



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

# **Annual Report for the period ending 30 June 2019**

# Table of Contents

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

1.1	FOREWORD AND OBSERVATIONS.....	1
1.2	SIGNIFICANT LEGISLATIVE REFORMS AND OTHER LEGAL DEVELOPMENTS .....	4
1.3	ROLE OF THE INSPECTOR.....	4
1.4	INSPECTOR'S POWERS UNDER THE ICAC ACT .....	5

## PART 2: OTHER RELEVANT LEGISLATION

2.1	GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 (GIPA ACT).....	7
2.2	THE PUBLIC INTEREST DISCLOSURES ACT 1994 (PID ACT).....	8
2.3	TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979 (CTH) (TIA ACT).....	10

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

	ADMINISTRATION .....	11
3.1	PREMISES.....	11
3.2	STAFF .....	11
3.3	BUDGET AND FINANCE .....	11

## PART 4: LIAISON AND COMMUNICATION

4.1	LIAISON WITH THE ICAC.....	12
4.2	MEETINGS/CONFERENCES UNDERTAKEN BY THE INSPECTOR .....	12
4.3	WEBSITE.....	13

## PART 5: THE INSPECTOR'S STATUTORY FUNCTIONS

5.1	AUDITING THE OPERATIONS OF THE ICAC [SECTION 57B(1)(A)].....	14
5.2	AUDITS CONDUCTED IN THE PERIOD 1 JULY 2018 TO 30 JUNE 2019 .....	15
5.3	COMPLAINTS [Sections 57(1)(b) and 57(1)(d)].....	15
5.4	PERIOD 1 JULY 2018 TO 30 JUNE 2019: NEW MATTERS AND OUTSTANDING COMPLAINTS FROM PREVIOUS REPORTING PERIODS.....	16
5.5	SUMMARY OF SPECIAL REPORT SUBMITTED TO PARLIAMENT PURSUANT TO SECTIONS 57B(5)AND 77A OF THE ICAC ACT .....	23

<b>PART 6: CONCLUSION.....</b>	<b>26</b>
--------------------------------	-----------

## 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 2019 and is my second Annual Report as the Inspector of the Independent Commission Against Corruption (ICAC or Commission) in respect of a year in which I was the Inspector. Although I signed off on the 2016-17 Annual Report, I did not in fact commence as Inspector until 1 July 2017.

As I indicated in last year's Annual Report, I have adopted two methods of dealing with complaints, bearing in mind sub sections 57B(1)(b) and (c) of the ICAC Act require that I deal with complaints by reports to Parliament, that is, to the Presiding Officer of each House of Parliament, that is, the President of the Legislative Council and Speaker of the Legislative Assembly.

The first such method is by letter to the complainant, setting out my decision as to the complaint. In cases where I have adopted this method, I have included a reference to the complaint and its disposition in Table 1 below in this Annual Report. In my opinion, that method of dealing with complaints satisfies my statutory obligations.

The second is by formal report to Parliament which I present personally to the President of the Legislative Council and the Speaker of the Legislative Assembly.

During the reporting period, most complaints were dealt with by letter to the complainant explaining my determination of their complaint. Although I did not uphold any complaints in the reporting period, 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 provides a summary of the complaints that were received by my Office during the reporting period.

My Office continues to have a productive and co-operative relationship with the Commission, and I appreciate the Commission’s detailed and timely responses to requests for information. The Commission, of its own motion, often provides my Office with copies of various submissions it makes relating to legislative reform proposals or seeks my views about matters of mutual importance. The open and transparent manner with which the Commission deals with me and that of my staff has greatly assisted me in carrying out my oversight function.

The three Commissioner model has now been operating for over two years and given that it is still a relatively new model for the NSW Government, it is timely that I make some comment about how it is functioning. My view is that the three Commissioner model has been working extremely well in the case of the ICAC. The three individuals appointed as Commissioners are highly experienced and are ably carrying out the functions of the Commission. The quality of the work that I see coming out of the Commission certainly reinforces that view. The three Commissioner model continues to enable ICAC to simultaneously run several investigations, a number of which are public inquiries. While this has been extremely beneficial for the purposes of improving public administration in NSW and exposing corrupt conduct, I am concerned about the long-term sustainability of such a model given the significant expense of running simultaneous public

inquiries. Most expenses are attributable to the cost of legal services – the use of counsel assisting by the Commission and transcription services.

