

RESPONSES TO QUESTIONS ON NOTICE ON OFFICE OF THE INSPECTOR ANNUAL REPORT 2005-2006

Role of the Inspector

- 1. The legislation that provides for the ICAC Inspector is modelled on the provisions of the Police Integrity Commission Act 1996, which establish the office of the PIC Inspector. What is your approach to the role performed by the ICAC Inspector and how does this compare with the role performed by the PIC Inspector?***

My approach to my role is to ensure that my statutory functions are carried out effectively to ensure the ICAC's accountability. I also take an interest in general management issues affecting the ICAC's performance. This is consistent with the general legislative intention that the Inspector's role should improve the ICAC's performance.

I am not aware of the details of how the PIC Inspector approaches his role and am therefore unable to comment on the second part of the question. I am aware, however, that the PIC Inspector undertakes audits on current investigations to ensure compliance with the law. Audits by my office are carried out on ICAC operations which have been completed. This approach avoids my being seen to have been involved in current operational decision-making of ICAC investigations where issues of non-compliance of the law might arise.

Funding and Resources

- 2. The Annual Report states that "in 2005-2006 the total operating budget for the Office was \$382,051, including \$68,000 in corporate costs" (page 3). Is it possible to supply the Committee with a more detailed breakdown of the operating budget of the Inspectorate for this period, e.g. staffing, property, plant and equipment expenses?***

The details of the 2005-2006 revised operating budget and year to date actual expenditure are as follows:

| Expenditure | Revised Budget | Year-to-Date Expenditure | Variance |
|---------------------------|-----------------------|---------------------------------|-----------------|
| Employee Related Expenses | \$288, 073 | \$248,551 | \$39,522 |
| Other Operating Expenses | \$25, 600 | \$63, 166 | (37, 566) |
| Total Maintenance | \$0 | \$1,351 | (1,351) |
| | <hr/> \$313, 673 | <hr/> \$311, 717 | <hr/> \$605 |

3. The Annual Report states that the “Premier’s Department provides, on a fee for service basis, a range of support services to the office such as information technology, payroll and general human resources support” (page 3). How does this arrangement work and has it been efficient?

The Department of Premier and Cabinet, on a fee for service basis, provides payroll, information technology and other corporate support services, e.g. purchasing of stationery. The annual fee charged is approximately \$16,000 per employee for provision of these services.

The services provided by the Department of Premier and Cabinet generally works well. Any information technology problems are quickly resolved and departmental staff generally are been very helpful in supporting the office in administration, for example, paying bills and providing monthly expenditure information, invoices and provides monthly expenditure information.

4. The Annual Report states that “...operating policies and procedures will continue to be developed in response to emerging business needs...” (page 3). What policies and procedures have been developed by the office to date and what standards and processes were observed in their development?

Policies developed to date:

| Policies Developed to Date | Standards and Processes Observed |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Assistance to complainants | <ul style="list-style-type: none"> ▪ NSW Ombudsman “Investigating Complaints; A Manual for Investigators”, June 2004 ▪ Australian standard ISO10002-2006 “Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.3 “Accessibility” |
| 2. Policy concerning allegations of misconduct by ICAC officers whilst “on-duty” and “off-duty” | <ul style="list-style-type: none"> ▪ There is no established standard or process in this area. |
| 3. Policy inviting complainants to advise whether they wish their complaint to be assessed by the Inspector, where the complaint has been referred by a third party. | <ul style="list-style-type: none"> ▪ Australian standard ISO10002-2006 “Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.9 “Accountability” |

Staff

5. ***The Annual Report indicates that “Two permanent staff are employed on a full-time basis” (page 2).***

a. ***Does the Office employ any part-time staff?***

Yes, an administrative assistant works two days a week.

b. ***Have staffing levels changed in the office since the tabling of the Annual Report?***

No.

c. ***Did the Inspectorate engage any additional staff or assistance for the 2005-2006 financial year, i.e. consultants, secondees, and legal advice, and if so for what purpose and at what the cost?***

Yes, a project officer from the NSW Ombudsman's office was seconded for a period of four months to assist with auditing and complaints management. The cost of this was \$27,217.67.

Senior Counsel was also engaged to provide legal advice on issues arising from a complaint being investigated. The cost of this was \$16,000.

6. ***The Annual Report explains that the workload of the Office, particularly in respect of the number of complaints received during 2005-2006, proved to be higher than expected. The on-going nature of the high workload resulted in the Office requesting a budget enhancement prior to 30 June 2006. Since June 2006 a budget enhancement has been approved. The bulk of this enhancement will be used to recruit an additional staff member to assist with managing the Office's day-to-day workload (page 3). Has an additional staff member been recruited, at what level and what type of work does this position undertake?***

Additional lawyers and a project officer have worked in the office on a temporary basis undertaking audits and complaint handling. They were employed at various levels, between Clerk Grade 9/10 to Legal Officer Grade 6, on the basis of their skills and experience. It has not been possible to employ a person to undertake such duties on an on going basis due to various factors such as other employment opportunities, a lack of fit with the office including, dissatisfaction with the nature of the work and the location of the office.

7. How do the staffing arrangements and operations of the OIICAC Inspectorate compare with those of the PIC Inspectorate and the Inspector of the Corruption and Crime Commission in Western Australia? Are the workloads of each Inspectorate comparable?

