

Office of the Inspector of the
Law Enforcement Conduct Commission

Complaints Handling Policy

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OFFICIAL

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1 Introduction

- 1.1 The Inspector of the Law Enforcement Conduct Commission (the LECC or Commission) is an independent statutory officer whose role is to oversee the operations and conduct of the LECC to ensure that it complies with the law and does not abuse the considerable powers which Parliament has vested in it.
- 1.2 The Inspector is appointed by the Governor on the advice of the Executive and the Parliament's Committee on the LECC is empowered to veto such appointments.
- 1.3 The current Inspector is Mr Bruce McClintock SC who took office on 1 July 2022. The term of his appointment is 5 years expiring 30 June 2027.
- 1.4 The functions of the Inspector are set out in Part 9 of the LECC Act. The legislation states that the Inspector is not subject to the LECC in any way. The Office of the Inspector of LECC (OILECC) is in premises separate from those of the Commission.
- 1.5 The Inspector oversees the LECC and its activities by:
- i. auditing the operations of LECC for the purpose of monitoring compliance with the law of the State, and
 - ii. dealing with complaints about abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
 - iii. dealing with conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by LECC or officers of LECC, and
 - iv. assessing the effectiveness and appropriateness of the procedures of LECC relating to the legality or propriety of its activities.
- 1.6 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.

2 Scope and Purpose

- 2.1 This policy outlines the Inspector's complaint handling procedures in respect of the LECC and its officers.
- 2.2 The aim is to ensure that complaints to the OILECC are handled fairly, consistently, and efficiently. It is also intended to provide complainants with an understanding of the functions and powers of the Inspector and the types of complaints the OILECC deals with.

3 The Inspector's Powers

- 3.1 Section 124 of the LECC Act grants the Inspector powers to perform his functions. The Inspector:
- i. may investigate any aspect of LECC's operations or any conduct of officers of LECC, and
 - ii. is entitled to full access to the records of LECC and to take or have copies made of any of them, and
 - iii. may require officers of LECC to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to LECC's operations or any conduct of the officers of LECC, and
 - iv. may require officers of LECC to attend before the Inspector to answer questions or produce documents or other things relating to LECC's operations or any conduct of the officers of LECC, and
 - v. may investigate and assess complaints about LECC or the officers of LECC, and
 - vi. may refer matters relating to LECC or officers of LECC to other public authorities or public officials for consideration or action, and
 - vii. may recommend disciplinary action or criminal prosecution against officers of LECC.
- 3.2 Under Section 126, the Inspector may make or hold inquiries to perform his functions and in doing so the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by the Royal Commissions Act 1923.

4 What kind of complaints can the Inspector deal with?

- 4.1 The Inspector can deal with complaints about the conduct of the Law Enforcement Conduct Commission (LECC) and/or its officers which amounts to maladministration on the part of LECC ("agency maladministration") or to misconduct or maladministration on the part of officers of the LECC ("officer misconduct" or "officer maladministration").
- 4.2 Agency maladministration is defined in the LECC Act as conduct, whether by action or inaction, that is:
- i. unlawful; or
 - ii. unreasonable, unjust, oppressive or improperly discriminatory in its effect; or
 - iii. arises from improper motives; or
 - iv. arises from a decision that has taken irrelevant matters into consideration; or
 - v. arises from a mistake of law or fact; or
 - vi. is conduct of a kind for which reasons should have been given but have not; or
 - vii. engaged in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.
- 4.3 Agency maladministration also includes (without limitation) unreasonable delay in the conduct of an investigation and unreasonable invasion of privacy.

- 4.4 Officer maladministration is defined in the LECC Act as conduct, whether by way of action or inaction, that is:
- i. unreasonable, unjust, oppressive or improperly discriminatory in its effect; or
 - ii. arises from improper motives; or
 - iii. arises from a decision that has taken irrelevant matters into consideration; or
 - iv. arises from a mistake of law or fact; or
 - v. is conduct of a kind for which reasons should have been given but have not.
- 4.5 Officer misconduct can include but is not limited to:
- i. conduct that constitutes a criminal offence; or
 - ii. conduct that constitutes corrupt conduct; or
 - iii. conduct that constitutes unlawful conduct; or
 - iv. conduct that constitutes a disciplinary infringement.