I have been regularly briefed by the Commission about the financial difficulties they have faced since the three Commissioner and CEO model was introduced. The model, while beneficial for the overall good governance of the Commission and its productivity, does not appear to have been funded to provide for the increase in investigative work that the Commission is now able to do. Regrettably, during the reporting period this resulted in the Commission seeking additional ‘top up’ grant funding from the Government so that it could continue to carry out investigations that had already commenced. Although the grant funding sought by the Commission was provided (in addition to the Commission’s annual budget), such one off and at times ad hoc funding is not sustainable in ensuring the Commission can continue to carry out its statutory functions. I am advised that the practice of ICAC requesting top up granting funding has been a long-standing practice between the Commission and previous Governments. This funding model may have worked in the past but I query whether it is desirable for an independent statutory body whose primary role is ensuring the integrity of public administration in NSW. I hope the Government will give consideration to an alternative model which maintains the independence of the Commission by ensuring adequate funding.

To enable the Commission to continue to investigate, expose and prevent corruption involving public authorities and public officials in NSW, it requires sufficient financial resources via a funding model that contemplates, to an extent at least, the unpredictability of the Commission’s work. I appreciate that from the Government’s point of view, having a body such as the Commission deviate from traditional funding models which are applicable to all Government agencies across the state is not ideal and may encourage other such bodies to make similar requests. However, to ensure the ultimate statutory independence of the Commission, funding for it should be determined via a non-politicised process and one that is not subject to bureaucratic management or oversight. A reconsideration of the current funding model to one which takes in to account the entirety of the Commission’s ever-increasing workload, particularly following the introduction of

the three Commissioner model would ensure that the Commission can continue to expose and investigate serious corrupt conduct.

## **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 (Special Minister of State), 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 the 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 developed its 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, 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 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 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>1</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 revised its policy and procedure during the reporting period. Those documents are 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 – 1
  
- b) The number of public interest disclosures received by the Inspector relating to each of the following:
  - i. corrupt conduct only– 1
  - 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

As indicated above, the Inspector received one public interest disclosure during the reporting period. However, following inquiries made of ICAC by the Office it was determined that the complaint would not be treated as a public interest disclosure as there was little information or evidence that showed that the conduct complained of had occurred.

---

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

### 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 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 2018 to 30 June 2019 was \$448, 935. This compares with a total expenditure of \$469,582 in the previous financial year.

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 several 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.

As part of my audit function I commenced meeting with staff of the Commission. In the reporting period I met with the Corruption Prevention and Assessment Teams.

### 4.2 MEETINGS/CONFERENCES UNDERTAKEN BY THE INSPECTOR

Date	With Whom	Where	Purpose
21 August 2018	A National Integrity System Assessment Symposium	Canberra	A symposium to discuss best practice in public integrity institution design and operations
3 October 2018	The Hon. Michael Murray AM QC, Parliamentary Inspector of Corruption and Crime	Brisbane, QLD	Meeting of Inspectors to discuss issues of mutual importance.

	Commission (WA), Ms Karen Carmody, Parliamentary Crime and Corruption Commissioner (QLD), Mr Eamonn Moran PSM QC, Victorian Inspector (VIC), The Hon. Terry Buddin SC, Inspector of the Law Enforcement Conduct Commission (NSW), The Hon. Kevin Duggan AM QC, Reviewer of ICAC (SA)		
14 -15 November 2018	12 <sup>th</sup> National Investigations Symposium	Sydney, NSW	A symposium to discuss investigative techniques used by various jurisdictions
11 February 2019	Meeting with the Commonwealth Ombudsman, Mr Michael Manthorpe	Canberra, NSW	Meeting to discuss the inspectorate function and how it is carried out.
3 April 2019	National Integrity Forum	Melbourne, VIC	A Forum to discuss matters of mutual interest for integrity bodies
1 June 2018	Parliamentary Committee on the ICAC	NSW Parliament	Committee inquiry into the Inspector's 2016-17 Annual Report.

### 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.oiiacac.nsw.gov.au](http://www.oiiacac.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.

## 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.

There were no individual audits in to the Commission's use of the above-mentioned powers in the reporting period. However, during the period I requested and have routinely been provided with an audit schedule in respect of the Commission's use of the statutory powers referred to above. That document has been most 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.

Also, during the reporting period I attended one of the Commission's quarterly Audit and Risk Committee (ARC) meeting and now routinely receive those meeting papers and minutes. I propose to attend two ARC meetings per year.

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.