Staffing arrangements:

| OIICAC | PIC Inspector | Inspector of Corruption & Crime Commission (WA) |
|---------------------------------------------|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 x executive officer 1 x office manager | 1 x administrative assistant* | Currently uses his existing secretarial staff employed by him as barrister. In his 2006/07 Annual Report states that he is in the process of recruiting a full time professional assistant to undertake audits.** |

Workload of Inspectorates:

| OIICAC | PIC Inspector | Inspector of Corruption & Crime Commission (WA) |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 2006-2007 Number of complaints received: 39 Number of audits undertaken: 2 | 2006-2007 Number of complaints received: 30 * Number of audits undertaken: not comparable | 2006-2007 Number of complaints received: 42 ** Number of audits undertaken: nil |

*Source: Annual Report of the Inspector of the Police Integrity Commission 2006/07

**Source: Parliamentary Inspector of Corruption and Crime Commission Annual Report 2006/07

Relationship with ICAC

8. The Annual Report states that “The MOU [between ICAC and the Inspector] was due to be reviewed in September 2006” (page 5).

a. Has this review taken place and were any changes made to the MOU?

Yes. There were two changes, these being:

1. The Commissioner is to be notified when an Executive Director is requested to attend an interview with OIICAC regarding a complaint;

2. A clause was inserted to provide that the ICAC would ensure that complainants were made aware about the Inspector's role and functions.

b. Would you please provide a copy of the MOU to the Committee?

A copy of the MOU is attached at Tab A

9. The Annual Report states that "ICAC has generally been forthcoming in meeting requests for information. Material is generally produced to the Office within 1-3 weeks of a request being made" (page 5).

a. To date, have there any situations where difficulties have arisen in the provision of information by the ICAC in response to a request by the Inspector?

Yes, in two situations.

1. The ICAC could not locate a certain document requested which was relevant to a complaint being investigated by the OIICAC.

2. During an audit (on the ICAC's compliance with the law when exercising powers provided by the ICAC Act which allow it to compel other persons or agencies to co-operate with it) the ICAC advised the OIICAC that it could not locate a number of the sample of records being audited without considerable resources being expended.

b. On how many occasions has the ICAC taken longer than 3 weeks to produce information?

On two occasions.

Complaints

10. Please outline the current system for managing complaints, in particular, the process by which an individual complaint is assessed.

Assessment Process:

- Complaints received are acknowledged by way of a standard letter.
- All evidentiary material reviewed including:
 - Material supplied by the complainant;
 - ICAC records including, the complaint, Assessment Panel Report, correspondence with complainant, Case Note Reports.

- Executive Officer prepares written advice including recommendations and draft correspondence and submits these along with the complaint file for Inspector's review and determination.
- Inspector's directions implemented, including any amendments and finalisation of correspondence for signature.

11. What factors are considered when determining whether there is sufficient information to investigate a complaint and who is responsible for undertaking this assessment?

The factors considered are:

- Age of the complaint and the likelihood of uncovering relevant evidence; and
- Whether the evidence either provided by the complainant and/or obtained from the ICAC and other sources indicate a reasonable likelihood that the allegations may be substantiated.

The Executive Officer undertakes the assessment in the first instance. The Inspector makes the final assessment .

12. What other criteria is used by the Inspectorate in determining whether or not to decline to investigate a complaint?

Other criteria used by the Inspectorate to determine whether or not to decline to investigate a complaint are:

- Whether a complaint is within jurisdiction;
- Nature of complaint – seriousness of issues raised and whether they raise concerns about public confidence and integrity in the ICAC;
- Age of the complaint and the likelihood of uncovering relevant evidence;
- Cost of investigating the complaint with respect to the seriousness of the issues raised and the overall resource demands of investigating the complaint;
- Available resources and existing workload of the OIICAC;
- Whether the issues raised in a complaint raise issues of value to an audit;
- Whether any other agency is investigating or has investigated the same issues, and, if so, any outcome which has been determined;
- The likely impact of either investigating or not investigating a complaint further in respect of any broader issues of concern;

- History of complainants (whether they are vexatious);
- The ICAC's own policies and criteria for determining its best use of its resources (i.e. priorities)

13. Has the Inspectorate conducted personal interviews with complainants during the assessment process and, if so, how frequently does this occur? Who would conduct these interviews?

Yes. This has occurred on two occasions. The interviews were conducted by the Executive Officer.

14. The policy on Complaint Handling provides that "...particulars of a complaint should be provided in writing, unless there is a sound reason why a complainant is unable to do so." (page 4)

a. How does the number of written complaints to the Inspector compare with the number of oral complaints?

Twenty-six written complaints were received and nine oral complaints were received.

b. On how many occasions has the Inspectorate provided assistance to a complainant, in what circumstances and what kind of assistance has been provided?

Assistance is provided to complainants during the assessment process to obtain particulars of complaints where required. As advised in response to question 13, this has occurred on two occasions.

Once an investigation is commenced the OIICAC undertakes all necessary tasks to ensure that the complaint is fully investigated.

c. What training is available to staff of the Inspectorate involved in complaint handling and dealing with complainants?

All staff will attend courses provided by complaint handling agencies such as the NSW Ombudsman's office.

