2 |
| Budget  | 3 |
| Annual Reporting Requirements   | 3 |
| Freedom of Information Legislation  | 3 |
| Establishment of the Office   | 3 |
| Policies Developed  | 4 |
| Policy concerning assistance to complainants  | 4 |
| Policy concerning allegations of misconduct by ICAC officers<br>whilst "on-duty" and "off-duty" | 4 |
| Liaison between the Inspector, the ICAC and the Parliamentary<br>Joint Committee                | 5 |
| Memorandum of Understanding   | 5 |
| Meetings between the Inspector and Commissioner   | 5 |
| Liaison between Office staff and the ICAC   | 5 |
| Meetings between the Inspector and the Parliamentary<br>Joint Committee                         | 5 |
| Issues Raised by the Parliamentary Joint Committee  | 6 |

|   |    |
|---|----|
| Summary of Consultations Undertaken by the Inspector                | 7  |
| Advertisements Appearing in the Media                               | 8  |
| Brochures Mailed Out  | 9  |
| Results at a Glance - Table 1: Awareness of Inspector's Office/Role | 9  |
| Sample of Office brochure   | 10 |
| Conference Speeches   | 11 |
| Website   | 11 |
| <br>  |    |
| Report on Inspector's Statutory Functions                           | 11 |
| Auditing the Operations of the Commission                           | 11 |
| Recommendations made by the Inspector in the draft Audit Report     | 12 |
| Complaints  | 13 |
| Complaints determined as not warranting further investigation       | 13 |
| Complaints referred back to the ICAC                                | 17 |
| Complaints still active as of 30 June 2006                          | 18 |
| Other correspondence and enquiries relevant to complaints           | 20 |
| Results at a Glance – Table 2: Complaints                           | 20 |
| Assessment of Procedures  | 21 |
| <br>  |    |
| Telecommunication (Interception) Act 1979 (Cth)                     | 21 |
| <br>  |    |
| Relevant Legislative Amendments during 2005–2006                    | 21 |
| <br>  |    |
| Future Operations   | 21 |

## PRELIMINARY OBSERVATIONS

This is my inaugural Annual Report to Parliament as Inspector of the Independent Commission Against Corruption ("the ICAC" or "the Commission") pursuant to section 78(1A) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act" or "the Act"). I recommend that the report be made public forthwith.

My appointment, which commenced on 1 July 2005, will conclude on 1 July 2008. These preliminary observations set out the role and purpose of the Office of the Inspector ("the Office").

The idea of establishing an Inspector to oversee the ICAC developed from a review of the ICAC Act that was begun by the Hon. Jerrold Cripps QC, in 2005. Subsequent to Mr Cripps' appointment as the Commissioner of the ICAC ("the Commissioner"), the review was continued by Mr Bruce McClintock S.C. The review identified the fact that there was no particular body that could review complaints that alleged misconduct or maladministration by the ICAC or its officers. This was seen to be a gap in accountability and it was recommended that an Inspector with appropriate powers to review, report and make recommendations on, any such allegations should be established.

## ROLE OF THE INSPECTOR

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

The Inspector's role is generally modelled on that of the Inspector of the Police Integrity Commission. Under section 57A of the Act the Inspector is appointed by the Governor. The Parliamentary Joint Committee on the Independent Commission Against Corruption ("the Parliamentary Joint Committee" or "the Committee") is empowered to veto the proposed appointment, which is required to be referred to the Committee by the Minister.<sup>1</sup>

Section 57B sets out the principal functions of the Inspector. 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 an investigation 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 and propriety of its activities.*

---

<sup>1</sup> Clause 10, Schedule 1A, Independent Commission Against Corruption Act 1988.

The definition of maladministration is defined under section 57B 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) 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 Parliamentary Joint Committee or any public authority or public official. The Inspector is not subject to the Commission in any respect.

"The Minister" referred to under section 57B(2) is the Premier of New South Wales.

Under section 77A of the 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. Reports made under either sections 77A or 77B are to be made to the Presiding Officer of each House of Parliament.

## POWERS OF THE INSPECTOR

Section 57C of the ICAC Act establishes the powers of the Inspector. The Inspector has extensive powers to investigate any aspect of the Commission's operations or any conduct of any officers of the Commission. The Inspector is empowered to make or hold inquiries in order to carry out his functions and for that purpose has the powers, authorities, protections and immunities of a Royal Commissioner. There were no formal inquiries held during 2005-06.

## THE OFFICE

The Office is located at Redfern. The postal address for the Office is GPO Box 5341, Sydney, NSW, 2001. The telephone number for the Office is (02) 8374 5381; the facsimile is (02) 8374 5382. The email address for the Office is [InspectorICAC@oicac.nsw.gov.au](mailto:InspectorICAC@oicac.nsw.gov.au)

Two permanent staff are employed on a full-time basis. They are the Executive Officer and the Office Manager. The Executive Officer commenced duty on 28 November 2005. The Office Manager's position was filled on a temporary basis in January 2006 and subsequently recruited on a long term basis in July 2006.

The Office operates as an independent agency with its own budget, and its staff are under the exclusive control of the Inspector. However, an administrative

arrangement exists with the Premier's Department whereby the Premier's Department provides, on a fee for service basis, a range of support services to the Office such as information technology, payroll and general human resources support.

## BUDGET

In 2005-06 the total operating budget for the Office was \$382,051. This included an amount of \$68,000 for corporate costs.

The workload of the Office, particularly with respect to the number of complaints received during 2005-06, proved to be higher than expected. The ongoing nature of the high workload resulted in the Office requesting a budget enhancement prior to 30 June 2006. Since 30 June 2006 a budget enhancement has been approved. The bulk of this enhancement will be used to recruit an additional staff member to assist with managing the Office's day to day workload.