## **5.2 AUDITS CONDUCTED IN THE PERIOD 1 JULY 2018 TO 30 JUNE 2019**

There were no formal audits completed during the reporting period.

However, pursuant to s57B(1)(a) and (d) of the ICAC Act I continued the audit into the manner in which the Commission deals with, instructs and controls counsel assisting, which I commenced in the previous financial year. I anticipate I will report on the outcomes of that audit in next year's annual report.

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

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

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

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

A substantial proportion of complaints involve matters in which 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, whether there is any substance to the complaint and, whether it warrants investigation.

#### **5.4 PERIOD 1 JULY 2018 TO 30 JUNE 2019: NEW MATTERS AND OUTSTANDING COMPLAINTS FROM PREVIOUS REPORTING PERIODS**

My Office dealt with a total of 27 complaints in the reporting period. A breakdown of the complaints that were dealt with is as follows:

- Of the 23 complaints received by the Inspectorate in the reporting period, 19 were completed and 4 complaints remained outstanding at the end of the period. However, those 4 have since been completed. One of those complaints was dealt with by way of Special Report to Parliament. That Report is available on the Office's website at:

<https://www.oicac.nsw.gov.au//assets/oicac/reports/special->

[reports/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.pdf](https://www.oicac.nsw.gov.au/assets/oicac/reports/special-reports/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.pdf)

- During the current reporting period the Office finalised the 4 complaints that remained outstanding from the previous reporting period (2017-18). Of those 4 complaints, one was dealt with by way of Special Report to Parliament. That Report is available on the Office's website at: <https://www.oicac.nsw.gov.au/assets/oicac/Special-Report-BROOK.pdf>.
- On 1 July 2017 when the I took Office, I inherited 23 complaints from the previous reporting periods (2014-15, 2015-16, 2016-17). Of those 23, 19 were finalised during the 2017-18 reporting period and the remaining 4<sup>2</sup> were finalised during the current period. A breakdown of those 4 complaints is as follows:
  - 2 of those complaints were from the 2014-15 reporting period.
  - 1 of those complaints was from the 2015-16 reporting period and was dealt with by way of Special Report. That Report is available on the Office's website at: <https://www.oicac.nsw.gov.au/assets/oicac/reports/special-reports/Report-concerning-a-Complaint-by-Mr-Murray-Kear-about-the-conduct-of-the-ICAC-in-Operation-Dewar-1804-Anon.pdf> . The report was initially submitted to Parliament on 6 June 2018, however one of the persons named in the Report requested that their name be redacted. The Inspector granted the request and the Report was resubmitted to Parliament on 4 July 2018.
  - 1 complaint was from the 2016-17 period.
  - The reasons for the delay in finalising the complaints varied. It included seeking further information from the complainant and/or their legal representatives, providing procedural fairness to the complainant and/or other people that were referred to in the Special Report and obtaining responses from ICAC in relation to the matters raised by the complainants.
- Of the 23 complaints that were received during the current period, 8 of those complaints were either referred or notified to the Office pursuant to paragraph

---

<sup>2</sup> In my annual report for the 2017-18 reporting period, I stated that there were 5 complaints outstanding. That was an error – there were in fact, only 4 outstanding. All of those were concluded in this reporting period.

5.1 of the MOU between the Inspector and the Chief Commissioner of ICAC.  
Those matters are identified in Table 1 below.

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>
C1 2019	Broad complaint about harassment of complainant by police officers.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. Complainant was advised that no further action will be taken by the Inspector, however it was suggested to the complainant that they may wish to contact the Law Enforcement Conduct Commission.
C2 2019	Referral from ICAC advising Inspector of allegations of possible misconduct on the part of an ICAC officer.	Report with findings of misconduct by the ICAC were provided to the Inspector. Inspector determined that ICAC had appropriately investigated the matter and that appropriate disciplinary action had been taken by ICAC. No further action was taken by the Inspector.
C3 2019	Complainant alleges that exculpatory documents were withheld by ICAC during a public inquiry.	The inspector determined that the conduct of ICAC did not amount to "abuse of power, impropriety or other forms of misconduct" or "maladministration" pursuant to s57B(1)(b) & (c) and complainant was advised that no further action will be taken by the Inspector .
C4 2019	Complaint that ICAC failed to investigate a university exam result in which the complainant failed.	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.
C5 2019	Broad complaint which was referred to the Inspector by ICAC about ICAC itself, Crown Solicitors Office, the courts, judges, politicians, the police and others of conspiratorial cover-up involving refusal to investigate serious criminal offences.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. The complainant did not complain directly to the Inspector so no action was taken by the Inspector.
C6 2019	Complainant requesting that their	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of

