



19 October 2010

The Hon Amanda Fazio MLC  
President  
Legislative Council  
Parliament House  
Sydney NSW 2000

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

Dear Ms President and Mr Speaker,

In accordance with section 77B of the *Independent Commission Against Corruption Act 1988* (the ICAC Act), I, as the Inspector of the Independent Commission Against Corruption (the Inspector), hereby furnish to each of you for presentation to the Parliament the Annual Report of the Inspector for the year ended 30 June 2010.

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 until her leaving on about 17 August 2009 to take one year's extended leave. Over the preceding four years she was involved in the setting up of this office and its statutory processes; and
- Ms Felicity Cannon, Office Manager/Executive Assistant; and
- Mr Hamish Hill, Administrative Assistant until his retirement on about 13 August 2009.

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 guidance and assistance provided by the Parliamentary Joint Committee on the Independent Commission Against Corruption and its diligent staff.

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



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## **1 PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS**

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

My term commenced on 1 October 2008.

The report covers the period between 1 July 2009 and 30 June 2010, which is referred to in the report as the "current reporting period".

As at the date of writing, the Parliamentary Joint Committee on the Independent Commission Against Corruption has not published its Review of the Inspector's 2008-2009 Annual Report. Consequently there are no specific recommendations to be addressed in this report.

The recommendations in its report No. 4/54 of October 2008 were addressed in the Inspector's Annual Report for 2008-2009.

## **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. Clause 10 of schedule 1A of the Act empowers the Parliamentary Joint Committee on the Independent Commission Against Corruption ("the Committee") 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 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 Freedom of Information Act 1989 (NSW)**

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

The *Government Information (Public Access) Act 2009* (“GIPAA”) came into force on 1 July 2010 replacing the FOI Act.

Schedule 1 of GIPAA provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information, the disclosure of which is prohibited by the ICAC Act whether or not the prohibition is subject to specified qualifications or exceptions and whether or not a breach of the prohibition constitutes an offence.

Schedule 2 to GIPAA provides that information that relates to the operational, auditing, complaint handling, investigative and reporting functions of the office of Inspector of the Independent Commission Against Corruption is *excluded information* of the agency. Under Schedule 1 it is to be conclusively presumed that there is an overriding public interest against disclosure of excluded information of an agency (unless the agency consents to disclosure). Section 43 prevents an access application from being made to an agency for excluded information of the agency.

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

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

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

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

The Annual Report for 2008-2009 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 the Inspector's 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.

In the interests of ensuring a coherent regime for public accountability, suggested amendments were included to overcome the current prohibitions on the Inspector's powers to act under that section.

Unfortunately, notwithstanding support from the Parliamentary Joint Committee on the Independent Commission Against Corruption ("the Committee") and from the ICAC Commissioner, no amendments have been made.

By letter dated 12 May 2009 to the then Premier I sought support for the suggested amendments to each of the two Acts. On the same day I wrote to the Chair of the Parliamentary Committee on the Independent Commission Against Corruption enclosing a copy of the letter to the Premier seeking the support of the Committee.

On 4 August 2009 I sent an e-mail to the Legal Officer, Telecommunications and Surveillance Law Branch, National Security Law and Policy Division of the Commonwealth Attorney-Generals Department requesting the amendments to the TIA Act.

By letter dated 11 September 2009 the Parliamentary Committee on the Independent Commission Against Corruption advised its support for the legislative amendments.

On the 14 January 2010 I wrote to the NSW Attorney General in his capacity as the Minister responsible for the SD Act to seek his support for an amendment to that Act. I enclosed a copy of the Parliamentary Committee's letter of 11 September 2009.

On 14 January 2010 I wrote to the then Premier in her capacity as the minister responsible for the ICAC Act seeking her support for amendments to the SD Act and enclosed a copy of the Parliamentary Committee's letter of 11 September 2009. I pointed out that I had no response to my letter of 12 May 2009 to the then Premier.