## ANNUAL REPORTING REQUIREMENTS

The Inspector is neither a Department nor a Department Head for the purposes of the *Annual Reports (Departments) Act 1985*. 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* 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* applies; nor is the Inspector or the Office prescribed as a statutory body by the *Annual Reports (Statutory Bodies) Act 1984*. As noted, however, section 77B of the ICAC Act requires the Inspector to report annually to Parliament.

## FREEDOM OF INFORMATION LEGISLATION

Under schedule 2 of the *Freedom of Information Act 1989* ("the FOI Act") the Inspector is exempt from the provisions of the FOI Act.

## ESTABLISHMENT OF THE OFFICE

During 2005-06 the priority was to establish effective operating systems and key operational policies and procedures. This included the recruitment of staff, establishment of physical and electronic infrastructure, development of administrative systems, financial management procedures and a complaints management system. While operating policies and procedures will continue to be developed in response to emerging business needs, key infrastructure and operating systems were established by March 2006.



During 2005-06 remote electronic access to the ICAC's electronic records was also established. This means that the Inspector and his staff can gain access to the ICAC's electronic records with privacy and complete security.

## POLICIES DEVELOPED

Given its limited resources, it was recognised early on that the Office needed to develop relevant operational policies in order to effectively manage the Inspector's various statutory functions. The high number of complaints received by the Office, in particular, was recognised as requiring operational policies that would ensure that while complaints were managed effectively, they did not completely absorb all available resources. The following policies were therefore developed in regards to complaints:

Policy concerning assistance to complainants:

1. Particulars of a complaint should be provided in writing, except where there is a sound reason why the complainant is unable to do so, e.g. a complainant has difficulties with written communication due to language or other difficulties. In such situations, complainants will be provided with assistance by the Office.
2. The assistance provided by the Office will be limited to a maximum of 2 hours' assistance. An assessment will be made at the end of the 2 hour period as to the merits of the complaint. If the complaint is assessed as unlikely to support the allegations being made, no further assistance will be provided to the complainant.

Policy concerning allegations of misconduct by ICAC officers whilst "on-duty" and "off-duty":

1. Complaints concerning alleged misconduct of ICAC officers when they are "on-duty" will be investigated by the Inspector if, after an assessment, the complaint appears to have merit.
2. Complaints concerning alleged misconduct of ICAC officers when they are "off-duty" will be referred to the Solicitor to the Commission for further action.

This policy is consistent with the legislative intent of the ICAC Act which was intended to address the conduct of ICAC officers which occurred during the course of their duties. The Office's policy to refer complaints to the ICAC where misconduct is alleged to have occurred while officers are "off-duty" ensures effective use of public resources as the ICAC already has an established mechanism for dealing with general complaints against its officers for unsatisfactory conduct. Under the ICAC's Policy 64 "Unsatisfactory Performance, Misconduct & Serious Offences", the Solicitor to the Commission receives and may investigate complaints concerning misconduct of ICAC officers which may breach the ICAC Code of Conduct.

## LIAISON BETWEEN THE INSPECTOR, THE ICAC AND THE PARLIAMENTARY JOINT COMMITTEE

### Memorandum of Understanding

A Memorandum of Understanding ("MOU") was executed by the Inspector and the Commissioner of the ICAC in September 2005. The MOU established protocols for communication and liaison between the two agencies in 2005-06. The MOU also provides for regular monthly meetings between the Commissioner and the Inspector. Under the MOU the Executive Officer liaises with the Deputy Commissioner in relation to matters arising out of the Inspector's statutory functions. Clause 5.1 of the MOU provides that the MOU may be reviewed at any time at the request of either the ICAC or the Inspector, or at the latest at the end of 12 months from its execution. The MOU was due to be reviewed in September 2006.

### Meetings between the Inspector and the Commissioner

In accordance with the MOU, the Inspector and the Commissioner have held regular monthly meetings. These meetings have provided an opportunity to discuss policy, procedures and general performance issues which are of relevance to the Inspector's functions. As reported by the Inspector to the Parliamentary Joint Committee, the Commissioner has demonstrated an open and constructive attitude in these meetings.

### Liaison between Office staff and the ICAC

After commencing duty in late November 2005, the Executive Officer held meetings with ICAC management and staff to introduce the Office and the role of the Inspector. Meetings were held with each division between February to March 2006.

ICAC has generally been forthcoming in meeting requests for information. Material is generally produced to the Office within 1-3 weeks of a request being made.

### Meetings between the Inspector and the Parliamentary Joint Committee

The Inspector and the Parliamentary Joint Committee meet approximately once a quarter. The Inspector has established a practice of bringing his staff to attend these meetings in order to facilitate their understanding of the concerns and priorities of the Committee.

During 2005-06 the Committee and the Inspector met on the following dates:

- § 12 October 2005
- § 12 December 2005
- § 29 March 2006

Key issues discussed at these meetings were as follows:

October 2005

- § Financing of the Office
- § The type of information to be provided to the Committee to facilitate its oversight role
- § The general operations of the ICAC
- § Establishing access to the Commission's electronic records

December 2005

- § Staffing of the Office
- § Office profile and its accessibility to the public
- § The relationship with the ICAC
- § Number and types of complaints received to date

March 2006

- § Progress report on the development of infrastructure of the Office
- § Development of a brochure and website publicising the Inspector's role and functions
- § Operational policies developed to manage the Inspector's complaint handling function
- § The Office's business plan for 2006-07
- § Possible legislative changes
- § Potential audit projects
- § Number and types of complaints received to date

The transcripts of the meetings are available from Mr Ian Faulks, Committee Manager, Parliamentary Joint Committee on the ICAC. Mr Faulk's email address is: [icac@parliament.nsw.gov.au](mailto:icac@parliament.nsw.gov.au)

## ISSUES RAISED BY THE PARLIAMENTARY JOINT COMMITTEE

During 2005-06 the Parliamentary Joint Committee requested that the Inspector examine and report on the following issues:

1. *The Inspector examine ways of improving the effectiveness and appropriateness of the procedures governing the Operations Review Committee ("the ORC") so that it can exercise a more productive advisory role. (Report No. 5/53, December 2005)*

As the ORC was abolished in June 2006 this recommendation has become obsolete.

