



Annual Report 2012 - 2013

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

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

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September 2013

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

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

Dear Mr President & Madam Speaker

In accordance with section 77B of the *Independent Commission Against Corruption Act 1988* (the ICAC Act), I, as the Inspector of the Independent Commission Against Corruption (the Inspector), hereby furnish to each of you for presentation to the Parliament the Annual Report of the Inspector for the year ended 30 June 2013.

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 and
- Ms Felicity Cannon, Office Manager/Executive Assistant.

They have made an outstanding contribution in supporting me to carry out my statutory functions.

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

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

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

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PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS

1 PRELIMINARY OBSERVATIONS

I was appointed as the Inspector of the Independent Commission Against Corruption for a term commencing on 1 October 2008 and ending on 30 September 2011. That term was extended for a further two years ending on 30 September 2013.

Clause 4(2) of Schedule 1A of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") provides that a person may not hold the office of Inspector for terms totalling more than 5 years.

This report covers the period between 1 July 2012 and 30 June 2013, and is referred to as the "current reporting period" and the Independent Commission Against Corruption is referred to as "the ICAC" or "the Commission."

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. A Committee of the NSW Parliament comprising representatives of all political parties and independent members called "The Committee on the Independent Commission Against Corruption" ("the Committee") is empowered to veto the proposed appointment which is required to be referred to the Committee by the Minister.

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

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

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

- assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

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

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

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

Section 57B(2) of the ICAC Act enables the Inspector to exercise the prescribed statutory functions on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector, or in response to a reference by the Joint Committee or any public authority or public official.

Section 57B(3) of the ICAC Act provides that the Inspector is not subject to the Commission in any respect.

Under section 77A of the ICAC Act the Inspector may make special reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector.

Under section 77B of the ICAC Act the Inspector is required to report annually to Parliament. Both of these reports are to be made to the Presiding Officer of each House of Parliament.

3 POWERS OF THE INSPECTOR

3.1 Powers under the ICAC Act

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

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

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 and to submit an annual report of the Inspector's operations during the year within a 4 month period after 30 June of each year.

5 OTHER RELEVANT LEGISLATION

5.1 Government Information (Public Access) Act 2009 No 52 (GIPA Act)

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

Information concerning the Inspector and the ICAC's statutory functions are exempt from being released under an access application made under the GIPA Act.

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

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

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

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

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

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

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

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

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

5.2 The Public Interest Disclosures Act 1994 (PID Act)

The *Public Interest Disclosures Act 1994* ("the PID Act") provides for public servants and other public officials to report serious wrong doing in public sector agencies on a confidential basis. Under the PID Act complaints or allegations made by public servants and public officials are called

disclosures. The PID Act provides for public servants and public officials making disclosures to be protected against actual or potential reprisals.

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

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

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

- (a) 3 public officials made a public interest disclosure to the Inspector.
- (b) The number of public interest disclosures received by the Inspector relating to each of the following categories:
 - i. corrupt conduct only: Nil
 - ii. maladministration and/or corruption: 3
 - iii. serious and substantial waste of public money or local government money (as appropriate): Nil
 - iv. government information contraventions: Nil
 - v. local government pecuniary interest contraventions: Nil
- (c) 3 public interest disclosures were finalised by the Inspector.
- (d) The Inspector has a public interest disclosures policy in place. This policy is available for viewing on the Office website: www.oicac.nsw.gov.au.
- (e) The Inspector provided staff with on-the-job training in order to meet his obligations under section 6E(1)(b) of the PID Act. This section requires the head of a public authority to ensure that staff are aware of the contents of a public authority's Public Interest Disclosure Policy and the protections available under the PID Act for a person who makes a public interest disclosure.

5.3 Telecommunications (Interception and Access) Act 1979 (Cth)(TIA Act)

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

In accordance with reporting requirements under sections 96(1) and 159(1) of the TIA Act, the Commonwealth Attorney-General's Department was

advised by the Inspector that there was nil usage of the provisions of the TIA Act during the current reporting period.