By letter dated 25 January 2010 from the Australian Government's Attorney-General's Department I was advised:

"While the Department understands the importance of your role as Inspector and the impact that role has in maintaining the integrity of the telecommunications interception regime, the TIA Act does not allow any

agency to use their powers under the TIA Act for auditing purposes. In fact, the TIA Act limits the powers of all agencies to the investigation of specific offences and restricts the inspection role specifically to the Ombudsman.

Amending the TIA Act to enable the Inspector of the ICAC to use the audit functions bestowed by the ICAC Act to conduct a general sampling of the telecommunications interception records obtained by the ICAC under the TIA Act, would affect this legislative division of responsibility. It would also raise consistency issues that would need to be considered across all affected jurisdictions.

Given these concerns, I do not anticipate that your suggested amendments will be recorded into the TIA Act at any stage in the immediate future."

On 9 March 2010 I wrote further letters to the Premier and the NSW Attorney General seeking a reply to my earlier letter.

By letter dated 24 March 2010 the Director-General of the Office of Premier and Cabinet advised me that since the issue was first raised in May 2009 officers of the Department of Premier and Cabinet have undertaken consultation with relevant agencies and officers on the proposed amendments and that the Department is currently preparing a proposal for consideration by the Government.

The current situation is 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 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 for purposes unrelated to the objectives of the ICAC, could proceed undetected. It is for this reason, among others, that the exercise by the Office of the Inspector of its powers of audit have been considered by the NSW Legislature to be so important.

The effect of sections 39 and 40 of the SD Act is to prevent the Commission from communicating to the Office of the Inspector (inter alia) details of any information obtained from the use of a surveillance device under a warrant or any information

relating to an application for, issue of, existence or expiry of, a warrant, or the communication or publication of protected information.

Sub-sections (6) and (7) of section 40 authorise the Commissioner to consent to protected information being communicated to the Inspector if satisfied that it is necessary or desirable in the public interest for the protected information to be so communicated and that the public interest in communicating the information outweighs any intrusion on the privacy of the person to whom it relates or of any other person who may be affected by its communication.

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

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

### **7.1 Premises**

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**

In August 2009 the Executive Officer, Ms Seema Srivastava, left to take one year's extended leave and the Administrative Assistant, Mr Hamish Hill, retired.

Since then the staffing structure consists of Ms Felicity Cannon as Office Manager/Executive Assistant to the Inspector recruited under the *Public Sector Management Act (2002)* ("the PSM Act") working five days per week and the Inspector who works normally two days per week. So far this staffing has been adequate to keep all work up to date although, on occasions, the Inspector has worked extra days.

If the demands on the time increase (for example due to an extensive investigation) the Inspector is authorised under the ICAC Act to employ such other staff as he may require either under the PSM Act or otherwise.

### **7.3 Budget & Finance**

The Inspector of the Independent Commission Against Corruption is an independent statutory body allocated an annual budget from the NSW Government. In 2009 to 2010 this was fixed at \$600,000 – the same as the previous year's budget.

The administration of the budget is handled by the Department of Premier and Cabinet (DPC) which, each month, issues to the Office of the Inspector a detailed operating statement. In addition, it issues a similar statement for the financial year ending 30 June 2010.

The statement for the period from 1 July 2009 to 30 June 2010 shows a total expenditure of \$307,116, falling within the set budget. This compares with a total expenditure of \$454,665 in the prior year. The decrease in outgoings has mainly been due to fewer staff.

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 latest version was executed on 21 December 2009.