In addition, the following literature is available to staff as training resources and staff are required to familiarise themselves with such literature as part of induction and ongoing on the job training:

- Effective Complaint Handling;
- Dealing with Difficult Complainants;
- The Rights Stuff: Tips for making complaints and solving problems;
- NSW Ombudsman Protected Disclosures Guidelines;
- NSW Ombudsman The Complaint Handler's Tool Kit 2nd edition; and

- NSW Ombudsman Investigating Complaints

Other training available to staff involved in complaint handling are:

- Software management including database management relating to complaints;
- Communication training.

The Executive Officer principally deals with complaints and complainants and has undertaken extensive complaint handling training in previous positions, including: investigation management, interviewing skills and conflict resolution.

15. The policy on Complaint Handling provides that assistance provided by the Office is limited to a maximum of 2 hours. An assessment is made at the end of the 2 hour period as to the merits of the complaint. If the complaint is assessed as unlikely to support the allegations being made, not further assistance will be provided to the complainant. (page 4)

a. What factors led to a decision to cap the amount of assistance to complainants at 2 hours?

The factors that led to the cap were:

- The personnel resources of the office, i.e. there being only 1 full time staff member with the ability to provide this assistance, i.e. the Executive Officer;
- The larger than anticipated volume of complaints; and
- The need to ensure that the Executive Officer had sufficient time available to support the Inspector's other statutory functions, for example undertaking audits.

b. Have there been circumstances where 2 hours assistance has been inadequate to assess the merits of a complaint?

No.

c. Have you found this approach to be sufficiently flexible to accommodate the needs of complainants?

Yes. The policy allows for an assessment at the end of the 2 hour period as to whether further time and/or other resources are required and enables the provision of such additional time and resources as appropriate.

16. The policy concerning alleged misconduct of ICAC Officers while 'off-duty' states that "Complaints concerning 'off duty' conduct will be referred to the Solicitor to the Commission for further action." (page 4)

- a. **To date, how many complaints has the Inspector received relating to “off duty” conduct?**

One.

- b. **Is the Solicitor to the Commission required to advise the Inspector of any action taken as a result of the conduct referred?**

The Solicitor to the Commission is requested to advise the Inspector of the outcome of his considerations.

17. In relation to complaints referred back to ICAC, the Inspector:

- **recommended that the Commission develop an explicit policy for staff about the standard of effort required to access evidence, which might, at first instance, prove difficult to access; and**
- **suggested that the adequacy of the ICAC’s assessment report should be generally examined as there were concerns raised by an examination of the assessment report in the complaint about the accuracy of matters being reported by Assessment Officers. (page 17)**

As of June 2006 the Inspector had not received a response from the ICAC on either of these matters. Has the Inspector subsequently received a response to these proposals and, if so, what was the nature of the response? If not, what reasons has the ICAC given for not responding to date?

Yes, the Inspector has subsequently received a response to these proposals. The responses were, respectively, as follows:

- That the Commission did not need to develop a specific policy on the standard of effort required to access evidence as it was felt to be an issue that could be addressed in the induction process;
- The ICAC advised that it recognised the issues raised by the Inspector about the adequacy of its reports to the Operations Review Committee (ORC) and its assessment procedures. The ICAC further advised that it would consider the issues raised as part of the review of the Commission’s complaint assessment procedures (to be undertaken following the abolition of the ORC).

Freedom of Information

- 18. The Annual Report states “Under Schedule 2 of the Freedom of Information Act 1989 the Inspector is exempt from the provisions of the FOI Act” (page 3). Schedule 2 of the FOI Act provides that the Inspector is exempt in relation to operational auditing, complaint handling, investigative and reporting functions.**

- a. ***In effect, what information would be available in respect of the administrative functions performed by the Inspector, which do not appear to be exempt from FOI?***

Administrative functions concerning the management of the OIICAC do not appear to be exempt from the FOI Act. Examples of available information would include OIICAC budget details, human resource policies and practices.

- b. ***Has the Inspector received any FOI applications? If so, what sort of information was sought and how have these applications been dealt with?***

No.

Business Plan

- 19. The Annual Report mentions an Office business plan for 2006-2007 (page 6). What are the main goals of the business plan and will the Inspectorate require additional funds or resources to achieve these goals? Will the business plan involve significant changes to the priorities of the Inspectorate?***

Goals:

- Finalise outstanding complaints received in 2005-2006;
- Handle all new complaints as effectively as possible to ensure that complaints without merit do not disproportionately absorb the Office's resources;
- Undertake all other work as required under the ICAC Act 1988 (for example the Annual Report);
- Prioritise the undertaking of audits pursuant to s. 57B (1) (a) of the *ICAC Act 1988* (the Act) in order to monitor compliance with the laws of the State and to identify any systemic issues affecting the accountability and performance of the Independent Commission Against Corruption;

Deliverables:

- Finalise the audit report on the ICAC's compliance with s. 12A of the ICAC Act;
- New audit on ICAC's exercise of compulsory powers undertaken; and
- Follow up on recommendations from the Joint Parliamentary Committee Report 5/53, December 2005.

No, the Inspectorate will not require additional funds or resources to achieve its business plan goals.

No, the business plan does not involve significant changes to the Inspectorate's ongoing priorities.