In earlier Annual Reports I pointed out that the Telecommunications (*Interception and Access*) Act 1979 (*Cth*) (“the TIA Act”) prevents my undertaking audits of the ICAC's exercise of its powers under that Act and are, therefore, in conflict with the Inspector's prescribed functions under section 57B (1)(a) of the ICAC Act.

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

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

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

The obtaining of a warrant and subsequent interception pursuant to the TIA Act are normally unknown to the person(s) who is/are 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 Act could proceed undetected. It is for this reason, among others, that the exercise by the Inspector of powers of audit have been considered by the NSW legislature to be so important.

PART 2: THE OFFICE OF THE INSPECTOR OF THE ICAC

6 ADMINISTRATION

6.1 Premises

The Office is located on Level 10, Bligh House, 4-6 Bligh Street, Sydney. The contact details are:

Postal address: GPO Box 5341, Sydney, NSW, 2001
Telephone: (02) 9228 5260
Facsimile number: (02) 8243 9484
E-mail: InspectorICAC@oiicac.nsw.gov.au

6.2 Staff

The staffing structure of the Office consists of an Executive Officer and an Office Manager/Executive Assistant. These two positions are employed under the *Public Sector Employment and Management Act (2002)* (“the PSEM Act”). The Inspector is authorised under the ICAC Act to employ additional staff as required either under the PSEM Act or otherwise. No additional staff has been employed during the reporting period.

It is Office policy that all employees, permanent and temporary, obtain a security clearance on the same basis as ICAC personnel.

6.3 Budget & Finance

The Office of the Inspector is a cost centre within the NSW Department of Premier and Cabinet (DPC). It operates independently of the DPC with regards to decision-making and expenditure of its budget. The Office receives however, a range of support services from the DPC in areas such as information technology, payroll administration, human resources and payments of accounts.

Each month, as part of its services to the Office, DPC issues to the Office an operating statement detailing the Office’s expenditure including payroll expenses. DPC also provides a statement for the full financial year, the most recent being for the financial year ending 30 June 2013.

The statement for the period from 1 July 2012 to 30 June 2013 shows a total expenditure of \$425,373. This compares with a total expenditure of \$438,642 in the prior year. The budget for 2013-2014 will be \$446,000. This budget allows for increases to salary costs expected to come into effect during the period.

7 LIAISON AND COMMUNICATION

7.1 Liaison with the ICAC

Liaison with the ICAC is conducted in accordance with the terms of a Memorandum of Understanding (“MOU”) agreed between the Inspector and the Commissioner. The purpose of the MOU is to ensure that communications between the Inspector’s office and the ICAC are conducted at an appropriate level.

The MOU is periodically updated to ensure relevance. The most recent MOU was executed on 14 June 2012.

7.2 Meetings/liaison undertaken by the Inspector

During the current reporting period I attended and met:

- On 12 September 2012: with delegates of Zhengzhou Municipal Bureau of Supervision in China to deliver a presentation on the Inspector’s role and functions.
- On 13 September 2012: with the Presiding Officers of both Houses of the NSW Parliament in order to present the 2011-2012 Annual Report.
- On 30 October 2012 and 23 May 2013: with the Commissioner of the ICAC, the Hon David Ipp AO QC, to discuss ongoing operational and policy issues.
- On 31 October 2012: with staff from the Office of the General Counsel, Department of Premier and Cabinet to deliver a presentation on the Inspector’s role and functions as part of the Continuing Legal Education Program of the Office of the General Counsel.
- On 1 November 2012: with delegates of Republic of Serbia, UN Development Program to deliver a presentation on the Inspector’s role and functions.
- On 5 November 2012: attended training on employer responsibilities under the *Work Health & Safety Act 2011* and the *Workers Compensation Act 1987*.
- On 23 November 2012: with the Presiding Officers of both Houses of the NSW Parliament to present an audit report entitled “Report of an Audit of Applications for and Execution of Search Warrants by the Independent Commission Against Corruption.”
- On 5 March 2013: with delegates of the Administrative Control & Transparency Authority from the State of Qatar to deliver a presentation on the Inspector’s role and functions.