2. *The Inspector monitor and assess the impact of any new arrangements between the Commission and the Office of the Director of Public Prosecutions ("the ODPP") and report to Parliament within six months on whether they have improved or are likely to improve operational effectiveness. (Report No. 5/53, December 2005)*

The Inspector has held discussions with the Director of Public Prosecution ("the DPP") and the Commissioner of the ICAC about the new Memorandum of Understanding ("the MOU") which was signed by the Commissioner of the ICAC

and the DPP on 24 October 2005. The MOU sets out the responsibilities of, and procedures to be followed by, each agency in relation to the following matters:

- i. the furnishing of evidence to the ODPP by the ICAC;
- ii. requisitions to be answered by the ICAC upon the request of the ODPP;
- iii. consultation between the ICAC and the ODPP in the instituting of a prosecution;
- iv. the costs of security arrangements for witnesses, the investigation of the charge, the obtaining of evidence and the preparation of evidence for trial;
- v. the preparation of summary hearings, committals and trials;
- vi. points of contact for the ICAC and the ODPP; and
- vii. general matters related to sentencing under the *Crimes (Sentencing Procedure) Act 1999* and notification of proceedings brought under the *Confiscation of Proceeds of Crime Act 1989*.

The Commissioner of the ICAC and the DPP have each advised the Inspector that he felt the MOU was working well. There are no data available as yet which would indicate the extent to which the MOU has assisted in reducing the time being taken to prepare matters for prosecution.

3. *The Inspector of the ICAC use the additional information contained in future ICAC Annual Reports regarding the time taken to deal with complaints, to examine the issues of delay in the completion of investigations. (Report No. 5/53, December 2005)*

On page 9 of the Committee's Report No. 5/53, December 2005, the average "turn-around time" was defined as "the time from receipt of a matter to the provision of information to the complainant on the Commission's decision". This was noted in the Committee's report as being 51 days in 2003-04.

The Inspector will report on this issue as more information comes to hand in future ICAC Annual Reports.

## SUMMARY OF CONSULTATIONS UNDERTAKEN BY THE INSPECTOR

During 2005-06 the Inspector and/or his staff consulted with the following:

1. NSW Ombudsman's Office, 15 February 2006  
The Executive Officer met with Assistant Ombudsman Greg Andrews and Assistant Ombudsman Simon Cohen.
2. Director of Public Prosecutions (DPP), 28 March 2006  
The Inspector met with the DPP, Nicholas Cowdery AM, QC.

3. Operations Review Committee of the ICAC (ORC)
  - i. The Inspector and Executive Officer met with ORC Member, Reverend Harry Herbert on 30 March 2006.
  - ii. The Inspector and Executive Officer met with ORC Member, Merrilyn Walton on 12 April 2006.
4. Sutherland Shire Council, Office of the Internal Ombudsman, 4 April 2006  
The Executive Officer met with Sutherland Shire Council Ombudsman Sue Bullock and her staff.
5. Executive Committee Members of Ethnic Communities Council, 10 May 2006  
The Inspector and Executive Officer met with the Members of the Management Committee of the Ethnic Communities Council.
6. Dr Simon Longstaff, St. James Ethics Centre, 31 May 2006  
The Inspector and Executive Officer met with Executive Director of the St. James Ethics Centre, Dr Simon Longstaff.
7. Premier's Department, Level 39 GMT, 31 May 2006  
The Inspector and Executive Officer met with the Director General Dr Col Gellatly and Deputy Director General Alex Smith of the Premier's Department.

#### Advertisements Appearing in the Media

- § July 2005: Advertisements placed in weekend metropolitan papers announced the establishment of the Inspector of the ICAC.
- § May-June 2006: Advertisements and articles placed in local ethnic local papers publicised the role and functions of the Inspector. These advertisements and articles were placed at the request of the Parliamentary Joint Committee.

The publications included:

- *An Nahar*: Arabic – reaches the Muslim community;
- *El Telegraph*: Arabic – reaches the Christian community;
- *Sing Tao*: Chinese – Cantonese speaking;
- *Australian Chinese Daily* – Mandarin speaking;
- *Nova Hrvatska*: Croatian;
- *O Kosmos*: Greek;
- *Indian Link*: Indian, Pakistani and Fijian community;
- *Bulletin Indonesia*: Indonesian readership;
- *La Fiamma*: Italian;
- *Sydney Korean Herald*: Korean;
- *Today Denes*: Macedonian;
- *Novosti*: Serbian;
- *Spanish Herald*: Spanish;
- *The Pahana Light and Life*: Sri Lankan;
- *Dunya*: Turkish; and
- *Chieu Duong*: Vietnamese.

## Brochures Mailed Out

On 17 February 2006 50 copies of the brochure "Making complaints against the Independent Commission Against Corruption" were sent to each of the following persons, organisations and agencies:

- § Members of the NSW Legislative Council
- § Members of the NSW Legislative Assembly
- § The Independent Commission Against Corruption
- § NSW Ombudsman
- § The Inspector of the Police Integrity Commission
- § The Police Integrity Commission
- § NSW Attorney General's Department
- § NSW Supreme Court
- § NSW Law Society
- § NSW Bar Association
- § Inspector-General of Intelligence and Security
- § Legal Representation Office (on two occasions)

On 20 April 2006 50 of the same brochures were sent to:

- § Community Relations Division of NSW Attorney General's Department.