#### **Meetings/conferences undertaken by the Inspector and his staff**

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

- 1) 28-31 July 2009, the Australian Public Sector Anti-Corruption Conference 2009 in Brisbane, Queensland.
- 2) On 20 August 2009 and 15 October 2009 with the Commissioner of the ICAC, the Hon. Jerrold Cripps QC, to discuss ongoing operational and policy issues.
- 3) On 24 September 2009, Mr Peter Primrose, President, Legislative Council and the Hon. Richard Torbay MP, Speaker Legislative Assembly to present Parliament with the Inspectors 2008-2009 Annual Report as well as the Inspectors Report of an audit of applications for and execution of listening devices by the Independent Commission Against Corruption.
- 4) On 19 October 2009, a public hearing of the Committee on the Office of the Ombudsman and the Police Integrity Commission to answer questions on notice regarding complaints handling processes of the OIICAC.
- 5) On 24 November 2009, the Hon. Peter Moss, Inspector of the Police Integrity Commission to discuss ongoing operational and policy issues.
- 6) On 8 December 2009, the Hon. David Ipp, newly appointed Commissioner of the ICAC, introductions and to discuss ongoing operational and policy issues.
- 7) On 8 December 2009, Ms Amanda Fazio, President, Legislative Council and the Hon. Richard Torbay MP, Speaker Legislative Assembly to present Parliament with the Inspectors report of an audit of applications for and execution of surveillance device warrants limited to data surveillance,

optical surveillance and tracking surveillance by the Independent Commission Against Corruption.

- 8) On 23 February 2010, Ms Elizabeth Proust and Mr Peter Allen of the State Services Authority of the state of Victoria to discuss issues and suggestions in relation to creation of a proposed Victorian Anti-Corruption & Integrity Commission.
- 9) On 2 March 2010, training on the ICAC's new data collection system, MOCCA.
- 10) On 11 March 2010, Mr Frank Terenzini, Chairman of the PJC to discuss ongoing and operational issues.
- 11) On 6 April 2010, Ms Amanda Fazio, President, Legislative Council and the Hon. Richard Torbay MP, Speaker Legislative Assembly to present Parliament with the Inspectors Report of an audit into the exercise by the Independent Commission Against Corruption of its powers under sections 21, 22, 23 and 35 of the Independent Commission Against Corruption Act 1988.
- 12) On 25 May 2010 the Hon. David Ipp to discuss ongoing operational and policy issues.
- 13) On 22 and 23 June 2010, attending the European Forum on Anti-Corruption and Post Conference Workshop held in London, UK.

During the reporting period the Office Manager, Felicity Cannon, attended or met with the following:

1. On 11 August 2009 a public hearing of the PJC for an examination of the ICAC's 2008-9 Annual Report and other related matters.
2. On 31 August 2009, NSW Ombudsman - Effective Complaints Handling training.
3. On 16 September 2009, NSW Ombudsman - Resolution Options/Introduction to Investigations training.
4. On 19 October 2009, a public hearing of the Committee on the Office of the Ombudsman and the Police Integrity Commission.
5. On 20 November 2009 & 2 March 2010, training on the ICAC's new data collection system, MOCCA.
6. On 16 April, 19 April & 21 June 2010, public hearings conducted at the ICAC relating to Burwood Council, Maritime NSW and Sydney University respectively.

## 8.2 Website

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

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

Contacts for the Inspector's office and a link to the OIICAC website can be found on the ICAC website as a part of the ICAC's complaint handling process.

During the reporting period the Inspector revised the OIICAC website. Efforts were made to redevelop the site to provide more information around the functions of the Inspector and easy to follow instructions on how the complaint handling process works. In the past, some complainants have contacted the Inspector believing him to be a part of ICAC. The website has been updated to provide more clarity about the Inspector's independence from the ICAC.

Along with the revision of the site, the complaints form was reviewed and updated from a printable version to an online version in order to simplify and facilitate an easier format for complainants to present their concerns.

Unfortunately, due to problems with an outsourced service provider, the DPC, which hosts the OIICAC website, was unable to provide usage statistics until March 2010. Website statistics for the forthcoming 2010-2011 reporting period are expected to be full and complete.

The usage since March 2010 is:

- March 425 hits;
- April 523 hits;
- May 599 hits; and
- June 70 hits.



## 9 PART 3: THE INSPECTOR'S STATUTORY FUNCTIONS

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

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"), and 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 privacy and 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 audits were conducted of:

- 1) applications for and execution of listening devices. Report published September 2009;
- 2) applications for and execution of surveillance device warrants limited to data surveillance, optical surveillance and tracking surveillance. Report published November 2009; and
- 3) the exercise by the Independent Commission Against Corruption of its powers under sections 21, 22, 23 and 35 of the Independent Commission Against Corruption Act 1988. Report published March 2010.

