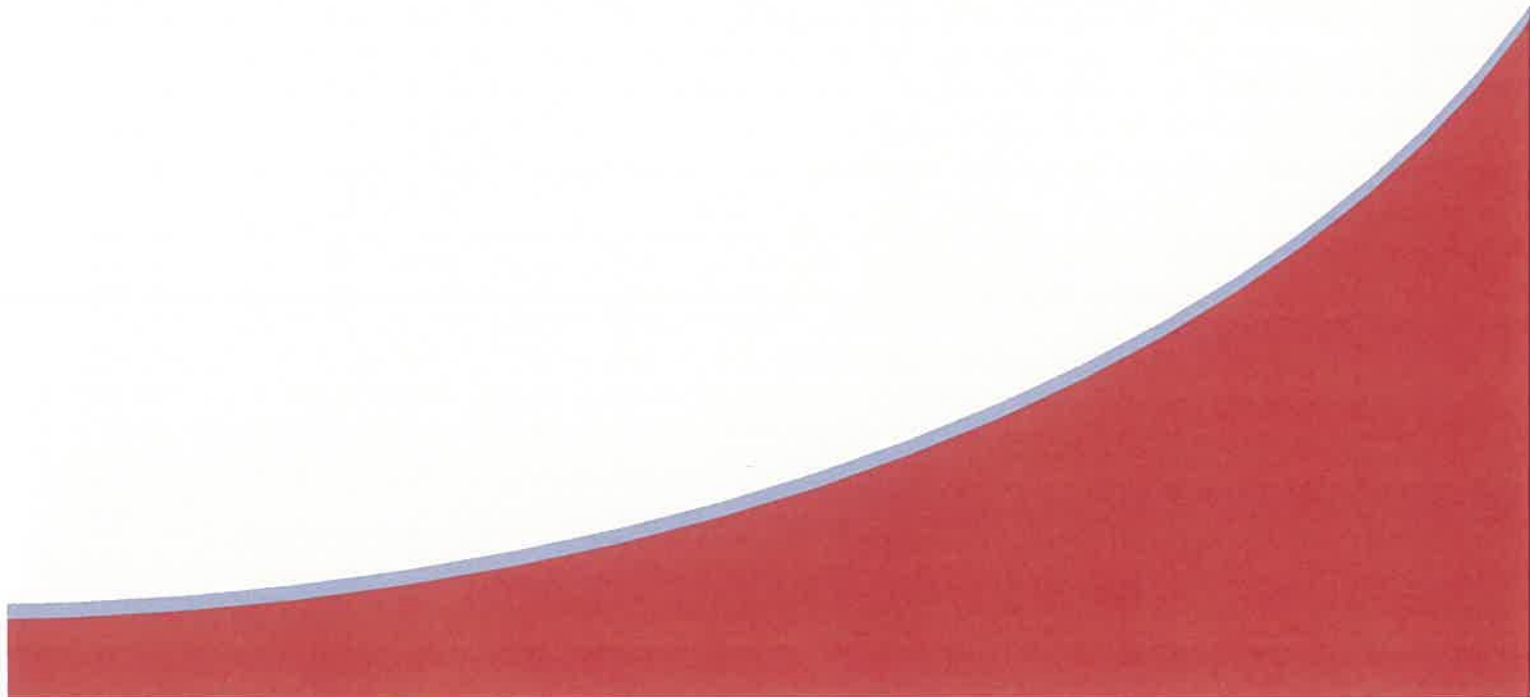




Office of the Inspector of the  
**Independent Commission Against Corruption**

# **Annual Report for the period ending 30 June 2020**



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

### 1.1 FOREWORD AND OBSERVATIONS

I am pleased to present this Annual Report pursuant to s77B of the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) and recommend that this Report be made public forthwith pursuant to s78(1A) of the ICAC Act. This Report relates to the year ended 30 June 2020 and is my third Annual Report as the Inspector of the Independent Commission Against Corruption (ICAC or Commission).

As I have indicated in previous Annual Reports a significant component of the work of my Office in previous years has been dealing with legacy complaints that I inherited when I first commenced in the role as Inspector on 1 July 2017. A number of those complaints were dealt with by way of a report to Parliament and addressed a number of longstanding misconceptions about the Commission and indeed the role and functions of the Inspector. I am pleased to report that during this period a greater focus for my Office has been on its auditing function, an area for which I have been eager to pursue since I became Inspector but was unable to fully devote my attention to given the backlog and nature of the complaints I inherited.