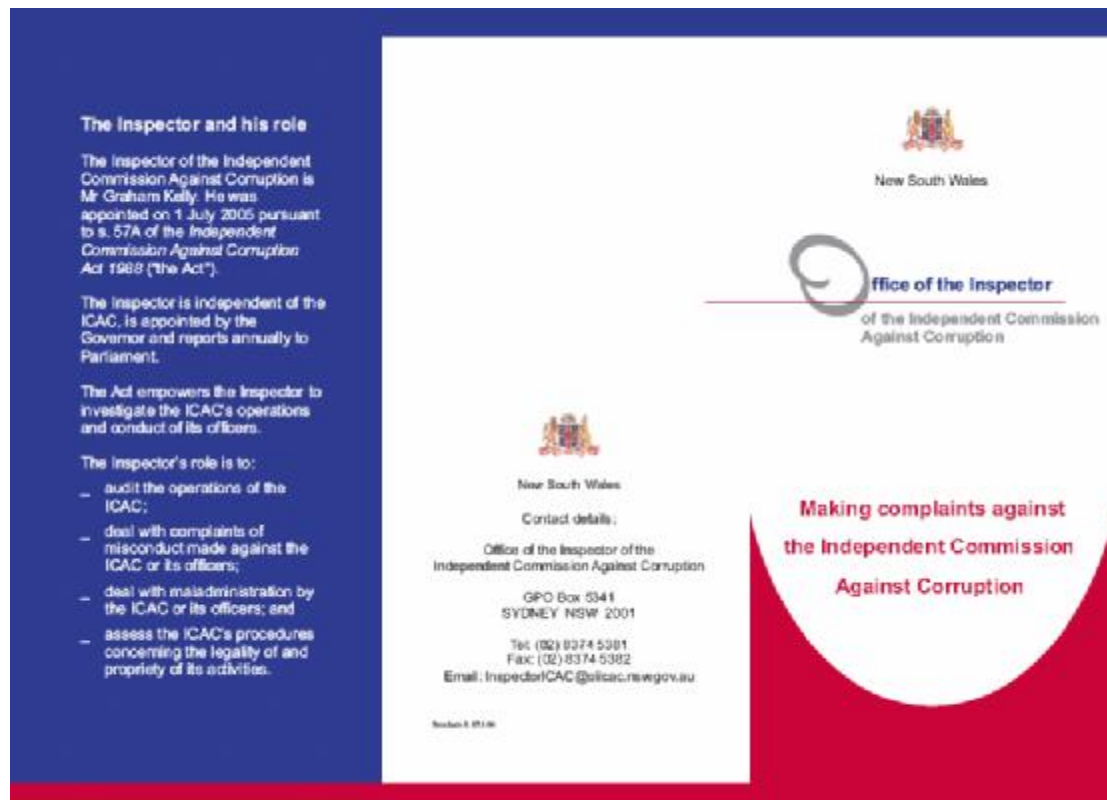
## Results at a Glance – Table 1: Awareness of Inspector's Office/Role

|  |      |
|--|------|
| "Making complaints against the Independent Commission Against Corruption" brochures mailed | 700  |
| Consultations undertaken by the Inspector  | 8    |
| Number of advertisements placed in ethnic press  | 32   |
| Number of visits <sup>+</sup> to the Office's website                                      | 643  |
| Number of hits <sup>++</sup> on Office's website   | 8894 |

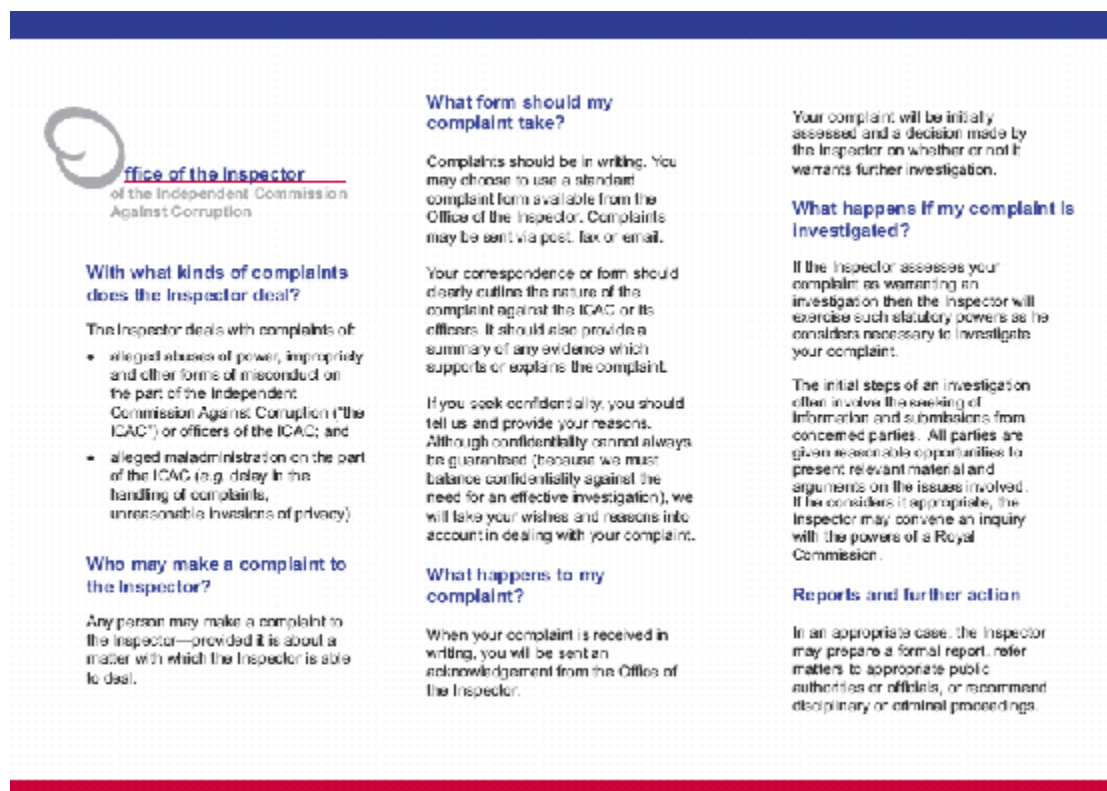
+ Visits refers to the total number of visits made to a site for a period.