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:

1. to determine whether the ICAC has obeyed the terms of the legislation.
2. to examine the systems instituted and maintained by the ICAC to ensure that such use is limited to those circumstances where it is lawful and appropriate for the conduct of its statutory functions.
3. to 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, I examined if there are 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), I also examined if 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 attempted to assess 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 examined reveals 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**

Between 1 July 2009 and 30 June 2010, 38 complaints were received. In addition two were carried over from the previous reporting period.

The Inspector of the ICAC 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. The Inspector 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.

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

Consequently, when considering a complaint the Inspector's 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, 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.

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 and therefore, warrants investigation. Table 2 below shows these respective categories,

## 10.2 Categories

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

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

## 10.3 Statistical Data

**Table 1**

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

	2009-10	2008-09
Total complaints under consideration within the current reporting period	40	56
Complaints carried over from previous reporting periods	2	21
Total complaints finalised within the current reporting period	37	54
New matters received in current reporting period	38	35
Complaints open at end of reporting period	3	2

**Table 2****Complaints finalised**

	2009-10	2008-09
Complaints assessed as outside jurisdiction	14	15
Complaints assessed as not warranting investigation after preliminary examination.	9	50
Complaints referred back to ICAC	1	4
Complaints investigated	12	4
Complaints not assessed (withdrawn)	1	5

**Table 3****Outcomes for complaints finalised within the current reporting period**

	2009-10	2008-09
Complaints sustained	0	0
Complaints not sustained	37	54
Number of complaints resulting in systemic changes	0	0

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

	2009-10	2008-09
Complaints received by mail	7	12
Complaints received by e-mail	17	11
Complaints received by facsimile	1	3
Complaints received by telephone	13	9

**Table 5****Turnaround times for complaints finalised**

	2009-10	2008-09
Average time taken to assess complaints	n/a*	n/a*
Complaints finalised within 6 months	36	44
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. The reason for taking this approach is that averages can create a distorted or misleading picture of what has occurred.

## Additional Information

**Table 5 (i)**

**Turnaround times to finalise complaints received and closed in the current reporting period**

	2009-10	2008-09
Complaints finalised in 0-7 days	14	9
Complaints finalised in 8-31 days	15	9
Complaints finalised in 32 -60 days	2	6
Complaints finalised in 61-90 days	3	3
Complaints finalised in 91 - 180 days	1	6
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.*

	2009-10	2008-09
Complaints finalised in 0-7 days	14	9
Complaints finalised in 8-31 days	16	10
Complaints finalised in 32 -60 days	2	8
Complaints finalised in 61-90 days	3	3
Complaints finalised in 91 - 180 days	2	14
Complaints finalised in over 180 days	0	10

There were three complaints received during the reporting period which were not concluded. One was received in May 2010 and further information was awaited. Two were received in late June whilst the Inspector was on leave.

**Table 6**

A number of general enquiries were received by the Office during the current reporting period. These enquiries were not complaints but included matters such as the Inspector's role and functions. The 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. These complaints were sent on to the appropriate agencies.

### **Enquiries and other correspondence**

	2009-10	2008-09
Enquiries	7	11*
Redirected complaints	5	4

\* Enquiries reported 2008-2009 as 10 should be 11.

## 10.4 Case Studies

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

### *Out of Jurisdiction*

- A complaint was received by fax on 31 July 2009 in relation to overseas ownership of Australian lands as well as drilling/oil companies purchasing local land without the permission of owners. The Inspector reviewed the complaint and found it to be out of his jurisdiction.
- A complaint was received from a Member of Parliament on behalf of a person who complained of the failure of the Police Service to file charges against one or more persons in respect of the death of a sibling. Both the Member and person were advised that the Inspector had no jurisdiction and were referred to the Police Integrity Commission.
- Other complaints related to the conduct of officers of the Department of Community Services in removing children from the custody of a parent.