However, before I elaborate on the audit function, I should point out that given that a significant component of my Office's work is complaints handling, my Office welcomed the suggestion made by the Committee of the ICAC to develop a complaints handling policy and procedure. In its publication *Review of the 2017-2018 Annual Reports of the ICAC and the Inspector of the ICAC*, the Committee recommended that I publish procedures and guidelines on how I assess and manage complaints. I am pleased to advise that the *Complaints Handling Policy and Procedure*<sup>1</sup> has been available on my Office's website since April 2020. The document endeavours to explain to complainants the nature and limits of my Office's jurisdiction and how my Office assesses and determines complaints.

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<sup>1</sup> The Policy and Procedure is available on the OIICAC website at: <https://www.oicac.nsw.gov.au/complaints-handling-policy-and-procedure/>

During the reporting period my Office received 27 complaints, all of which were dealt with by letter or email to the complainant explaining my Office's determination of their complaint. I did not uphold any complaints in the reporting period but as I have said in previous Annual Reports, in any case that I do, I shall submit a Special Report to Parliament.

Most of the complaints received by my Office did not enliven my jurisdiction pursuant to s57B(1)(b) of the ICAC Act. That is, there was no basis for determining that ICAC or an officer of ICAC engaged in "abuse of power, impropriety or other forms of misconduct" or "maladministration". In some circumstances it was necessary to obtain a response from the Commission in relation to the matters raised by the complainant. For all of those matters I was satisfied with the responses provided by the Commission. In fact, in most of those cases the Commission itself had had extensive dealings with the complainant and the complainant was usually dissatisfied with the Commission's decision not to investigate their complaint. However, as the Inspector I do not have the power to deal with decisions by the Commission unless the making of the decision involves conduct of the type referred to in s57B of the ICAC Act. Table 1 below in 5.4 provides a summary of the complaints that were received by my Office during the reporting period and a short explanation as to how they were dealt with.

I should also add that during the reporting period I was appointed as the Assistant Inspector of the Law Enforcement Conduct Commission for a period of 3 months, commencing 4 September 2019 to deal with a complaint made by the then Commissioner for Oversight, Mr Patrick Saidi. That complaint took up significant amount of my time and that of my Office and resulted in a report to Parliament.

My Office, like a number of Government agencies has mostly been working remotely since March 2020. That arrangement has worked well to date and there has been minimal, if any, operational impact of COVID-19 to the functioning of my Office. I share my staff and office premises with the Inspector of the Law Enforcement Conduct Commission and that arrangement has to date worked well.

The relationship between the Commission and that of my Office continues to function well and I appreciate the Chief Commissioner regularly briefing me on matters that effect the work of the Commission. One such matter is the Commission's budgetary issues and its future funding model. Given that I expressed my view about those matters in last year's Annual Report, there is no need to repeat them here. However, I note that the Auditor-General recently performed an audit to assess the effectiveness of the financial arrangements and management practices of the four integrity agencies in NSW, including ICAC. During the reporting period my Office met with representatives from the Audit Office to assist it with that audit. My Office expressed its views on the current funding arrangements and outlined its role as the oversight body of the Commission. The Audit Office released its report in relation to these matters on 20 October 2020. As at the date of finalisation of this report I have not been able to consider the Audit Office's recommendation in sufficient detail to make useful comments.

As I indicated earlier, one area I have been able to focus on more during this reporting period is my audit function. I will elaborate on the work of my Office in that regard later in the report, however of note is that in December 2019 I submitted to Parliament a *Report pursuant to sections 57B(5) and 77A of the Independent Commission Against Corruption Act 1988 concerning an audit under section 57B(1)(d) thereof into the Independent Commission Against Corruption's procedures for dealing with counsel assisting in investigations and inquiries under Part 4 of the Act.*