Issues Raised by Parliamentary Joint Committee

20. The Joint Parliamentary Committee directed the Inspector to “monitor and assess the impact of any new arrangements between the Commission and the Office of the Director of Public Prosecutions and report to Parliament within six months on whether they have improved or are likely to improve operational effectiveness” (page 6). Has the Inspector undertaken any further work in this regard?

Yes, in March 2006 the Inspector met with the Director of Public Prosecutions (DPP) and the Commission of the ICAC to discuss what arrangements existed between their respective agencies. The Inspector was advised that a new Memorandum of Understanding established between the Office of the Director of Public Prosecutions (ODPP) and the ICAC was assisting the two agencies to work with greater clarity and efficiency. No statistical information was provided, however, by either agency about either anticipated or actual reduction of time taken to refer and assess briefs for prosecution.

The Commissioner has recently advised that he is concerned that the ODPP's requisitions requires the ICAC to devote additional resources to collating briefs and undertaking further investigations. The Commissioner's view is that it is not the ICAC's responsibility to undertake such functions. The Deputy Commissioner, Ms Theresa Hamilton, has advised that she is having discussions with relevant officers at the ODPP about ways in which both agencies can work better together to address the Commissioner's concerns and to improve the process for referrals and assessment of briefs for prosecution.

21. The Joint Parliamentary Committee requested the Inspector to “use the additional information contained in future ICAC Annual Reports regarding the time taken to deal with complaints, to examine the issues of delay in the completion of investigations” (page 7). Has the Inspector undertaken any examination of this issue?

Yes.

Complaints

Page 9 of the ICAC Annual Report for 2005-06 sets out a table on performance, workload and work activity measures. This table shows that in 2004-05 2511 complaints, reports and information was received and dealt with an average in 41.2 days. In 2005-06 2191 complaints, reports and information received were dealt with on average in 45 days. Despite this slight increase in the last reporting period, overall, these figures represent a significant improvement from the average time taken of 51 days taken in 2003-04 to deal with complaints.

The Inspector will continue to monitor and report on this issue and notes that in its last Annual Report the ICAC set a target of 80% of complaints being dealt with, on average, in 42 days.

Investigations

Out of 51 investigations commenced in 2004-05 (including preliminary, category 1 and category 2 investigations) the ICAC reported 30 (i.e. 58%) as being finalised in six months and 30% completed in 12 months.

Out of 63 investigations commenced in 2006 including preliminary, category 1 and category 2, the ICAC reported that 24 were finalised in 6 months (i.e. 38%) and 82% of the investigations completed in 12 months.

It appears that the ICAC is taking longer to finalise investigations in six months in 2005-06 compared to 2004-05 because of the higher number of investigations undertaken in that reporting period. The Inspector will continue to monitor and report on this issue and notes that in its last Annual Report the ICAC set a target of 90% of investigations being completed in 12 months.

RESPONSES TO QUESTIONS ON NOTICE ON OFFICE OF THE INSPECTOR ANNUAL REPORT 2005-2006

Role of the Inspector

- 1. The legislation that provides for the ICAC Inspector is modelled on the provisions of the Police Integrity Commission Act 1996, which establish the office of the PIC Inspector. What is your approach to the role performed by the ICAC Inspector and how does this compare with the role performed by the PIC Inspector?***

My approach to my role is to ensure that my statutory functions are carried out effectively to ensure the ICAC's accountability. I also take an interest in general management issues affecting the ICAC's performance. This is consistent with the general legislative intention that the Inspector's role should improve the ICAC's performance.

I am not aware of the details of how the PIC Inspector approaches his role and am therefore unable to comment on the second part of the question. I am aware, however, that the PIC Inspector undertakes audits on current investigations to ensure compliance with the law. Audits by my office are carried out on ICAC operations which have been completed. This approach avoids my being seen to have been involved in current operational decision-making of ICAC investigations where issues of non-compliance of the law might arise.

Funding and Resources

- 2. The Annual Report states that "in 2005-2006 the total operating budget for the Office was \$382,051, including \$68,000 in corporate costs" (page 3). Is it possible to supply the Committee with a more detailed breakdown of the operating budget of the Inspectorate for this period, e.g. staffing, property, plant and equipment expenses?***

The details of the 2005-2006 revised operating budget and year to date actual expenditure are as follows:

| Expenditure | Revised Budget | Year-to-Date Expenditure | Variance |
|---------------------------|-----------------------|---------------------------------|-----------------|
| Employee Related Expenses | \$288, 073 | \$248,551 | \$39,522 |
| Other Operating Expenses | \$25, 600 | \$63, 166 | (37, 566) |
| Total Maintenance | \$0 | \$1,351 | (1,351) |
| | <u>\$313, 673</u> | <u>\$311, 717</u> | <u>\$605</u> |

3. The Annual Report states that the “Premier’s Department provides, on a fee for service basis, a range of support services to the office such as information technology, payroll and general human resources support” (page 3). How does this arrangement work and has it been efficient?

The Department of Premier and Cabinet, on a fee for service basis, provides payroll, information technology and other corporate support services, e.g. purchasing of stationery. The annual fee charged is approximately \$16,000 per employee for provision of these services.

The services provided by the Department of Premier and Cabinet generally works well. Any information technology problems are quickly resolved and departmental staff generally are been very helpful in supporting the office in administration, for example, paying bills and providing monthly expenditure information, invoices and provides monthly expenditure information.