++ Hits refers to the total number of files /pages/graphics requested from the server on that site.

Sample of the Office's brochure: "Making complaints against the Independent Commission Against Corruption".



Front and back panels



Inside panels

## Conference Speeches

- § The Inspector gave a speech at the 2<sup>nd</sup> National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies on Thursday 23 February 2006. The speech provided an overview of the Inspector's role and functions. A copy of the speech can be obtained by contacting the Office.

## Website

- § The website for the Office, [www.oiiacac.nsw.gov.au](http://www.oiiacac.nsw.gov.au) was established in March 2006.
- § The Office's website provides a link to the following websites:
- i. The Independent Commission Against Corruption
  - ii. The Premier's Department
  - iii. The New South Wales Government (home page)
  - iv. NSW Attorney General's Department
  - v. The Office of the NSW Ombudsman
- § The total number of visits to the Office's website during the reporting period was 643.
- § The total number of hits to the Office's website during the reporting period was 8,894.

## REPORT ON INSPECTOR'S STATUTORY FUNCTIONS

### 1. Section 57 (1)(a): AUDITING THE OPERATIONS OF THE COMMISSION

In 2005-06 the Office conducted its first audit of the operations of the Commission. The purpose of the audit was to assess the ICAC's compliance with section 12A of the ICAC Act, which requires the ICAC to:

*direct its attention to serious and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.*

A sample of 215 complaint files, representing approximately 12% of the 1783 complaints received and assessed by the ICAC between 1 July 2005 and 30 April 2006, was audited.

The key findings contained in the draft Audit Report were as follows:

- § 98% of the sample audited showed that the ICAC complied with the objectives of section 12A and no further issues were identified. The ICAC complied with section 12A by not investigating complaints which were assessed as not raising issues concerning serious and systemic corrupt conduct.
- § 2% of the sample audited (a total of 5 complaints) involved the following other issues:



- The ICAC imposed an onerous requirement on some complainants to provide specific evidentiary details before it would act. Such details could have been readily obtained by the ICAC if it had made relevant inquiries. The ICAC's practice of citing lack of such detail, in its assessment reports<sup>2</sup>, as a basis for not being able to take further action appeared on these occasions to be unreasonable, and in some instances, even misleading.
- Even where sufficient information has been provided by the complainant to do so, the ICAC does not always follow up basic inquiries into allegations apparently involving serious and systemic corrupt conduct (this point overlaps with the point made above).
- The ICAC regards what would ordinarily be regarded as direct oral evidence as not constituting "evidence".
- The ICAC's assessment reports are not always clear about the reasons for not investigating matters involving serious and systemic corrupt conduct. This lack of specificity and transparency tends to inhibit effective review of such decisions.
- The ICAC's practice of referring matters involving serious and systemic corrupt conduct to agencies and public officials pursuant to section 19 "for information" rather than referring the matter under its specific referral powers under Part 5 of the Act runs the risk of such matters being ignored.

#### Recommendations made by the Inspector in the draft Audit Report

1. The ICAC assessment reports should include reference to the matters listed in the ICAC's Assessment Checklist (which identifies factors to be taken into account in assessing a complaint) in order to improve the quality and consistency of the ICAC's reasoning regarding what constitutes serious and systemic corrupt conduct.
2. The ICAC should ensure that, where complaints are assessed as potentially involving serious and systemic corrupt conduct, it undertakes basic inquiries where it is provided sufficient information to do so.
3. The ICAC should review the standard of evidence that is required from complainants to ensure that its requirements are not unduly onerous and do not undermine its responsibility to prevent serious and systemic corrupt conduct. In particular, ICAC Assessment Officers need to have a clear understanding that direct oral evidence can constitute evidence of the facts

---

<sup>2</sup>Assessment reports are reports written by Assessment Officers recommending a particular course of action that the ICAC should take in respect of a complaint, namely, to investigate further or not to investigate. Assessment reports are usually written by Assessment Officers and signed off by their supervisor. They are also approved by the Manager, Assessments Section, prior to being forwarded to the ICAC's internal Assessment Panel, and when it existed, the ORC. The ICAC's internal Assessment Panel consists of the following membership: the Deputy Commissioner, the Solicitor to the Commission, the Executive Director, Strategic Operations, the Manager, Assessments Section and the Executive Director, Corruption Prevention, Education and Research.

asserted (though there may be questions of credibility and reliability of such evidence).

4. The ICAC should provide the Inspector with advice on the outcome of its current review concerning its application of sections 53 and 54. It is further recommended that as part of this review the ICAC consider and advise the Inspector whether or not the ICAC has, or intends to develop, guidelines about when complaints should be referred under section 53 and when a report should be requested from an agency to whom a matter has been referred under section 54.

## 2 & 3. Sections 57B(1)(b) and 57B(1)(c): COMPLAINTS

Between 1 July 2005 and 30 June 2006 35 complaints were received about the conduct of the ICAC and/or its officers. Out of these, 21 complaints were finalised before 30 June 2006, 3 were referred back to the ICAC for reconsideration and 11 are still active. The complaints are summarised below without details that would identify the complainants. The status of the complaint has been reported, i.e. whether it has been finalised or is still active. Where a complaint has been finalised, the Inspector's determination has been reported. The Inspector's determination is advised in writing to complainants or to referral bodies wherever it is possible to do so.

### Complaints determined as not warranting further investigation

1. In July 2005 a complaint was received by mail concerning the ICAC's refusal to investigate allegations of corruption by councillors and officers of a named local council. The complainant alleged that the ICAC's conduct was unreasonable because it had failed to assess evidence supporting the complaint, including failing to interview relevant witnesses.