### *Maladministration*

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

- An example is provided by the complainant who had been employed by a Department which dismissed him. His subsequent claim to the Industrial Relations Court for wrongful dismissal was upheld. He claimed that his "protected disclosure" rights had been breached by the Department which referred this complaint to the ICAC. The Inspector reviewed his documentation and found while the Department may have acted improperly in dismissing him there was no corruption. Hence the ICAC did not act improperly in refusing to investigate.
- A further complainant alleged maladministration and corruption on the part of the ICAC because the Commission refused to conduct an investigation of his claims that a number of Government agencies and officials were corrupt because they had refused to act upon his complaints to them. Following an investigation that included three lengthy recorded interviews with the complainant and consideration of ICAC files, the Inspector found there was no evidence of corruption or maladministration on the part of ICAC.

- A member of a local government council complained of maladministration on the part of the ICAC because it had not investigating his complaints properly. The Inspector interviewed the complainant and a colleague who raised a number of allegations. After investigation including examination of ICAC's files, the Inspector found no misconduct or maladministration on the part of ICAC.
- A further complainant alleged maladministration on the part of the ICAC because it had failed to uphold his complaints against the NSW Ombudsman and the Police Service. After investigation it was found that the ICAC had acted properly.

### ***Allegations of misconduct by officers of the ICAC***

- In February 2010 a complainant alleged that the ICAC had not appropriately investigated a complaint made to it in the year 2000. The complainant alleged this was due to conflicts of interest and actual bias on the part of the Commission and that the Commissioner or an officer of the Commission had illegally communicated details of his complaint to person(s) outside of ICAC who in turn had wrongfully influenced the Commission's consideration of those complaints. His complaints to the Commission alleged corruption on the part of a judicial officer and a senior politician in relation to litigation in which the complainant was involved and which concluded in about 1992. In 2005 he had made the same complaints to the then Inspector who dismissed them after consideration. His current complaint alleged that the prior Inspector's decision was politically influenced. The Inspector interviewed the complainant, reviewed lengthy briefs supplied by him, as well as information furnished by the ICAC. The information available did not support the allegations. The complainant was advised of this and that no further action was warranted.
- A Member of Parliament had complained to the ICAC that an ICAC investigator had taken a "softly softly" approach to an investigation and had committed a breach of confidentiality. The ICAC reported the complaint to the Inspector who recommended that ICAC perform its own internal investigation and report the outcome to him. Following their investigation, the ICAC reported to the Inspector that the first allegation was not sustained but the second was and that the officer was counselled. The Inspector considered the report and approved the action of the ICAC.
- A complaint was received from the solicitor of the complainant alleging misconduct, corruption and maladministration by the Commissioner in denying his client procedural fairness during a public hearing. The Inspector considered the transcript, the law and submissions of the complainant and concluded that the action of the Commissioner did not constitute a denial of procedural fairness.

*Those complaints which were withdrawn.*

- A complaint was received alleging misconduct on the part of the Commissioner in that he had denied the complainant procedural fairness by refusing to adjourn a public hearing and insisted that she give evidence. The complainant later withdrew her complaint.



## 11 CONCLUDING COMMENTS

Over the 2009-2010 period I have concentrated my audits on those activities which involved ICAC's most intrusive powers such as those under sections 21, 22, 23 and 25 of the ICAC Act published in March 2010; data, optical and tracking surveillance under the Surveillance Devices Act published in November 2009; and listening devices under the Surveillance Devices Act published in September 2009.

In all three audits I have been pleased to note the ICAC's compliance with the relevant legislation and that nothing was found which gives rise to any comment adverse to the ICAC.

The disappointment of the past year is the refusal of the Commonwealth to amend the *Telecommunications (Interception and Access) Act 1979 (Cth)*. The hope for the coming year is that the State Government will give a positive reply to my suggestions for amendment to the Surveillance Devices Act 2007 (NSW).

During the year, the Office has enhanced its complaint handling process to ensure efficiency and flexibility at the same time as giving each matter the careful consideration it is due.

Harvey Cooper AM  
**Inspector**