	“blacklisting” from ICAC be lifted and that ICAC have been complicit in the concealment of serious and systemic corrupt conduct.	the ICAC Act and complainant was advised that no further action will be taken by the Inspector.
C7 2019	Complainant alleges ICAC did not properly investigate a complaint of corruption involving public officials of the NSW Department of Planning and Environment.	Following correspondence with the Office, the complainant subsequently advised the Office that other NSW agencies were considering the complaint.
C8 2019	Referral from ICAC advising Inspector of allegations of possible misconduct on the part of an ICAC officer.	Report with findings of misconduct by ICAC were provided to the Inspector. Inspector determined that ICAC had appropriately investigated the matter and that appropriate disciplinary action had been taken by ICAC. No further action was taken by the Inspector.
C9 2019	Complaint about the NSW Police Force and the Law Enforcement Conduct Commission.	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.
C10 2019	Complaint against a former ICAC officer alleging that the officer obstructed a complaint about an organisation of which that officer was a board member.	Following information provided by ICAC about the complaint, the Inspector determined that it did not enliven the Inspector’s jurisdiction pursuant to s57B(1)(b) and (c). No further action was taken by the Inspector.
C11 2019	Referral from ICAC advising Inspector of allegations of possible misconduct on the part of an ICAC officer.	A report with findings of misconduct by the ICAC officer were provided to the Inspector by ICAC. Inspector determined that ICAC had appropriately investigated the matter and that appropriate disciplinary action had been taken. No further action was taken by the Inspector.

C12 2019	Request by a member of the public for a report prepared by the Inspector that was available on the Inspector's website in PDF to be provided in Word format.	Request was denied. The only publicly available reports from the Inspector are those available in PDF form on the Office's website.
C13 2019	Complaint that ICAC did not investigate allegations of corruption and misconduct by a local government authority (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.
C14 2019	Complaint that ICAC investigation into political donations amounts to maladministration.	Complaint was dismissed. See Inspector's Special Report 20/01: <a href="https://www.oicac.nsw.gov.au//assets/oicac/reports/special-reports/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.pdf">https://www.oicac.nsw.gov.au//assets/oicac/reports/special-reports/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.pdf</a>
C15 2019	Referral from ICAC about a complaint that ICAC leaked information to the media about a search warrant it had executed.	Complainant did not provide contact details or any particulars in relation to the complaint. Inspector determined that no further action will be taken until such time as further information is provided by the complainant.
C16 2019	Referral from ICAC about a complaint that alleges that ICAC failed to investigate a complaint about a local government authority and protect the complainant from unlawful harassment and intimidation by various government bodies.	Complaint did not enliven Inspector's jurisdiction pursuant to s57B(1)(b) and (c) of the ICAC Act. No further action was taken by the Inspector.

C17 2019	Complainant dissatisfied with the manner in which the Health Care Complaints Commission (HCCC) handled their complaint.	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.
C18 2019	Complaint referred by ICAC. Complainant alleges discrimination on the part of ICAC because ICAC did not investigate the complaints made about the NSW Supreme Court, TAFE NSW and the Anti-Discrimination Board of NSW on behalf of the complainant.	ICAC provided complainant with the Inspector's contact details. Complainant did not contact Inspector directly. Inspector assessed correspondence that had passed between ICAC and the complainant and determined that no further action was warranted in relation to the matter.
C19 2019	Complaint that ICAC did not investigate allegations of corruption and misconduct by a local government authority (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.
C20 2019	Notification by ICAC to the Inspector that following an upgrade to its website confidential information about a member of the public had inadvertently become publicly available on the ICAC website.	The Commission contacted the owner of the information and assured them that there would be no repetition of such an incident. The Inspector was not unsatisfied with the manner in which the Commission dealt with this matter.
C21 2019	Complaint concerning ICAC's decision not to investigate complaints about the Health Care	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.



	Complaints Commission.	
C22 2019	Complaint concerning ICAC's decision not to investigate a complaint about Royal Prince Alfred Hospital.	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.
C23 2019	Complaint about counsel assisting during an ICAC public inquiry.	Complainant was advised that counsel assisting is not an "officer of the Commission" and therefore the Inspector has no jurisdiction to deal with complaints concerning misconduct on the part of counsel assisting. Complainant was advised that no further action will be taken by the Inspector in relation to the complaint.