The complaint was assessed as being within the Inspector's jurisdiction pursuant to section 57B(1)(c) of the ICAC Act. The material provided by the complainant was therefore reviewed. The assessment of the material showed that there was no evidence to support the allegations made. In November 2005 the complainant was advised that the Inspector would not investigate the matter. In January 2006 the Inspector reviewed the ICAC file concerning the ICAC's handling of the complaint in order to develop an understanding of the ICAC's assessment processes. The ICAC's file was returned to the ICAC in late January 2006.

2. In July 2005 a complaint was received by telephone concerning the ICAC's decision not to investigate alleged corrupt conduct of councillors of a named local council. In May 2006 the complainant withdrew his complaint.
3. In July 2005, the Solicitor to the Commission wrote to the Inspector referring a complaint that had been sent to the ICAC. The complaint to the ICAC concerned the conduct of a former ICAC officer. As the complainant was seeking a response from the ICAC, the matter was referred back to the Commission in September 2005 to deal with in the first instance. The

Inspector requested that the ICAC advise the complainant about the Inspector's role and functions.

4. In August 2005 a complaint was received by email about the conduct of certain officers of a named government service provider. The complaint was assessed as being not within the Inspector's jurisdiction. In August 2005 the complainant was advised accordingly.
5. In August 2005 a complaint was received by mail concerning the ICAC's conduct and handling of hearings into a named development. Preliminary inquiries showed that there was no evidence to support the allegations that the ICAC's conduct amounted to abuse of power, impropriety or other form of misconduct or maladministration under the ICAC Act. In September 2005 the complainant was advised accordingly.
6. In September 2005 a complaint was received by email against the ICAC and a former Commissioner. Despite requests from the Office for further particulars of his allegations, none was supplied. The Inspector therefore determined that there was a lack of sufficient information on which to proceed. In May 2006 the complainant was advised accordingly.
7. In August 2005 a complaint was referred from the Parliamentary Joint Committee. Subsequently in August 2005 the complainant wrote directly to the Inspector requesting that the complaint be investigated. The complaint made allegations against a number of high profile persons and government agencies, as well as against the ICAC. The information in the complaint was unclear and not able to be properly assessed. Despite an exchange of emails between the Office and the complainant, clarification of the complaint was not able to be obtained. In May 2006 the Inspector advised the complainant that the complaint would not be progressed any further due to a lack of proper particulars.
8. In October 2005, a complaint was received by email alleging corrupt conduct by officers of the ICAC in the early 1990s. As the complaint was within jurisdiction, a detailed assessment of the available evidence was undertaken. This included interviewing the complainant to ascertain particulars of the complaint, reviewing material which had been supplied by the complainant and examining material provided by the ICAC on request of the Office. In June 2006 the Inspector advised the complainant that, based on an assessment of the available evidence, the complaint was not substantiated and therefore would not be investigated.
9. In December 2005, a complaint was received by email concerning the conduct of the ICAC with respect to its inquiry into a named development. A preliminary assessment of the complaint showed that the complaint was an attempt to appeal against the ICAC's findings. In January 2006 the complainant was advised that the complaint was not within jurisdiction and would not be investigated.
10. In December 2005 the Parliamentary Joint Committee referred a complaint which it had received. The complainant alleged that the ICAC

had failed to assess evidence relevant to a complaint which he had made to it. In December 2005 the complainant wrote directly to the Inspector requesting that his complaint against the ICAC and its officers be investigated.

The complaint was assessed as being within jurisdiction. The material supplied by the complainant was examined. It showed that the complaint had been personally reviewed by an ICAC Commissioner several years earlier. The Commissioner had determined that the complaint did not warrant investigation.

The Office's assessment of the complaint showed that there was no evidence to support the complainant's allegations that the ICAC or its officers had acted corruptly in relation to the management of the original complaint. There was also no evidence to indicate that the ICAC or its officers had failed to assess the material provided by the complainant.

As there was no basis to substantiate the complaint under either section 57B(1)(b) or (c) of the ICAC Act, the Inspector determined that the complaint would not be investigated. In April 2006 both the complainant and the Chairman of the Parliamentary Joint Committee were advised accordingly.

11. In January 2006 a complaint was received by telephone alleging improper and corrupt conduct by ICAC officers in dealings with the complainant and in the management of the complaint which he had lodged with the ICAC. The complainant also alleged that the ICAC had failed to assess evidence which the complainant had provided to it and that therefore its decision not to investigate his complaint was unreasonable. As the complaint was within jurisdiction an assessment of the material provided by the complainant was undertaken. An assessment of relevant ICAC records contained on its electronic database was also undertaken.

The available material showed that there was no evidence to support the allegations being made against the ICAC or its officers. Furthermore, the available evidence did not support a view that that the ICAC had been unreasonable in refusing to investigate the complaint. In February 2006 the Inspector advised the complainant that the matter would not be investigated.

12. In early February 2006 a complaint was received by email. As the complaint was not concerned with the conduct of the ICAC or its officers, the complaint was assessed as not being within the Inspector's jurisdiction. In late February 2006 the complainant was advised accordingly.
13. In February 2006 a complaint was received by email alleging maladministration on part of the ICAC. The complaint was assessed as being within jurisdiction. As the complainant did not supply any material an assessment of the ICAC's records concerning the complaint was undertaken via accessing its electronic database. It was assessed that

there was no evidence to support the allegations and that the complaint should therefore not be investigated. In June 2006 the complainant was advised accordingly.