Also in relation to my audit function, on 18 June 2020 I wrote to the then Independent National Security Legislation Monitor (INSLM), Dr James Renwick CSC SC, to request consideration of an amendment to s68 of the *Telecommunications (Interception And Access) Act 1979* (the TIA Act) to enable the Inspector to have access to material obtained by the ICAC pursuant to that Act. At present, the Inspector has no such access. That lack of access can seriously impede the performance of the duties imposed on me under the ICAC Act. To illustrate, if I were to receive a complaint that an ICAC officer had engaged in misconduct in how that officer obtained the intercepted material and commence an investigation, I could access that material to determine whether the complaint was well-founded or not. If, however, I were

conducting an audit I would not. The position is anomalous because ICAC has the material but I, as the integrity oversight body for that agency do not. The issue is particularly relevant to my audit function. I have no power to access TI material for the purposes of conducting a general audit pursuant to s57B(1)(a) and (d) of the ICAC Act. For instance, I cannot request the Commission's intercepted information to audit whether they complied with the TI Act and/or whether there was any misconduct involved on the part of the Commission or one of its officers.

I determined that it is necessary to bring this matter to the attention of the NSW Parliament and will submit a report on this issue. While I appreciate that the NSW Parliament cannot affect a legislative amendment of the TIA Act, I thought it appropriate to inform it and the Committee of the ICAC of my intention to pursue this matter at the Commonwealth level. My Office is currently in discussion with the Department of Home Affairs with a view to facilitating a legislative amendment to the TIA Act.

## **1.2 SIGNIFICANT LEGISLATIVE REFORMS AND OTHER LEGAL DEVELOPMENTS**

There have been no significant statutory reforms or legal developments during the reporting period.

## **1.3 ROLE OF THE INSPECTOR**

The Inspector's role and functions are prescribed by 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 Premier and the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, are jointly responsible for the administration of the ICAC Act. As such, reference to "The Minister", under the ICAC Act, are the Premier of New South Wales and the Special Minister of State.

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. Pursuant to both section 77A and 77B Reports are to be made to the Presiding Officer of each House of Parliament.

#### **1.4 INSPECTOR'S POWERS UNDER THE ICAC ACT**

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

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



## PART 2: OTHER RELEVANT LEGISLATION

### 2.1 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA ACT)

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

Pursuant to Schedule 1(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.

Pursuant to Schedule 2(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 this Office will not be granted.

Applications for access to information made in respect of the Office’s administrative functions (for example, staffing 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 and clause 8(b) of the Regulation, I advise that there were no access applications made under the GIPA Act to the Office during the reporting period.

As required under section 20 of the GIPA Act, the Office has an Agency Information Guide. The Guide is available on the Office website: <https://www.oicac.nsw.gov.au//assets/oicac/AGENCY-INFORMATION-GUIDE2.pdf>

The Agency Information Guide includes information about my functions and the structure of the Office and other matters as required by section 20 of the GIPA Act.

Under section 7(3) of the GIPA Act and 8(a) of the Regulation, I advise that I conducted an annual review of this program to release proactively information which is in the public interest. All information which is publicly available appears on the Office website.

In compliance with section 7 of the GIPA Act, I advise that the Office's website content was reviewed to assess what, if any, further information could be proactively released. The Office ensures that my reports that are tabled in the NSW Parliament are made available on its website. Other than those reports and the Annual Reports, there is limited information held by the Office that can be proactively released due to the sensitive and confidential nature of material handled by the Office. However, during the reporting period existing information on the Office website was updated to ensure currency and relevance. It is a process of ongoing review.

## 2.2 *THE PUBLIC INTEREST DISCLOSURES ACT 1994 (PID ACT)*

*The Public Interest Disclosures Act 1994* ("the PID Act") provides for public servants and other public officials to report serious wrongdoing 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 investigating authority pursuant to s4(1)(g) of the PID Act. To be protected by the PID Act a disclosure by a public official to the ICAC Inspector must:

- (a) be made in accordance with the *Independent Commission Against Corruption Act 1988*, and
- (b) be a disclosure that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration

or serious and substantial waste of public money by the Commission, an officer of the Commission or an officer of the ICAC Inspector<sup>2</sup>.

To ensure that the Office complies with s6D(1) of the PID Act which provides that each public authority must have a policy that provides for its procedures for receiving, assessing and dealing with public interest disclosures, the Office has available on its website its policy and procedure for dealing with PIDs which is available on the Office website at: <https://www.oicac.nsw.gov.au/protected-disclosures/>

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

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

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

The Inspector is included as an “eligible authority” for the purposes of the *Telecommunications (Interception and Access) Act 1979* (Cth) (“TIA Act”). In accordance with reporting requirements under section 96(1) of the TIA Act, the

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<sup>2</sup> S12C(1) *Public Interest Disclosure Act 1994*

Commonwealth Department of Home Affairs was advised by the Inspector that there was nil usage of the relevant provisions of the *TIA Act* during the reporting period.