- On 10 May 2013: with the Presiding Officers of both Houses of the NSW Parliament in order to present an audit report entitled “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.”
- On 20 June 2013: with the Presiding Officers of both Houses of the NSW Parliament to present an audit report entitled “Report of an audit into the exercise by the Independent Commission Against Corruption of Applications for and Execution of Search Warrants by the Independent Commission Against Corruption.”
- On 21 June 2013: with the Parliamentary Committee on the ICAC to review the Inspector’s 2011-2012 Annual Report.
- On 21 June 2013: with the Victorian Parliamentary Independent Broad-based Anti-corruption Commission Committee (IBACC) to discuss the role and functions of the Inspector and, in particular, the relationship between the Parliamentary Committee and the Inspector.

7.3 Website

The Inspector’s website is managed by the Office. The website address is www.oicac.nsw.gov.au. The website contains information about the Office and the Inspector’s role and functions and complaint handling and reporting methods as well as:

- Provision for lodging a complaint on-line.
- All published reports.
- Information in respect of the Inspector’s obligations under the *Government Information (Public Access) Act 2009* and the *Public Interest Disclosures Act 1994*.
- Links to the websites of the following government agencies and bodies whose functions support the NSW Government’s objectives of providing integrity and accountability in government administration.
 - The Independent Commission Against Corruption;
 - The Committee on the Independent Commission Against Corruption;
 - The NSW Ombudsman;
 - The Police Integrity Commission;
 - The Inspector of the Police Integrity Commission;
 - LawAccess;
 - The Office of the Information Commissioner;
 - The Department of Premier and Cabinet.

There were 56,557 hits on the Inspector’s website, with an average of 4,713 per month. These figures are almost double the 29,680 hits recorded during 2011/2012. I am not aware of the reason for this increase.

Website hits – full year statistics	Total Hits
July 2012	4,993
August 2012	4,575
September 2012	5,005
October 2012	4,714
November 2012	4,821
December 2012	3,925
January 2013	4,726
February 2013	4,148
March 2013	5,116
April 2013	4,216
May 2013	5,347
June 2013	4,971
Total hits	56,557
Average hits	4,713

PART 3: THE INSPECTOR'S STATUTORY FUNCTIONS

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

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"). In addition there is the power to apply for and execute search warrants under Division 4 of Part 4 of the ICAC Act and Division 4 Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. It is further empowered to apply for and execute surveillance device warrants pursuant to the *Surveillance Devices Act 2007* ("the SD Act"). Such warrants include listening device, data surveillance, optical surveillance and tracking surveillance.

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

During the current reporting period the following audits were undertaken:

1. November 2012: Report of an Audit of Applications for and Execution of Search Warrants by the Independent Commission Against Corruption.
2. April 2013: 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.
3. June 2013: Report of an audit into the exercise by the Independent Commission Against Corruption of Applications for and Execution of Search Warrants by the Independent Commission Against Corruption.

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

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

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

Pursuant to section 57B (1)(b), during the course of each audit I also assessed whether there were grounds for reporting the existence of evidence of maladministration including unreasonable invasions of privacy and action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives under section 57B (1)(c).

In addition I assessed the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities (section 57B (1)(d)).

Examination of the exercise of each of the powers revealed the following:

- Each exercise examined was applied for and used as one of the tools authorised by the Act to enable the Commission to carry out its statutory functions.
- Each took place only in circumstances where a belief was reasonably formed in the light of information available from other sources that it was soundly based.
- Each exercise complied with the ICAC's own operating procedures and policies which are designed to ensure proper supervision of any application for an exercise of power.
- In all cases the exercise of powers was appropriate in the light of the information then available.
- In the majority of the cases the exercise of 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.

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

9.1 Overview

The Inspector is authorised to deal with complaints of abuse of power, Impropriety, maladministration and other forms of misconduct only on the part of the ICAC or its officers or former officers.

Maladministration is defined as action or inaction of a serious nature that is contrary to law or unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

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

A substantial proportion of complaints involve matters in which the ICAC declined to investigate or make a finding of corruption. In effect the complainant seeks to appeal against the decision of the ICAC. When assessing such complaints the Inspector's objective is to determine whether there was any evidence of the ICAC engaging in the type of misconduct prohibited by the ICAC Act. Consequently, when considering such complaints the focus must be on whether the conduct of ICAC amounts to misconduct 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 any substance to the complaint and, whether it warrants investigation.