4. The Annual Report states that “...operating policies and procedures will continue to be developed in response to emerging business needs...” (page 3). What policies and procedures have been developed by the office to date and what standards and processes were observed in their development?

Policies developed to date:

| Policies Developed to Date | Standards and Processes Observed |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Assistance to complainants | <ul style="list-style-type: none"> ▪ NSW Ombudsman “Investigating Complaints; A Manual for Investigators”, June 2004 ▪ Australian standard ISO10002-2006 “Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.3 “Accessibility” |
| 2. Policy concerning allegations of misconduct by ICAC officers whilst “on-duty” and “off-duty” | <ul style="list-style-type: none"> ▪ There is no established standard or process in this area. |
| 3. Policy inviting complainants to advise whether they wish their complaint to be assessed by the Inspector, where the complaint has been referred by a third party. | <ul style="list-style-type: none"> ▪ Australian standard ISO10002-2006 “Customer satisfaction – guidelines for complaint handling in organisations (ISO 1002:2004, MOD), see clause 4.9 “Accountability” |

Staff

5. The Annual Report indicates that “Two permanent staff are employed on a full-time basis” (page 2).

a. Does the Office employ any part-time staff?

Yes, an administrative assistant works two days a week.

b. Have staffing levels changed in the office since the tabling of the Annual Report?

No.

c. Did the Inspectorate engage any additional staff or assistance for the 2005-2006 financial year, i.e. consultants, secondees, and legal advice, and if so for what purpose and at what the cost?

Yes, a project officer from the NSW Ombudsman's office was seconded for a period of four months to assist with auditing and complaints management. The cost of this was \$27,217.67.

Senior Counsel was also engaged to provide legal advice on issues arising from a complaint being investigated. The cost of this was \$16,000.

6. The Annual Report explains that the workload of the Office, particularly in respect of the number of complaints received during 2005-2006, proved to be higher than expected. The on-going nature of the high workload resulted in the Office requesting a budget enhancement prior to 30 June 2006. Since June 2006 a budget enhancement has been approved. The bulk of this enhancement will be used to recruit an additional staff member to assist with managing the Office's day-to-day workload (page 3). Has an additional staff member been recruited, at what level and what type of work does this position undertake?

Additional lawyers and a project officer have worked in the office on a temporary basis undertaking audits and complaint handling. They were employed at various levels, between Clerk Grade 9/10 to Legal Officer Grade 6, on the basis of their skills and experience. It has not been possible to employ a person to undertake such duties on an on going basis due to various factors such as other employment opportunities, a lack of fit with the office including, dissatisfaction with the nature of the work and the location of the office.

7. How do the staffing arrangements and operations of the OIICAC Inspectorate compare with those of the PIC Inspectorate and the Inspector of the Corruption and Crime Commission in Western Australia? Are the workloads of each Inspectorate comparable?

Staffing arrangements:

| OIICAC | PIC Inspector | Inspector of Corruption & Crime Commission (WA) |
|---------------------------------------------|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 x executive officer 1 x office manager | 1 x administrative assistant* | Currently uses his existing secretarial staff employed by him as barrister. In his 2006/07 Annual Report states that he is in the process of recruiting a full time professional assistant to undertake audits.** |

Workload of Inspectorates:

| OIICAC | PIC Inspector | Inspector of Corruption & Crime Commission (WA) |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 2006-2007 Number of complaints received: 39 Number of audits undertaken: 2 | 2006-2007 Number of complaints received: 30 * Number of audits undertaken: not comparable | 2006-2007 Number of complaints received: 42 ** Number of audits undertaken: nil |

*Source: Annual Report of the Inspector of the Police Integrity Commission 2006/07

**Source: Parliamentary Inspector of Corruption and Crime Commission Annual Report 2006/07

Relationship with ICAC

8. The Annual Report states that "The MOU [between ICAC and the Inspector] was due to be reviewed in September 2006" (page 5).

a. Has this review taken place and were any changes made to the MOU?

Yes. There were two changes, these being:

1. The Commissioner is to be notified when an Executive Director is requested to attend an interview with OIICAC regarding a complaint;

2. A clause was inserted to provide that the ICAC would ensure that complainants were made aware about the Inspector's role and functions.

b. Would you please provide a copy of the MOU to the Committee?

A copy of the MOU is attached at Tab A

9. The Annual Report states that "ICAC has generally been forthcoming in meeting requests for information. Material is generally produced to the Office within 1-3 weeks of a request being made" (page 5).

a. To date, have there any situations where difficulties have arisen in the provision of information by the ICAC in response to a request by the Inspector?

Yes, in two situations.

1. The ICAC could not locate a certain document requested which was relevant to a complaint being investigated by the OIICAC.

2. During an audit (on the ICAC's compliance with the law when exercising powers provided by the ICAC Act which allow it to compel other persons or agencies to co-operate with it) the ICAC advised the OIICAC that it could not locate a number of the sample of records being audited without considerable resources being expended.

b. On how many occasions has the ICAC taken longer than 3 weeks to produce information?

On two occasions.

Complaints

10. Please outline the current system for managing complaints, in particular, the process by which an individual complaint is assessed.