## **PART 3: THE OFFICE OF THE INSPECTOR OF ICAC**

### **ADMINISTRATION**

#### **3.1 PREMISES**

The Office of the Inspector of ICAC shares premises with the Office of the Inspector of the Law Enforcement Conduct Commission (OILECC). Both Offices relocated to new premises in August 2018 to accommodate the Inspector of LECC's staff that were transferred to his Office from the NSW Ombudsman on 1 July 2017.

The contact details for the Office are:

Postal address: GPO Box 5341, Sydney, NSW, 2001  
Telephone: (02) 9228 3023  
E-mail: [oiicac\\_executive@oiicac.nsw.gov.au](mailto:oiicac_executive@oiicac.nsw.gov.au)

#### **3.2 STAFF**

The Inspector shares two staff with the Inspector of the LECC, a Principal Legal Advisor and a Business Coordinator.

#### **3.3 BUDGET AND FINANCE**

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

The Office's expenditure for the period from 1 July 2019 to 30 June 2020 was \$587, 044. This compares with a total expenditure of \$402,054 in the previous financial year.

Of note is that that actual expenditure of \$448,935 recorded in the OIICAC Annual Report for 2018/19 was the budgeted amount. This actual expenditure for OIICAC for that period was \$402,054.

The Inspector is paid a daily rate of \$4600 being the Attorney General's rate paid to Senior Counsel at the time of the Inspector's appointment on 1 July 2017.

## PART 4: LIAISON AND COMMUNICATION

### 4.1 LIAISON WITH THE ICAC

The Memorandum of Understanding (MOU) between the Chief Commissioner and me, which sets out the arrangements for liaison between the Commission and my Office concerning referral of matters, access to information and points of contact between both agencies, has been operating effectively. The Commission has responded adequately to my requests for information. As indicated in paragraph 5.4 below, the Commission, in accordance with the MOU, notified my Office of misconduct or possible misconduct by Commission officers during the reporting period.

During the reporting period I met with the ICAC Chief Commissioner and Commissioners on a number of occasions to discuss matters relevant to the exercise of my functions.

In addition, informal and regular liaison occurs frequently between staff of the Office and staff of the Commission for the purpose of requesting and obtaining documents from ICAC to assist me in exercising my functions.

In last year's Annual Report, I indicated that as part of my audit function, I commenced meeting with teams within the Commission, however COVID-19 prevented me from continuing to meet with staff during the reporting period.

### 4.2 MEETINGS/CONFERENCES UNDERTAKEN BY THE INSPECTOR

Conferences/meetings with external agencies:

Date	With Whom	Where	Purpose
25 July 2019	Meeting with Ms Tanya Davies, Chair, Committee of the ICAC	Sydney	Introductory meeting to discuss the functions of the Office of the Inspector of ICAC

22 August 2019	Representatives from the ACT Ombudsman's Office	Sydney	Staff from OIICAC met with staff of the Ombudsman's Office to discuss the ACT's new Inspectorate function
27 September 2019	Parliamentary Committee on the ICAC	Sydney	Introductory meeting with the new members of the Committee to discuss the functions and work of OIICAC
18 October 2019	Parliamentary Committee on the ICAC	Sydney	Committee review of the Inspector's 2017-18 Annual Report
29-31 October 2019	Australian Public Sector Anti-Corruption Conference (APSACC)	Melbourne	A forum to discuss methods of preventing, exposing and responding to corrupt conduct and corruption risks in public institutions
1 November 2019	National Conference of Inspectors, Reviewers and Parliamentary Commissioners	Melbourne	Meeting of Inspector's to discuss matters of mutual interest
30 January 2020	Representatives from the NSW Audit Office	Sydney	Meeting to discuss the Auditor-General's audit of the financial arrangements and management practices of the integrity agencies in NSW
15 May 2020	Parliamentary Committee on the ICAC	Sydney	Committee review of the Inspector's



			2018-2019 Annual Report
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#### 4.3 WEBSITE

The Office manages its own website. The content of which was reviewed and updated during the reporting period. The website address is [www.oicac.nsw.gov.au](http://www.oicac.nsw.gov.au).