Where a complaint is to be assessed or investigated any or all of the following steps are taken:

- 1) The ICAC file is obtained.
- 2) The documents provided by the complainant and the ICAC file are examined.
- 3) The complainant and any other person nominated by him/her may be interviewed and the interview recorded.
- 4) All of the information is then considered and the complainant is advised in writing of the decision of the Inspector.

During the current reporting period 21 complaints were received – the lowest number in the past five years. The reason for the drop in numbers is not known.

9.2 Categories

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

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

Due to awaiting further information from the complainant one complaint was carried over into the 2013-2014 reporting period.

9.3 Statistical Data

Table 1

Matters received and/or finalised within the current reporting period

	2012-13	2011-12	2010-11
Total complaints under consideration within the current reporting period	21	32	42
Complaints carried over from previous reporting periods	0	1	3
Total complaints finalised within the current reporting period *	20	32	41
New matters received in current reporting period	20	31	38
Complaints open at end of reporting period	1	0	1

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

Table 2

Complaints finalised within the current reporting period

	2012-13	2011-12	2010-11
Complaints assessed as outside jurisdiction	7	9	14
Complaints assessed as not warranting investigation after preliminary examination	8	9	4
Complaints referred back to ICAC	2	0	2
Complaints investigated	1	14	20
Complaints withdrawn/lapsed	2	2	2

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

	2012-13	2011-12	2010-11
Complaints sustained	0	0	0
Complaints not sustained	20	21	41
Number of complaints resulting in systemic changes	0	0	0

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

	2012-13	2011-12	2010-11
Complaints received by mail	5	3	11
Complaints received by e-mail	10	12	17
Complaints received by facsimile	0	3	1
Complaints received by telephone	6	13	9
Of above, complaints referred by a third party	0	1	0

Table 5 (i)**Turnaround times to finalise all complaints received in the current reporting period**

	2012-13	2011-12	2010-11
Complaints finalised in 0-7 days	11	14	16
Complaints finalised in 8-31 days	7	9	15
Complaints finalised in 32-60 days	1	5	5
Complaints finalised in 61-90 days	1	1	2
Complaints finalised in 91-180 days	0	1	0
Complaints finalised in over 180 days	0	1	0

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

	2012-13	2011-12	2010-11
Complaints finalised in 0-7 days	11	14	16
Complaints finalised in 8-31 days	7	10	16
Complaints finalised in 32-60 days	1	5	6
Complaints finalised in 61-90 days	1	1	3
Complaints finalised in 91-180 days	0	1	0
Complaints finalised in over 180 days	0	1	0

Table 6

This additional table provides information with respect to general enquiries and re-directed complaints which my office received during the current reporting period. The enquiries were not complaints but sought information such as my role and functions. The re-directed complaint was one intended for ICAC, but mistakenly sent to my office.

Enquiries and other correspondence

	2012-13	2011-12	2010-11
Enquiries	6	5	9
Re-directed complaints	1	0	1

9.4 Case Studies

The following are samples of complaints considered during the reporting period.

Out of Jurisdiction

1. Complainant alleged widespread pedophile activities in a named district but made no complaint against the ICAC. He was advised that the powers of the Inspector did not extend to dealing with this complaint.
2. Complainant requested an investigation of matters leading to the death of his father in a named hospital. He was advised that the Inspector's powers are limited to dealing with complaints of misconduct on the part of the ICAC and was referred to the Health Care Complaints Commission as having jurisdiction over such complaints.
3. Complainant against a solicitor and doctors connected with claims for damages instituted in Victoria. The complainant was advised that the Inspector had no power to deal with such a complaint.