Assessment Process:

- Complaints received are acknowledged by way of a standard letter.
- All evidentiary material reviewed including:
 - o Material supplied by the complainant;
 - o ICAC records including, the complaint, Assessment Panel Report, correspondence with complainant, Case Note Reports;

- Executive Officer prepares written advice including recommendations and draft correspondence and submits these along with the complaint file for Inspector's review and determination; and
- Inspector's directions implemented, including any amendments and finalisation of correspondence for signature.

11. What factors are considered when determining whether there is sufficient information to investigate a complaint and who is responsible for undertaking this assessment?

The factors considered are:

- Age of the complaint and the likelihood of uncovering relevant evidence; and
- Whether the evidence either provided by the complainant and/or obtained from the ICAC and other sources indicate a reasonable likelihood that the allegations may be substantiated.

The Executive Officer undertakes the assessment in the first instance. The Inspector makes the final assessment.

12. What other criteria is used by the Inspectorate in determining whether or not to decline to investigate a complaint?

Other criteria used by the Inspectorate to determine whether or not to decline to investigate a complaint are:

- Whether a complaint is within jurisdiction;
- Nature of complaint – seriousness of issues raised and whether they raise concerns about public confidence and integrity in the ICAC;
- Age of the complaint and the likelihood of uncovering relevant evidence;
- Cost of investigating the complaint with respect to the seriousness of the issues raised and the overall resource demands of investigating the complaint;
- Available resources and existing workload of the OIICAC;
- Whether the issues raised in a complaint raise issues of value to an audit;
- Whether any other agency is investigating or has investigated the same issues, and, if so, any outcome which has been determined;
- The likely impact of either investigating or not investigating a complaint further in respect of any broader issues of concern;

- History of complainants (whether they are vexatious); and
- The ICAC's own policies and criteria for determining its best use of its resources (i.e. priorities).

13. Has the Inspectorate conducted personal interviews with complainants during the assessment process and, if so, how frequently does this occur? Who would conduct these interviews?

Yes. This has occurred on two occasions. The interviews were conducted by the Executive Officer.

14. The policy on Complaint Handling provides that "...particulars of a complaint should be provided in writing, unless there is a sound reason why a complainant is unable to do so." (page 4)

a. How does the number of written complaints to the Inspector compare with the number of oral complaints?

Twenty-six written complaints were received and nine oral complaints were received.

b. On how many occasions has the Inspectorate provided assistance to a complainant, in what circumstances and what kind of assistance has been provided?

Assistance is provided to complainants during the assessment process to obtain particulars of complaints where required. As advised in response to question 13, this has occurred on two occasions.

Once an investigation is commenced the OIICAC undertakes all necessary tasks to ensure that the complaint is fully investigated.

c. What training is available to staff of the Inspectorate involved in complaint handling and dealing with complainants?

All staff will attend courses provided by complaint handling agencies such as the NSW Ombudsman's office.

In addition, the following literature is available to staff as training resources and staff are required to familiarise themselves with such literature as part of induction and ongoing on the job training:

- Effective Complaint Handling;
- Dealing with Difficult Complainants;
- The Rights Stuff: Tips for making complaints and solving problems;
- NSW Ombudsman Protected Disclosures Guidelines;
- NSW Ombudsman The Complaint Handler's Tool Kit 2nd edition; and

- NSW Ombudsman Investigating Complaints.

Other training available to staff involved in complaint handling are:

- Software management including database management relating to complaints;
- Communication training.

The Executive Officer principally deals with complaints and complainants and has undertaken extensive complaint handling training in previous positions, including: investigation management, interviewing skills and conflict resolution.

15. The policy on Complaint Handling provides that assistance provided by the Office is limited to a maximum of 2 hours. An assessment is made at the end of the 2 hour period as to the merits of the complaint. If the complaint is assessed as unlikely to support the allegations being made, no further assistance will be provided to the complainant. (page 4)

a. What factors led to a decision to cap the amount of assistance to complainants at 2 hours?

The factors that led to the cap were:

- The personnel resources of the office, i.e. there being only 1 full time staff member with the ability to provide this assistance, i.e. the Executive Officer;
- The larger than anticipated volume of complaints; and
- The need to ensure that the Executive Officer had sufficient time available to support the Inspector's other statutory functions, for example undertaking audits.

b. Have there been circumstances where 2 hours assistance has been inadequate to assess the merits of a complaint?

No.

c. Have you found this approach to be sufficiently flexible to accommodate the needs of complainants?

Yes. The policy allows for an assessment at the end of the 2 hour period as to whether further time and/or other resources are required and enables the provision of such additional time and resources as appropriate.

16. The policy concerning alleged misconduct of ICAC Officers while 'off-duty' states that "Complaints concerning 'off duty' conduct will be referred to the Solicitor to the Commission for further action." (page 4)

a. To date, how many complaints has the Inspector received relating to "off duty" conduct?

One.

b. Is the Solicitor to the Commission required to advise the Inspector of any action taken as a result of the conduct referred?

The Solicitor to the Commission is requested to advise the Inspector of the outcome of his considerations.