The website is regularly updated and contains access to reports that have been prepared by the Office, including Annual Reports and Special Reports which have been tabled in Parliament. The website also contains information for members of the public about my powers and functions and information about how to contact the Office.

As indicated in the introduction of this report, during the reporting period my Office added to its website the *OICAC Complaints Handling Policy and Procedure*.

## PART 5: THE INSPECTOR'S STATUTORY FUNCTIONS

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

The ICAC is invested with compulsory powers to seek and obtain information under sections 21, 22, 23 and 35 of the 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.

My Office is routinely provided with an audit schedule in respect of the Commission's use of its statutory powers referred to above. That document is useful in enabling the Office to discharge its various statutory functions, in particular s57B(1)(a) and (d) of the ICAC Act, in its auditing and oversight of the operations of the Commission. Furthermore, it provides the Office with an overview of certain aspects of the Commission's activities during any given period of time.

The monthly audit schedule includes the following information:

- Number of preliminary investigations commenced and completed pursuant to s20A
- Notices issued pursuant to s21 and the investigation it relates to
- Notices issued pursuant to s22 and the investigation it relates to
- Notices issued pursuant to s23 and the investigation it relates to
- Injunctions granted by the Supreme Court pursuant to s27 and the investigation it relates to
- Number of compulsory examinations conducted pursuant to s30 and the investigation they relate to
- Number of public inquiries conducted pursuant to s31 and the investigation they relate to

- Number of summons issued by a Commissioner pursuant to s35 and the investigation they relate to
- Number of search warrants issued pursuant to s40 and the investigations they relate to
- Number of reports prepared pursuant to s74.

The Commission also provides the Office with investigation and executive management reports and other quarterly reports, all of which have been helpful in assisting me to carry out my audit function.

During the reporting period the Principal Legal Advisor in my Office attended two of the Commission's quarterly Audit and Risk Committee (ARC) meetings. My Office routinely receives the ARC meeting papers and minutes. I anticipate that I or a representative from my Office will continue to attend two ARC meetings per year.

## 5.2 FORMAL AUDITS CONDUCTED IN THE PERIOD 1 JULY 2019 TO 30 JUNE 2020

During the reporting period my Office commenced an audit of the Commission's application for and execution of search warrants for 2018-19. The results of that audit will be released soon, however my preliminary views are that the Commission complied with the relevant statutory provisions concerning search warrants and that its own policies and procedures in that area are effective.

I also completed the audit I commenced in 2018-19 concerning the Commission's procedures for dealing with counsel assisting in investigations and inquiries. On 19 December 2019 I submitted to Parliament a *Report pursuant to sections 57B(5) and 77A of the Independent Commission Against Corruption Act 1988 concerning an audit under section 57B(1)(d) thereof into the Independent Commission Against Corruption's procedures for dealing with counsel assisting in investigations and inquiries under Part 4 of the Act* (Special Report 2020/02)<sup>3</sup>.

That audit examined the conduct of counsel assisting in one Commission inquiry, Operation Spicer. I concluded that such conduct was, in some instances,

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<sup>3</sup> The report can be found under 'Reports' on the OIICAC website at: <https://www.oiiac.nsw.gov.au/reports/>

inappropriate and unfair to the persons whose conduct was being examined by the Commission. The ICAC conducted the Operation Spicer public inquiry in 2014 well before the introduction of the current three Commissioner model in 2017 and the appointment of the present Chief Commissioner and Commissioners. Having audited the Commission's current procedures in relation to counsel assisting in the conduct of investigations under Division 2 of Part 4 of the Act and compulsory examinations and public inquiries under Division 3 of Part 4, I am satisfied that those procedures are presently operating satisfactorily, appropriately and in accordance with the relevant legislation. I am also confident that the inappropriate conduct I identified in the audit during the Operation Spicer investigation is unlikely to be repeated. Consequently, I formed the view that legislative change is unnecessary as is any additional protection for witnesses. Nevertheless, I propose to continue to monitor these matters during the remainder of my term as Inspector to ensure that that continues to be the case.