Maladministration

1. Complaint that the decision of the ICAC not to investigate allegations of theft, breach of privacy regarding medical records, bullying and reprisal action for making a PID amounted to misconduct and maladministration. Examination of documentary evidence indicated no misconduct or maladministration on the part of the ICAC.
2. Complaint that the ICAC failed to take action on a complaint that a decision to locate the site for a new hospital at one site when another was a more appropriate location, was corrupt. Examination of relevant files and documents indicated no evidence of corruption. Hence the Inspector found there was no misconduct on the part of the ICAC.

3. Complaint that the ICAC failed to investigate a complaint alleging that the decision of a local government body to desex animals in its facilities amounted to corruption. The Inspector interviewed the complainant and reviewed the information provided. The Inspector found no misconduct on the part of the ICAC.
4. Complaint related to alleged corruption by a local government body concerning its approval of a series of development applications on a property adjoining that of the complainant. The evidence showed that a Council Officer had made a dishonest entry in respect of the first of the applications. However, there was no apparent dishonesty in relation to other applications. The Inspector concluded that there was no misconduct of the part of the ICAC in deciding that no further action should be taken by it.

Allegations of Misconduct by Officers of the ICAC

Clause 5 of the Memorandum of Understanding between the Commission and the Inspector provides that the Commission will notify the Inspector of matters which involve conduct of an officer of the Commission that comes within the principal functions of the Inspector.

1. Pursuant to this Clause the Commission notified the Inspector of an allegation of misconduct on the part of an ICAC officer in lying to Commission officers. The Inspector reviewed the material supplied by the ICAC and the ICAC Code of Conduct and agreed to allow the ICAC to manage the disciplinary process internally and requested a report on the result. A report was duly received. The Inspector concurred with the action taken by the Commission.
2. Pursuant to this Clause the Commission notified the Inspector of complaints of misconduct received by it against three staff members and advised it was conducting a preliminary investigation to determine if there was substance to the allegations. Subsequently the Commission advised that the investigation was completed and provided a detailed report. The Inspector noted the conclusions reached in the report and agreed with the action proposed.
3. The Inspector received a complaint that the ICAC had employed a person to a position for which the complainant regarded the person as inappropriate. The Inspector advised the Commission of the terms of the complaint and asked for full details of the circumstances of that person's employment and the pre employment vetting done. Those details were supplied. After a consideration of all of the material the Inspector determined that no further action was required.

10 CONCLUDING COMMENTS

I have had the honour of serving as the Inspector for five of the eight years that this Office has existed. Clause 4(2) of Schedule 1A of the ICAC Act provides that a person may not hold the office of Inspector for terms totalling more than five years. This being the last Annual Report I shall be presenting, I am taking the liberty of indulging in a retrospect of some of my experiences during that period.

At the outset I commend the cordial relationship between the Commission and the Office of the Inspector. The Commission and this Office have operated on the understanding that we are not in opposition to each other but are working for the same goal. Thus, the suggestions I have offered to the Commissioner were carefully considered and, in the main, accepted.

Supporting this understanding are the terms of the legislation which make it clear that the Inspector is not an appeal tribunal from the decisions of the Commission. The power of the Inspector is limited to dealing with complaints against the Commission of the types of misconduct defined in section 57B of the Act.

My appointment has been on a part time basis. Generally I have worked two days per week. My primary tasks have been dealing with complaints and preparing audits.

Priority has been given to dealing with complaints. From 1 July 2008 to 30 June 2013 there were 188 complaints. In none of the complaints with which I dealt did I make a finding of misconduct on the part of the ICAC.

It is appropriate to say a word about the complainants.

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

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

But my sympathy goes to those who suffered a justifiable sense of injustice due to the way they have been treated by officers of public agencies. They suffered because the conduct, of which they complained to the Commission, although hurtful, did not amount to corruption on which it could take action. I am not suggesting that the definition of "corruption" in the ICAC Act be expanded. I am just taking this opportunity to say that the plight of these people deserves sympathy. Some of them may have had rights which could have been exercised with the aid of a lawyer. Because they lacked the

means to engage a lawyer they inappropriately sought the aid of the Commission.

My policy regarding audits has been to concentrate upon the Commission's exercise of those powers having the greatest impact upon persons.

For reasons already stated, I have been unable to conduct audits of the Commission's use of telecommunication intercepts.