14. In February 2006 a complaint was received by telephone which alleged maladministration on part of the ICAC and its officers. The complainant alleged that the ICAC's decision not to investigate his complaint against a named government agency was improperly motivated. In March 2006 the Office was advised by the complainant that he wished to withdraw the complaint. In June 2006 the Inspector wrote to the complainant confirming the withdrawal of the complaint.
15. In February 2006 a complaint was received by email alleging corruption by various Commonwealth and State government agencies. There was no specific complaint against the ICAC or its officers. In June 2006 the Inspector advised the complainant that the complaint was not within jurisdiction and could not be dealt with.
16. In March 2006 a complaint was received by telephone alleging maladministration by the ICAC and its officers. The complainant alleged that the handling of his complaint by the ICAC had been unreasonable. An assessment of the complaint showed that there was no evidence to support the allegations made against the ICAC. The Inspector therefore determined that the complaint would not be investigated. In June 2006 the complainant was advised accordingly.
17. In March 2006 a complaint was received by telephone alleging that the ICAC had acted improperly in deciding not to investigate a complaint concerning a named government service provider. The complaint was assessed as being within jurisdiction and the material supplied by the complainant was assessed. An assessment was also undertaken of relevant ICAC's records stored on its electronic database. No evidence was found to support the complainant's claims that the ICAC or its officers had acted improperly. In April 2006 the complainant was advised of the Inspector's determination not to investigate the complaint.
18. In March 2006 a complaint was received by telephone alleging misconduct by an ICAC officer. The complainant provided virtually no particulars of the complaint. In June 2006 the Inspector advised the complainant that due to there being no evidence to support the allegations the complaint would not be investigated.
19. In March 2006 a complaint was received by email alleging impropriety on part of the ICAC in refusing to investigate a complaint which had been made to it. In June 2006 the Inspector advised the complainant that the complaint would not be investigated as no particulars had been provided to support the allegations made in the complaint.
20. In April 2006 the Parliamentary Joint Committee referred a complaint that it had received. Subsequently, in May 2006, the Inspector received a written complaint against the ICAC. The complaint was assessed as

amounting to an appeal against the decision of the ICAC not to investigate the complaint. In June 2006 the complainant was advised that the complaint was not within jurisdiction and could not be dealt with.

21. In June 2006 a complaint was received by email concerning a number of government agencies, which appeared to include the ICAC. In late June 2006 an authorised representative of the complainant advised that the complainant was withdrawing the complaint.

#### Complaints referred back to the ICAC

1. In December 2005 a complaint was received by mail alleging maladministration by the ICAC in that ICAC officers were unreasonable in failing to assess evidence supplied by the complainant in support of a complaint which he has made to it. An assessment of the complaint showed that it warranted investigation.

In June 2006, as a result of its investigations, the Inspector wrote to the Commission recommending that the ICAC assess the evidence which the complainant had provided. The Inspector also recommended that the Commission develop an explicit policy for staff about the standard of effort required to access evidence which might, at first instance, prove difficult to access. As of 30 June 2006 the Inspector had not received a response from the ICAC.

2. In March 2006 a complaint was received by facsimile alleging maladministration by the ICAC with respect to a complaint concerning the conduct of councillors in a named local government election. The complainant alleged that the Commission had been unreasonable in its assessment of the evidence, particularly in failing to speak to certain key witnesses. The complaint was assessed as being within jurisdiction and the material supplied by the complaint was assessed. An assessment was also undertaken of relevant ICAC's records stored on its electronic database.

In June 2006 the Inspector wrote to the ICAC recommending that the ICAC reconsider its decision not to investigate the complaint as there were issues of both process and substance which raised concerns about the ICAC's conduct. The Inspector noted his concerns with regard to the adequacy of the assessment report prepared by the ICAC for the ORC in relation to the complaint. The Inspector suggested that the adequacy of the ICAC's assessment reports should be generally examined as there were concerns raised by an examination of the assessment report in the complaint about the accuracy of matters being reported by Assessment Officers. As of 30 June 2006 the Inspector had not yet received a response from the ICAC concerning this complaint.

3. In May 2006 a complaint was referred to the Inspector alleging misconduct by an ICAC officer whilst off-duty. In June 2006 the Inspector referred the complaint to the ICAC for appropriate action under ICAC Policy 64: "Unsatisfactory Performance, Misconduct & Serious Offences". The

Inspector has requested that the ICAC inform him of the outcome of its investigations in relation to this complaint in due course. As of 30 June 2006 the Inspector had not yet received a response from the ICAC concerning this complaint.

#### Complaints still active as of 30 June 2006

1. In July 2005 a complaint was received by telephone alleging corrupt conduct by the ICAC and former officers of the ICAC in relation to its management of a complaint against certain public officials. The complainant alleged that the ICAC and certain of its officers had a vested interest in not investigating the complaint because of personal bias in favour of the persons who were the subject of the complaint. Several of the allegations made by the complainant required clarification and an exchange of correspondence occurred between the Office and the complainant on this issue. As of 30 June 2006 the complaint was still being assessed.
2. In July 2005 a complaint was received by email alleging maladministration by the ICAC in relation to its handling of a complaint concerning a named local government council. The complainant alleged that the ICAC had been unreasonable in not fully assessing the evidence which the complainant had provided to it. The complaint required detailed assessment of the available evidence including clarification on some issues from the ICAC and the complainant. As of 30 June 2006 the complaint was still being assessed.
3. In July 2005 a complaint was received by email alleging maladministration by the ICAC in relation to its handling of a complaint concerning a named local government council. The complainant alleged the ICAC had been unreasonable in not properly assessing evidence relevant to the allegations made in the complaint. As of 30 June 2006 the complaint was still being assessed due to the large amount of material sent by the complainant and the complexity of the issues raised, the complaint was still being assessed.
4. In July 2005 a complaint was received by email alleging maladministration by the ICAC in its handling of a complaint concerning a named local government council. The complainant alleged that the ICAC had failed to properly consider certain evidence which he had provided to it. There was an exchange of correspondence and emails between the Office and the complainant to clarify particulars of his complaint. The ICAC's records concerning the complaint were also examined. As of 30 June 2006 the complaint was still being assessed.
5. In August 2005 a complaint was received by mail alleging maladministration and possible corrupt conduct by the ICAC in relation to its handling of a complaint concerning a named government agency. The complainant alleged that the ICAC had been unreasonable in not properly considering allegations of bias. The complainant also alleged that an ICAC officer may have improperly influenced the Commission's decision not to

investigate the complaint. As of 30 June 2006, due to the complexity of the issues raised, the complaint was still being assessed.