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

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

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

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

A substantial proportion of complaints to my Office involve matters in which 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 ICAC

engaging in the type of misconduct prohibited by the ICAC Act. Consequently, when considering such complaints, the focus must be on whether the conduct of ICAC amounts to misconduct or maladministration of the type described above. In the course of looking at this focus, the conduct of those against whom complaints to the ICAC were initially made is considered, but only in the context of whether there was evidence of corruption on which the ICAC could have taken more action than it did and, if it could, whether its failure to do so amounts to such misconduct or maladministration.

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

#### **5.4 PERIOD 1 JULY 2019 TO 30 JUNE 2020: NEW MATTERS AND OUTSTANDING COMPLAINTS FROM PREVIOUS REPORTING PERIODS**

My Office dealt with a total of 28 complaints in the reporting period. A breakdown of the complaints that were dealt with is as follows:

- Of the 27 complaints received by the Inspectorate in the reporting period, 24 were completed and 3 complaints remained outstanding at the end of the period. However, of those 2 have since been completed.
- Of the 27 complaints that were received during the current period, 3 of those complaints were either referred or notified to the Office pursuant to the MOU between the Inspector and the Chief Commissioner of ICAC. Those matters are identified in Table 1 below.
- During the current reporting period the Office finalised 4 complaints that were received during the previous reporting period (2018-19).

In most cases that I do not submit a Special Report to Parliament, I write to the complainant advising them that their complaint has been dismissed and that I will not be taking any further action in relation to it. In any case that I do uphold a complaint about ICAC I will submit a Special Report to Parliament.

A summary of the details of all the complaints received in the reporting period is provided below in Table 1. To protect the identity of the complainants the description of the complaints is only provided in general terms.

**Table 1**

<b>Complainant</b>	<b>Nature of Complaint</b>	<b>Inspector's determination of complaint</b>
C01 2020	Complaint about the way a Commission solicitor dealt with a claim of legal professional privilege by a person the subject of an ICAC search warrant.	The Inspector sought particulars about this matter from the Commission. However, the Inspector ultimately determined that the conduct of the Commission solicitor did not amount to "abuse of power, impropriety or other forms of misconduct" or "maladministration" pursuant to s57B(1)(b) & (c). The complainant was advised that no further action will be taken by the Inspector.
C02 2020	Complaint about Inspector's perceived bias in his role as a barrister and his role as the Inspector of ICAC regarding the Inspector's investigation of the complaint by the NSW Labour Party.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.
C03 2020	Complaint that ICAC failed to investigate a complaint to it about the NSW Civil and Administrative Tribunal and the Department of Fair Trading.	The Inspector determined that the conduct of ICAC did not amount to an "abuse of power, impropriety or other forms of misconduct" or "maladministration" pursuant to s57B(1)(b) & (c) and the complainant was advised that no further action will be taken by the Inspector.
C04 2020	Complaint about corruption and misappropriation of funds by the Board of an Aboriginal Land Council.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector. Complainant was referred to ICAC.
C05 2020	Complaint referred by ICAC to Inspector. Complaint alleges that an ICAC Officer misled a witness into falsely believing that the material that the	The Inspector sought further particulars about this matter from the Commission and obtained a response from another Commission officer who was present during the private examination. The Inspector ultimately determined that in the circumstances, it would be impossible to come to any firm conclusion

	witness provided in a private examination would not be used in a public hearing.	about whether the witness was provided with such an assurance. The Inspector determined that no further action will be taken in relation to the matter.
C06 2020	Complaint from a Councillor concerning ICAC not investigating complaints of corruption at a Local Government Authority.	The Inspector determined that the conduct of ICAC did not amount to an “abuse of power, impropriety or other forms of misconduct” or “maladministration” pursuant to s57B(1)(b) & (c).
C07 2020	<p>Complainant alleges that ICAC did not respond or investigate a complaint of corrupt conduct by an electoral commission officer.</p> <p>Complainant also complained to the Legal Services Commissioner about the Inspector failing to investigate ICAC.</p>	<p>The Inspector determined that the conduct of ICAC did not amount to an “abuse of power, impropriety or other forms of misconduct” or “maladministration” pursuant to s57B(1)(b) &amp; (c). The complainant was not advised of the outcome of matter because OIICAC has had previous dealings with the complainant about the same matter.</p> <p>The Office of the Legal Services Commissioner dismissed the complaint about the Inspector as it was lacking in substance.</p>
C08 2020	Complaint about difficulty contacting ICAC over the telephone.	<p>Complainant did not respond to an email from the Inspector’s Office requesting further particulars from the complainant and the complainant’s consent to contact ICAC on their behalf.</p> <p>Based on the information provided by the complainant, the complaint did not enliven Inspector’s jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and no further action taken was in relation to the matter.</p>
C09 2020	Complaint that complainant did not receive a response to their complaint to ICAC.	<p>The Inspector sought further particulars about this matter from the Commission and was provided with a response. ICAC subsequently responded to the complainant.</p> <p>However, the complaint did not enliven the Inspector’s jurisdiction pursuant to s57B(1)(b)</p>