17. In relation to complaints referred back to ICAC, the Inspector:

- **recommended that the Commission develop an explicit policy for staff about the standard of effort required to access evidence, which might, at first instance, prove difficult to access; and**
- **suggested that the adequacy of the ICAC's assessment report should be generally examined as there were concerns raised by an examination of the assessment report in the complaint about the accuracy of matters being reported by Assessment Officers. (page 17)**

As of June 2006 the Inspector had not received a response from the ICAC on either of these matters. Has the Inspector subsequently received a response to these proposals and, if so, what was the nature of the response? If not, what reasons has the ICAC given for not responding to date?

Yes, the Inspector has subsequently received a response to these proposals. The responses were, respectively, as follows:

- That the Commission did not need to develop a specific policy on the standard of effort required to access evidence as it was felt to be an issue that could be addressed in the induction process;
- The ICAC advised that it recognised the issues raised by the Inspector about the adequacy of its reports to the Operations Review Committee (ORC) and its assessment procedures. The ICAC further advised that it would consider the issues raised as part of the review of the Commission's complaint assessment procedures (to be undertaken following the abolition of the ORC).

Freedom of Information

18. The Annual Report states "Under Schedule 2 of the Freedom of Information Act 1989 the Inspector is exempt from the provisions of the FOI Act" (page 3). Schedule 2 of the FOI Act provides that the Inspector

is exempt in relation to operational auditing, complaint handling, investigative and reporting functions.

- a. *In effect, what information would be available in respect of the administrative functions performed by the Inspector, which do not appear to be exempt from FOI?*

Administrative functions concerning the management of the OIICAC do not appear to be exempt from the FOI Act. Examples of available information would include OIICAC budget details, human resource policies and practices.

- b. *Has the Inspector received any FOI applications? If so, what sort of information was sought and how have these applications been dealt with?*

No.

Business Plan

- 19. *The Annual Report mentions an Office business plan for 2006-2007 (page 6). What are the main goals of the business plan and will the Inspectorate require additional funds or resources to achieve these goals? Will the business plan involve significant changes to the priorities of the Inspectorate?***

Goals:

- Finalise outstanding complaints received in 2005-2006;
- Handle all new complaints as effectively as possible to ensure that complaints without merit do not disproportionately absorb the Office's resources;
- Undertake all other work as required under the ICAC Act 1988 (for example the Annual Report); and
- Prioritise the undertaking of audits pursuant to s. 57B (1) (a) of the *ICAC Act 1988* (the Act) in order to monitor compliance with the laws of the State and to identify any systemic issues affecting the accountability and performance of the Independent Commission Against Corruption.

Deliverables:

- Finalise the audit report on the ICAC's compliance with s. 12A of the ICAC Act;
- New audit on ICAC's exercise of compulsory powers undertaken; and
- Follow up on recommendations from the Joint Parliamentary Committee Report 5/53, December 2005.

No, the Inspectorate will not require additional funds or resources to achieve its business plan goals.

No, the business plan does not involve significant changes to the Inspectorate's ongoing priorities.

Issues Raised by Parliamentary Joint Committee

20. The Joint Parliamentary Committee directed the Inspector to “monitor and assess the impact of any new arrangements between the Commission and the Office of the Director of Public Prosecutions and report to Parliament within six months on whether they have improved or are likely to improve operational effectiveness” (page 6). Has the Inspector undertaken any further work in this regard?

Yes, in March 2006 the Inspector met with the Director of Public Prosecutions (DPP) and the Commission of the ICAC to discuss what arrangements existed between their respective agencies. The Inspector was advised that a new Memorandum of Understanding established between the Office of the Director of Public Prosecutions (ODPP) and the ICAC was assisting the two agencies to work with greater clarity and efficiency. No statistical information was provided, however, by either agency about either anticipated or actual reduction of time taken to refer and assess briefs for prosecution.

The Commissioner has recently advised that he is concerned that the ODPP's requisitions requires the ICAC to devote additional resources to collating briefs and undertaking further investigations. The Commissioner's view is that it is not the ICAC's responsibility to undertake such functions. The Deputy Commissioner, Ms Theresa Hamilton, has advised that she is having discussions with relevant officers at the ODPP about ways in which both agencies can work better together to address the Commissioner's concerns and to improve the process for referrals and assessment of briefs for prosecution.

21. The Joint Parliamentary Committee requested the Inspector to “use the additional information contained in future ICAC Annual Reports regarding the time taken to deal with complaints, to examine the issues of delay in the completion of investigations” (page 7). Has the Inspector undertaken any examination of this issue?

Yes.

Complaints

Page 9 of the ICAC Annual Report for 2005-06 sets out a table on performance, workload and work activity measures. This table shows that in 2004-05 2511 complaints, reports and information was received and dealt with an average in 41.2 days. In 2005-06 2191 complaints, reports and information

received were dealt with on average in 45 days. Despite this slight increase in the last reporting period, overall, these figures represent a significant improvement from the average time taken of 51 days taken in 2003-04 to deal with complaints. The Inspector will continue to monitor and report on this issue and notes that in its last Annual Report the ICAC set a target of 80% of complaints being dealt with, on average, in 42 days.

Investigations

Out of 51 investigations commenced in 2004-05 (including preliminary, category 1 and category 2 investigations) the ICAC reported 30 (i.e. 58%) as being finalised in six months and 30% completed in 12 months.

Out of 63 investigations commenced in 2006 including preliminary, category 1 and category 2, the ICAC reported that 24 were finalised in 6 months (i.e. 38%) and 82% of the investigations completed in 12 months.