5 What the Inspector is unable deal with

- 5.1 The Inspector's principal functions relate solely to complaints about the conduct of the LECC and/ or its officers. The Inspector cannot deal with complaints about the conduct of other public officials. Nor can the Inspector deal directly with complaints about the NSW Police Force or the NSW Crime Commission, which is a matter for the LECC.
- 5.2 The Inspector does not have the power to review decisions by LECC including decisions by the Commission as to whether it will, or will not, investigate a specific matter unless the decision is affected by conduct amounting to agency maladministration, officer maladministration or officer misconduct. The Inspector is not an appeal body for decisions made by the Commission.
- 5.3 The Inspector has no power to consider the merits of any action or recommendation of the LECC unless it comes within the conduct referred to above.
- 5.4 The Inspector has no power to reverse or change any decision of the LECC, including a decision by the LECC not to investigate a matter.

6 Making a complaint

Who Can Make a Complaint

- 6.1 Any person can make a complaint to the Inspector. The Inspector principally receives complaints from:
- i. persons who are the subject of LECC investigations; or
 - ii. the families and staff of such persons; or
 - iii. complainants who are dissatisfied with the Commission's decision not to investigate their complaint or allegation.

- 6.2 The Inspector accepts complaints made in writing. The Office will endeavour to assist a complainant to put their complaint in writing if they are unable to do so. This may include referring them to a community legal centre for assistance in making their complaint or accepting a complaint made on their behalf by a representative (such as an advocate, family member, legal or community representative, Member of Parliament or another organisation).
- 6.3 The Inspector accepts anonymous complaints and will assess the issues raised which are within jurisdiction and whether there is enough information provided. Most people do not make anonymous complaints and the Inspector encourages complainants to identify themselves.
- 6.4 Section 125 of the LECC Act provides that a public official, within the meaning of the Public Interest Disclosures Act 2022, may complain to the Inspector about the conduct of the Commission, an officer or former officer of the Commission or an officer of the Inspector. If a complaint is assessed as being a public interest disclosure, then it will be handled in accordance with the Office's Public Interest Disclosure Policy which is available on the OILECC website.
- 6.5 The Inspector may also receive complaints from the Parliamentary Committee for the LECC.
- 6.6 The Inspector can undertake an investigation on the Inspector's own initiative pursuant to section 126 of the LECC Act.

Where to make a complaint

- 6.7 Complaints can be made in writing:
- i. Via email at oilcexecutive@oilc.nsw.gov.au
 - ii. Via mail at PO Box 5341 Sydney NSW 2001
- 6.8 The Inspector's office may be called on (02) 9228 3023.

What to include in a complaint

- 6.9 So that the Inspector can properly understand a complaint, the person complaining should provide as much specific and detailed information as they can. It will be of assistance if a complainant provides the following information:
- i. What is your complaint against the LECC and/or its officers?
 - ii. Do you believe that what is described in your complaint amounts to agency maladministration or to misconduct or maladministration on the part of officers of the LECC? (Refer to Part 4 of the policy)
 - iii. When did the issues you complain of occur (Date/Year)?
 - iv. What are the names of and positions held by the officers of the LECC against whom you are complaining?
 - v. Is there a file number concerning any complaint that you made to the LECC? If yes, please provide it.
 - vi. What are the names and contact details of any witnesses who can give evidence to support your complaint?

- vii. Are there documents or video which supports your complaint and if so, can you send them or copies of them to the Inspector to examine?
- viii. Are you employed in the NSW public sector or any NSW local council? Do you wish to keep your identity confidential from the LECC or any other persons (and if so from whom) and why?

7 How the Inspector deals with complaints

- 7.1 Once a complaint is received, the Inspector will assess and prioritise complaints according to the urgency and/ or seriousness of the issues raised.
- 7.2 If the complainant does not want their identity known to LECC, they should provide detailed reasons with their complaint. The Inspector will consider their reasons and the context of the complaint and will advise them of the decision, before acting on it.

Jurisdiction

- 7.3 The complaint will then be assessed to determine whether it raises allegations of agency maladministration or misconduct or maladministration on the part of officers of the LECC, which the Inspector is empowered to deal with.

Request for Further Material

- 7.4 If the complaint is within the Inspector's jurisdiction, further material may be sought from the complainant.
- 7.5 The Inspector may also seek material from the LECC, and the Commission will sometimes be asked for a response to the complaint.
- 7.6 The Inspector then assesses all the material gathered. The time required to deal with a complaint will vary depending on the complexity of the issues raised and the volume of information that needs to be reviewed. The Inspector aims to determine most complaints within six weeks.