		and (c) of the ICAC Act and the complainant was advised that no further action will be taken by the Inspector.
C10 2020	Complaint about various government agencies.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.
C11 2020	Complaint about alleged corruption at a Local Government Authority.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act.
C12 2020	Complainant requested an investigation of an employee of a particular NSW public service agency who is alleged to have run their personal business using agency resources. Complaint is also about ICAC's decision not to investigate the matter.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.
C13 2020	Complaint referred by ICAC concerning allegations of bullying.	A formal investigation into the complaint was undertaken by the Commission. The Inspector was informed of the outcome of the matter and the Inspector was satisfied with manner in which the Commission had dealt with it.
C14 2020	Complaint from a NSW public official that they were under surveillance, being stalked, and being manipulated into having a relationship with a colleague.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.  Complainant was also advised by the Inspector to speak to their line manager for assistance.
C15 2020	Complaint raised concerns about ICAC counsel assisting following Inspector's audit report to	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.

	Parliament concerning counsel assisting <sup>4</sup> .	
C16 2020	Complaint to NSW Police regarding an AVO the complainant received. OIICAC was copied into the complaint, however there was no reference to ICAC or its officers in the correspondence.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. No action was taken in relation to the matter.
C17 2020	Complainant dissatisfied with the coronial inquest into her son's death.	<p>The Inspector assessed correspondence that had passed between ICAC and the complainant and determined that no further action was warranted in relation to the matter. The Inspector suggested to the complainant other avenues of enquiry to pursue.</p> <p>Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.</p>
C18 2020	<p>Complaint referred by ICAC. Complainant alleges that an ICAC Officer accepted a gratuity from a Local Council officer to not investigate a complaint made to ICAC. ICAC supplied to the Inspector copies of the extensive correspondence it has had with the complainant.</p> <p>ICAC assessed the complaint and</p>	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. The Commission was advised that no action by the Inspector will be taken in relation to the matter.

<sup>4</sup> Report can be accessed at: <https://www.oicac.nsw.gov.au/assets/oicac/reports/audit-reports/Report-of-Inspector-of-ICAC-19-December-2019.pdf>

	determined to take further action.	
C19 2020	Anonymous complaint regarding the delay of a preliminary investigation being undertaken by the Commission.	<p>The Inspector sought further particulars about this matter from the Commission and was provided with a response. The Commission advised that the matter was still under preliminary investigation.</p> <p>The Inspector has requested ICAC to keep him informed of the progress of the investigation.</p>
C20 2020	Complaint regarding unfair treatment by NSW police officers.	<p>Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.</p> <p>Complainant was provided the contact details of the Law Enforcement Conduct Commission.</p>
C21 2020	Complaint concerning a decision by ICAC not to investigate corrupt conduct by a university professor.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.
C22 2020	Request to make an appointment to meet with the Inspector to make a complaint.	The Office informed the correspondent of the Inspector's power and advised them that if they wish to make a complaint to the Inspector they should do so in writing.
C23 2020	Complaint that during ICAC's investigation of the complainant that the Commission made false accusations and that ICAC perverted the course of justice.	The Inspector sought further particulars about this matter from the Commission and was provided with a response. However, the Inspector ultimately determined that the complaint did not enliven the Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. The complainant was advised that no further action will be taken by the Inspector.
C24 2020	Anonymous complaint concerning health issues of an ICAC officer.	The Inspector has conducted inquiries into the matter and determined further action was unnecessary at this time.
C25 2020	Complaint of misconduct and maladministration on the part of a former ICAC Commissioner.	The Inspector has previously dealt with the same complaint by the complainant. Inspector determined that the complaint did not enliven the Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. The

		complainant was advised that no further action will be taken by the Inspector.
C26 2020	Complaint that ICAC did not investigate complaint against Attorney-General.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.
C27 2020	Complaint concerning ICAC's decision not to investigate a complaint made about a Local Government Authority.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act and complainant was advised that no further action will be taken by the Inspector.