The eleven audits I have conducted are on the following topics:-

- four on applications for and exercise of search warrants;
- three on the exercise of powers under sections 21, 22, 23 and 35 of the ICAC Act;
- four on applications for and execution of Surveillance Device Warrants.

Dealing with complaints and conducting audits have left me very favourably impressed with the internal systems in the office of the ICAC designed to obviate improper conduct on the part of its officers.

It has been a privilege to have been asked for advice on the operations of the Office of the Inspector by local, interstate and overseas bodies. These included:-

- 1) November 2008: members of the Tasmanian Parliamentary Joint Select Committee on Ethical Conduct who were on a study tour in NSW with a view to setting up their own anti-corruption body.
- 2) February 2010: representatives 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.
- 3) January 2011: the Manager, Corruption Prevention, Education and Research of the State of Tasmania to discuss matters relating to the creation of an anti-corruption body in that State.
- 4) March 2011: a Victorian delegation consisting of the Hon Andrew McIntosh, Minister for Corrections and Minister for Crime Prevention, Adviser Mr Perry Wood, Mr Graham Hill, Executive Director, Premier & Cabinet and Mr Tony Cook, Deputy Secretary, Premier & Cabinet to discuss the establishment of an anti-corruption commission in Victoria.
- 5) June 2011: at its invitation, I travelled to Melbourne to address the Consultation Panel appointed by the Minister responsible for the establishment of the proposed anti-corruption commission in Victoria, the Hon Andrew McIntosh MP. The Panel comprised The Hon Stephen Charles QC (Chair), His Hon Gordon Lewis AM (Deputy Chair), Mr Peter

Harmsworth AO; and Ms Gail Owen OAM. Subsequently, I met the Hon Andrew McIntosh MP, Attorney General of the State of Victoria.

- 6) September 2011: His Hon David Patten, Commissioner, Special Commission of Inquiry into the New South Wales Crime Commission to provide information concerning the role of the Office of Inspector and its relevance to the Inquiry then being conducted.
- 7) May 2012: the Office of the Inspector received and gave a presentation to 16 students and faculty members of the Malaysia Anti Corruption Academy which is supported by the Malaysia Anti- Corruption Commission.
- 8) September 2012: delegates of Zhengzhou Municipal Bureau of Supervision in China to deliver a presentation on the Inspector's role and functions.
- 9) October 2012: with staff from the Office of the General Counsel, Department of Premier and Cabinet to deliver a presentation on the Inspector's role and functions as part of the Continuing Legal Education Program of the Office of the General Counsel.
- 10) November 2012: delegates of Republic of Serbia, UN Development Program to deliver a presentation on the Inspector's role and functions.
- 11) March 2013: delegates of the Administrative Control & Transparency Authority from the State of Qatar to deliver a presentation on the Inspector's role and functions.
- 12) June 2013: with the Victorian Parliamentary Independent Broad-based Anti-corruption Commission Committee (IBACC) to discuss the role and functions of the Inspector and, in particular, the relationship between the Parliamentary Committee and the Inspector.

And, on top of all this there have been the administrative tasks. On these I have been assisted most ably by those mentioned in the Acknowledgements at the beginning of this Report.

It is only proper that I mention again Ms Seema Srivastava, the Executive Officer and Ms Felicity Cannon, the Office Manager/Executive Assistant. They have translated the language of the bureaucracy into terms which I can comprehend and they have guided me through the myriad of reporting requirements with the minimum of fuss to allow me to carry out my statutory functions.

I am grateful to Ms Srivastava for her introduction to and guidance through the early days of my tenure of this Office. It was she who pointed out the many pitfalls that one can encounter.

Ms Cannon has been a most efficient office manager. She can promptly locate a requested file and is one of the very few who can make a computer do what she wants rather than what the computer is prepared to disgorge.

Together, they have made my work possible and pleasant.

As my term comes to an end it remains for me to give my very best wishes to the Office of the Inspector and all who sail in her.

A handwritten signature in blue ink, appearing to read 'H Cooper', with a stylized flourish at the end.

Harvey Cooper AM
Inspector

September 2013