## 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 the non-disclosure of information relating to Mr Paul Gardner Brook by the Independent Commission Against Corruption in Operation during Operations Jasper and Credo (Special Report 19/01)*

This report determined complaints concerning a disclosure issue arising from the ICAC's Operations Jasper and Credo. That issue was whether the Commission should have disclosed to the persons whom it was investigating two matters which may have had an effect on the credibility of an important witness in both enquiries, Mr Paul Gardner Brook. The two matters were:

1. The fact that, as a result of an online search, counsel assisting in Operation Jasper became aware that Mr Brook had made knowingly false claims as to his qualifications (including a false claim that he had a law degree) in an online curriculum vitae.

2. The fact that the ICAC had in its possession a psychiatrist's report (supplied to it on Mr Brook's behalf) which might have been thought to cast doubt on his ability to remember significant events and, thus, his credibility.

The issue, which had been the subject of a number of media articles, a complaint by Mr John Atkinson who ICAC found engaged in corrupt conduct during its Operation Jasper investigation and it was also referred to by the ICAC Chief Commissioner, the Hon. Peter Hall QC, in evidence to the Parliamentary Committee on the ICAC on 1 June 2018.<sup>3</sup>

Under current ICAC procedures such items of information would now be disclosed to relevant persons. Nevertheless, while it might have been desirable for the ICAC to disclose the matters in question, I formed the opinion that its failure to do so did not amount to "abuse of power, impropriety and other forms of misconduct" or "maladministration" on the part of the ICAC or any officer thereof within the meaning of s57B(1) (b) and (c) of the ICAC Act.

In the report I also considered whether, if the material had been disclosed to and relied upon by those subject to the enquiries, would have it had any significant adverse effect on the assessment of Mr Brook's evidence and whether the findings made in the relevant reports would have been affected by disclosure. In my view, all the findings made by the ICAC to which Brook's evidence was relevant were supported by evidence other than that of Mr Brook's and could have been made independently of his evidence, so I determined it improbable that disclosure would have made any difference.

In reaching these conclusions, I assessed the nature of the undisclosed materials, issues arising from the manner in which ICAC became aware of that material and the other evidence in the inquiries. I also noted the findings made by Foster J in the Federal Court in *Australian Competition and Consumer Commission v Cascade Coal Pty Ltd & Ors* (3) [2018] FCA 1019. In that judgment delivered on 6 July 2018, His Honour upheld Mr Brook's credibility, preferring his evidence to that of Mr John McGuigan, a prominent Sydney investor and solicitor, who was the subject of a finding of corrupt conduct in ICAC's Operation Jasper Report (see [531] to [538] of

---

<sup>3</sup> Transcript of the evidence can be accessed via <https://www.parliament.nsw.gov.au/ladocs/transcripts/2047/Transcript%20Review%20of%20the%202016%2017%20Annual%20Reports%20of%20the%20ICAC%20and%20Inspector%201%20June%202018.pdf>

the judgment). While I did not rely upon his Honour's views in reaching my conclusion, it is appropriate to mention them.

I concluded that in my view, the assertion that the ICAC engaged in misconduct by failing to disclose the CV lie or the psychologist's report should be rejected.

A copy of Special Report 19/01 can be found at:

<https://www.oicac.nsw.gov.au/assets/oicac/Special-Report-BROOK.pdf>

## PART 6: CONCLUSION

The period has been a period of consolidation of the role and operations of the Office. The principal focus has remained, somewhat unfortunately, in dealing with complaints received. As stated above, there were 27 complaints dealt with by the Office during the reporting period.

The Office has been able to, to some extent, refocus on the significant task of auditing the operations of the Commission. As indicated in this report, that has involved the attendance at significant Commission meetings such as the Audit and Risk Committee meeting (see page 15 above). Such work does not necessarily result in a formal report to Parliament, but the results, I hope, are tangible. I propose to continue my focus on various operational aspects of the Commission in the current year.

In addition, I am considering conducting an audit into the welfare of Commission witnesses, but I am yet to reach a conclusion about doing so. My concern was prompted by the recent suicide of a potential ICAC witness. If I do commence the audit, I will be considering the means by which ICAC protects the welfare of its witnesses, particularly the mental welfare of persons that are the subject of a Commission investigation.

*B. R. McClintock*

Bruce McClintock SC  
Inspector ICAC  
18 October 2019