## 5.5 Summary of Special Report submitted to Parliament pursuant to sections 57B(5) and 77A of the ICAC Act

Below is a summary of the Inspector's Special Report that was submitted to Parliament during the reporting period.

### ***1. Report concerning a complaint by the Australian Labor Party (NSW Branch) and Country Labor about the conduct of the ICAC in investigating political donations received by these parties (Special Report 2020/01)<sup>5</sup>***

This report determined a complaint against the Commission made on behalf of the Australian Labor Party (NSW Branch) (ALP NSW) and Country Labor by its solicitors Messrs. Holding Redlich. The report was submitted to Parliament on 17 July 2019.

The complaint concerned the circumstances in which officers of the ICAC obtained and executed a search warrant at the offices of the NSW ALP at Level 9, 377 Sussex Street, Sydney on 18 December 2018. Specifically, the complaint concerned two notices dated 17 and 20 December 2018 issued by ICAC to the General Secretary of the ALP NSW and Country Labor to attend ICAC and produce documents to it and

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<sup>5</sup> The report can be found under 'Reports' on the OIICAC website at: <https://www.oicac.nsw.gov.au/reports/>

whether any ICAC officer was responsible for informing the media of the fact that the ICAC was executing a search warrant at ALP NSW headquarters.

I determined that such misconduct had not been established. First, I could see no basis for the allegation that the ICAC should not have proceeded by way of search warrant whether because the ALP NSW and Country Labor had “complied” with the investigation previously, nor because the ALP NSW and Country Labor had co-operated with the Electoral Commission investigators or because there was an alternative available, that is the issuance of a notice under section 22 of the ICAC Act.

While executing a search warrant involves a major incursion into the rights and freedoms of members of our community, there are situations when exercise of that power is justified. This seemed to me to be one of those situations where, unless there was cogent evidence of impropriety, the ICAC’s judgement that it was necessary and/or desirable to use that mechanism for operational reasons should be respected. It seems to me reasonable for the ICAC to decide itself to act to obtain the documents covered by the warrant, rather than leaving decisions as to compliance in the hands of those served with a section 22 notice.

Secondly, there did not appear to me to be any basis for the assertion by Holding Redlich that the warrant may have been issued “for purposes other than the proper exercise of the ICAC’s investigative powers”. I assume the suggestion is that the warrant was obtained and executed publicly in an attempt to embarrass ALP NSW and Country Labor shortly before a state election was due to be held. But there is no evidence that that was the case. I was satisfied by the ICAC’s response to me that its decision to exercise the search warrant and the timing of its execution were based on operational considerations.

As to the allegation of unauthorised disclosure to the media, there was simply no evidence available to me that an ICAC officer was responsible for that. I did however note in the Report that Commission officers executing the search warrant observed a number of ALP staff at the ALP NSW branch premises making telephone calls on their phones during the execution of the warrant. I cannot, of course, say that any

of them informed the media but it is an obvious possibility and suffices to demonstrate that that is an alternative method by which the press might have been alerted.

I determined that the matters raised by the complainant did not amount to “abuse of power, impropriety and other forms of misconduct” nor “maladministration” as those terms are used in section 57B of the ICAC Act 1988. Accordingly, I ultimately dismissed the complaint by ALP NSW and Country Labor.

## PART 6: CONCLUSION

I am pleased to note that this reporting period enabled my Office to refocus its energy on auditing the operations of the Commission for the purpose of monitoring compliance with the laws of NSW, and to assess the effectiveness and appropriateness of the relevant Commission procedures. As I have indicated publicly to the Committee on the ICAC, I regard the audit function in many ways as more important than my complaints handling function. If I am able to identify an area in which the Commission has a weakness and make recommendations for improvement, I anticipate that it will result in less complaints to my Office and less people being aggrieved by the Commission's conduct or its practices.

In addition, I am pleased that the number of complaints about the Commission received by my Office has remained consistently low since I took Office on 1 July 2017. This is in stark contrast to the number of complaints the Office of the Inspector received prior to the three Commissioner model being introduced. I anticipate that this trend will continue under the current regime and the Commission's current practices.

*B. R. McClintock*

Bruce McClintock SC

Inspector ICAC