It appears that the ICAC is taking longer to finalise investigations in six months in 2005-06 compared to 2004-05 because of the higher number of investigations undertaken in that reporting period. The Inspector will continue to monitor and report on this issue and notes that in its last Annual Report the ICAC set a target of 90% of investigations being completed in 12 months.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INDEPENDENT COMMISSION AGAINST CORRUPTION
AND
THE INSPECTOR OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION

This Memorandum of Understanding (“MOU”) is made the 23rd day of October 2007 between the Independent Commission Against Corruption (“the Commission”) and the Inspector of the Independent Commission Against Corruption (“the Inspector”).

1. BACKGROUND

1.1 The Inspector’s role was created by the provision of the *Independent Commission Against Corruption (Amendment) Act 2005* which inserted Part 5A into the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). The relevant provisions commenced operation on 1 July 2005.

1.2 The principal functions of the Inspector are set out in section 57B of the ICAC Act and provide as follows;

(1) The principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*
- (b) to 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*
- (c) to 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*
- (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*

(2) The functions of the Inspector may be exercised 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.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves 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.

- 1.3 Section 57C of the ICAC Act sets out the powers of the Inspector and provides as follows;

The Inspector:

(a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and

(b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and

(c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and

(d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and

(e) may investigate and assess complaints about the Commission or officers of the Commission, and

(f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and

(g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

2. PURPOSE

- 2.1 To set out arrangements for liaison between the Commission and the Inspector concerning referral of matters, exchange of information and points of contact between both agencies.

3. INTENT

- 3.1 The Commission undertakes to co-operate fully and frankly with the Inspector and his staff in order to assist the discharge of the Inspector's functions under the ICAC Act.

4. LIAISON

- 4.1 The primary point of liaison will be between the Inspector and the Commissioner or their respective nominated delegates.

- 4.2 The Inspector and the Commissioner agree to meet periodically, and at least once per month, to discuss relevant issues and raise any matters touching on the Inspector's functions and the conduct of the Commission. Both the Inspector and the Commissioner will keep their own short notes of these meetings. Contact at other times may occur as and when required.

- 4.3 If the Inspector or his staff need information or material or to inquire of the Commission regarding a complaint or other matter touching on the conduct of the Commissioner, this will be referred to the Deputy Commissioner in the first instance. In the absence of the Deputy Commissioner, such inquiry will be directed to the Solicitor for the Commission.
- 4.4 For any other matters arising from the Inspector's functions, general inquiries, or requests for information and material etc, liaison shall occur between the Executive Officer to the Inspector and the Deputy Commissioner. In the absence of the Deputy Commissioner, such inquiry will be directed by the Inspector's staff to the Solicitor for the Commission.
- 4.5 Where the Inspector and/or his staff wish to interview any of the Executive Directors of the Commission in connection with a complaint, the Commissioner will be notified wherever possible.
- 4.6 Where the Inspector and/or his staff wish to interview any staff of the Commission in connection with a complaint, the relevant Executive Director will be advised wherever possible.
- 4.7 The Commission acknowledges however, there may be occasions where the Inspector and his duly authorized staff may need to act unilaterally without prior notification as outlined in paragraphs 4.5 and 4.6.
- 4.8 Written correspondence from the Commission to the Inspector will be addressed to the Inspector and marked "Private and Confidential" c/-;

Office of the Inspector of the Independent Commission Against
Corruption
GPO Box 5341
SYDNEY NSW 2001

Or by email to InspectorICAC@oiicac.nsw.gov.au
Or such other address as the Inspector may advise.

5. NOTIFICATION OF COMPLAINTS OF MISCONDUCT BY THE COMMISSION TO THE INSPECTOR

- 5.1 The Commission will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission that comes within the principal functions of the Inspector.
- 5.2 Unless urgent and requiring immediate attention, in which case oral communication will be provided to the Inspector as soon as possible to be subsequently confirmed in writing, all such matters will be communicated to the Inspector by way of written notification.

- 5.3 Notification of matters referred to in paragraph 5.1 will also be reported by way of schedule to be provided at the meeting between the Inspector and the Commissioner as referred to in paragraph 4.2. The schedule will briefly set out the relevant information as available and known to the Commission including any action the Commission itself has taken to deal with the complaint.
- 5.4 The Commission will make information concerning the Inspector's role and function publicly available to complainants. This includes:
- a) having copies of the relevant brochures concerning the Inspector's role and functions available at the waiting room and/or public areas of the Commission's premises;
 - b) having appropriate information about the Inspector and links to the Inspector's website on the ICAC web page;
 - c) where a determination is made not to investigate a complaint further advise complainants, the basis upon which they may be able to pursue a complaint with the Inspector and provide the Inspector's contact details.
- 5.5 Furthermore, where requested, Commission officers will provide any persons with the contact details for the Inspector as per the address details in paragraph 4.8 and/or the Office of the Inspector's general telephone number of 8374 5381.

6. REVIEW

- 6.1 This MOU may be reviewed at any stage the request of either party but in any event shall be reviewed no later than 12 months from the date of the MOU.

The Hon. Jerrold Cripps, QC
Commissioner of the ICAC

Graham Kelly
Inspector of the ICAC