6. In August 2005 a complaint was received by email alleging maladministration by the ICAC and its officers in relation to its handling of a complaint concerning a named government agency. The complainant alleged that the ICAC's conduct with regards to the assessment of evidence was unreasonable. As of 30 June 2006, due to the complexity of some of the issues raised, the complaint was still being assessed.
7. In December 2005 the Parliamentary Joint Committee referred a complaint which it had received concerning the conduct of ICAC officers during the course of an ICAC investigation against a named public official. The complaint was assessed as warranting investigation. As of 30 June 2006 the complaint was being investigated.
8. In January 2006 a complaint was received by telephone alleging possible corrupt conduct by a named ICAC officer whilst on-duty. The complaint was assessed as warranting investigation. As of 30 June 2006 the complaint was being investigated.
9. In February 2006 a complaint was received by mail alleging maladministration by the ICAC and its officers with respect to its handling of a complaint concerning a named government agency and a named public official. The complainant alleged that the ICAC had been unreasonable in its assessment of the evidence and also had been unjust in its handling of the complaint. As of 30 June 2006 the complaint was still being assessed.
10. In March 2006 a complaint was received by telephone alleging misconduct on part of an ICAC officer. The complainant was requested in late March 2006 to provide particulars of his complaint. As of 30 June 2006 the complaint was still being assessed.
11. In May 2006 a complaint was received by email alleging maladministration and dishonest conduct by the ICAC and its officers. The complainant alleged a lack of reasonableness in the ICAC's handling of the complaint. The complainant also raised concerns about the Commission's treatment of complainants who made complaints that met the criteria of the *Protected Disclosures Act 1994*. The complainant alleged that the ICAC's conduct in this respect provided a disincentive to complainants wishing to make protected disclosures.

The complainant also raised concerns about contradictory statements being made to him by certain officers of the ICAC in relation to his complaint. The complainant alleged that the contradictory statements showed that the ICAC was trying to "cover up" advice which certain ICAC officers had previously given him. The ICAC's records were examined in order to assess this complaint. As of 30 June 2006 this complaint was still being assessed.



## Other correspondence and enquiries relevant to complaints

1. In May 2006 the Inspector received a letter querying the ICAC's policy not to release information that it provides to other agencies or to public inquiries (i.e. public inquiries other than ICAC inquiries). The correspondent sought the Inspector's advice on the matter. The Inspector raised the issue with the Commissioner and sought reasons for the Commission's policy. The Inspector received advice in writing from the Commissioner regarding the Commission's reasoning on this issue. The Inspector subsequently advised the correspondent that the Commission's reasoning was sound both in terms of legality and propriety and therefore no further action would be taken in regards to the matter.
2. In May 2006 an email was received about the possible lodging of a complaint concerning an alleged improper relationship between a senior official and a CEO of a named private service provider. However, shortly after lodging the complaint, the complainant indicated he did not wish to pursue the matter.
3. Between May-June 2006 five enquiries were made to the Office regarding the Inspector's powers, role and functions.

## Results at a Glance – Table 2: Complaints

|   |     |
|---|-----|
| Complaints received   | 35  |
| Complaints determined as not warranting further investigation | 21  |
| Complaints referred back to the ICAC                          | 3   |
| Complaints still active as at 30 June 2006                    | 11  |
| Complaints finalised within 6 months                          | 19  |
| Average time taken to finalise complaint (months)             | 4.6 |
| Complaints received by mail                                   | 6   |
| Complaints received by email                                  | 14  |
| Complaints received by facsimile                              | 1   |
| Complaints received by telephone                              | 9   |
| Complaints referred to the Office by the Committee            | 5   |
| Other correspondence and enquiries received                   | 7   |

#### 4. Section 57B(d): ASSESSMENT OF PROCEDURES

The resources of the Office during its first year of operations were directed to its overall establishment. It was therefore not possible to undertake any assessment of procedures pursuant to section 57B(d). The Joint Parliamentary Committee was advised about this issue by the Inspector in their meeting of 29 March 2006.

#### TELECOMMUNICATION (INTERCEPTION) ACT 1979 (Cth)

*The Telecommunication (Interception) Act 1979* covers the following areas relevant to the ICAC's operations:

- warrants authorising interception of telecommunications;
- dealing with intercepted information;
- the keeping and inspection of interception records;
- access to stored communications; and
- dealings with accessed information.

This Act was amended by the *Telecommunications (Interception) Legislation Amendment (Stored Communications and Other Measures) Act 2005* (Cth). Under Schedule 1 of that Act the Inspector of the Independent Commission Against Corruption was included as an "eligible authority". The Act was given Royal Assent on 14 December 2005.

#### RELEVANT LEGISLATIVE AMENDMENTS DURING 2005-06

In June 2006 the ICAC Act was amended to insert section 57G. This section provides that the Inspector has jurisdiction to investigate, report on and make recommendations about the conduct of former as well as current officers of the ICAC.

#### FUTURE OPERATIONS

In 2006-07 the Office will focus on monitoring the Commission's systems, policies and procedures. This focus is consistent with developing a sound understanding of systemic issues underlying individual complaints. It is also consistent with supporting the general legislative intention of the Act that the Inspector improve the performance and accountability of the ICAC through the monitoring function provided in the Act.



New South Wales

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

GPO Box 5341  
SYDNEY NSW 2001

Tel: (02) 8374 5381  
Fax: (02) 8374 5382

Email: [InspectorICAC@oiicac.nsw.gov.au](mailto:InspectorICAC@oiicac.nsw.gov.au)