8 Outcome

- 8.1 After the assessment the Inspector will usually deal with the complaint in one of two ways:
 - i. by letter to the complainant notifying them of the outcome of their complaint, any action taken and the reasons for his decision or
 - ii. by a report to Parliament which may or may not include a recommendation concerning the conduct of ICAC or one of its officers.
- 8.2 If a complaint is determined to be outside of the Inspector's jurisdiction, the Office will inform the complainant of any other appropriate external review options available to them (for example, the NSW Ombudsman or the Law Enforcement Conduct Commission).
- 8.3 The Inspector will record a summary of every complaint received and the outcome in his Annual Report.

Making Recommendations to Parliament and Reports

- 8.4 One of the principal functions of the Inspector is to make a recommendation or report concerning any matter relating to the functions of the Inspector that the Inspector considers may effectively be dealt with by recommendation or report, and provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.
- 8.5 In all circumstances where the Inspector determines that he will submit a Special Report to Parliament, he and his staff take the appropriate steps to ensure that the complainant, the Commission and any other affected person are afforded procedural fairness. Section 143(1) of the LECC Act provides that a person about whom an adverse finding is to be made by the Inspector has an opportunity to respond to the proposed adverse finding and that any report prepared by the Inspector includes a summary of the substance of the person's response that disputes the adverse finding if the person requests the Inspector to do so.
- 8.6 The Inspector must not include in the report any information in the person's response that would identify any person who is not the subject of an adverse finding, unless the Inspector:
- i. is satisfied that it is necessary to do so in the public interest, and
 - ii. is satisfied that doing so will not cause unreasonable damage to the reputation, safety or well-being of a person who is not the subject of an adverse finding, and
 - iii. includes in the report a statement that the person identified is not the subject of any adverse finding.
- 8.7 Where the Inspector proposes to submit a Special Report to Parliament, it is the Inspector's usual practice to provide a copy of the draft report to the person/s or organisation that are the subject of the report even if there are no proposed adverse findings about them. In most circumstances where those named persons and/or organisation do provide a reply that is then referred to and/or included in the final report that is submitted to Parliament.
- 8.8 The Inspector's Annual Reports and Special Reports can be accessed on the OILECC website at: <https://www.oilecc.nsw.gov.au/reports/>

9 Review of the Inspector's decisions

- 9.1 The Inspector's powers in relation to complaints made to his Office about LECC are discretionary. Therefore, the Inspector cannot be required to investigate or take any other action in relation to a complaint received. The Inspector also cannot be required to review a decision that he has made about a complaint.
- 9.2 While the Inspector cannot be required to do so, as a matter of policy, a request to review a decision will be considered. However, a review will only be conducted if the person requesting it indicates clearly how or why the Inspector's decision was inappropriate or unreasonable and/or provides new information of substance that is relevant to the decision to be reviewed. Any decision made in respect of a request for a review will be final.
- 9.3 On occasions, complainants continue to send correspondence to the OILECC after the Inspector has determined their complaint and/or a request for review in relation to it. Such correspondence is read. However, if it does not provide new information or seek to make a fresh complaint about a matter not already dealt with, the Inspector may determine that

any future correspondence of that kind will be filed without a response. If such a determination is made, the Inspector will notify the complainant.

10 The Inspector's Accountability

10.1 In the performance of his functions, the Inspector is accountable to a joint parliamentary committee known as the Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (the Committee). The LECC also reports to this Committee. The functions of the Committee relevant to the Inspector are, under Schedule 2 s 12 of the LECC Act to:

- i. examine the proposed appointment of a person to the position of the Inspector and to either approve or veto the proposed appointment.

And under s 131 of the LECC Act to:

- i. monitor and review the exercise of the LECC and the Inspector's functions.
- ii. report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the LECC and the Inspector.
- iii. examine each annual and other report of the LECC and the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.
- iv. examine trends and changes in corrupt conduct and practices and methods relating to corrupt conduct and report to both Houses of Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the LECC and the Inspector.

10.2 Section 131(2) of the LECC Act, however, prohibits the Committee from investigating a complaint which has been investigated by the Inspector or the LECC. The Committee also cannot reconsider the findings, recommendations, determinations or other decisions of the Inspector or the LECC in relation to a particular investigation or complaint.

10.3 Further information about the Committee is available on the NSW Parliament website: <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=175>

11 Review of this policy

11.1 This policy is approved by the Inspector. It will be reviewed from time to time to ensure that it reflects current laws and best practice principles.

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