



Office of the Inspector of the
Law Enforcement Conduct Commission

ANNUAL REPORT

**INSPECTOR OF THE LAW
ENFORCEMENT CONDUCT
COMMISSION**

FOR THE PERIOD

ENDING 30 JUNE 2020

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PART 1: THE OFFICE OF THE INSPECTOR OF LECC

1.1 PRELIMINARY OBSERVATIONS

On 30 June 2017 the Police Integrity Commission ceased to exist as an agency. It was replaced by the Law Enforcement Conduct Commission (“LECC”) which became fully operational on 1 July 2017. At the same time the position of Inspector of the Police Integrity Commission also ceased to exist. It has been replaced by the position of Inspector of the Law Enforcement Conduct Commission (“Inspector of LECC”).

Pursuant to s120 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) the Inspector is appointed by the Governor on the advice of the Executive Council. The Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (the Joint Committee) is empowered to veto the proposed appointment (Schedule 2 to the *LECC Act* and s31BA of the *Ombudsman Act 1974*). Schedule 2 to the LECC Act provides that the Office of Inspector can be either a full time or a part time position. My term as the inaugural Inspector of LECC commenced on 1 July 2017. I have been appointed on a part-time basis for a term of 5 years.

In addition to creating the position of the Inspector of LECC, Part 9 of the LECC Act also provides for the employment of staff. The Inspector of LECC, together with support staff, constitute the Office of the Inspector of LECC (OILECC).

Responsibility for the administration of Part 9 and Schedule 2 to the LECC Act was initially allocated to the Premier by virtue of the *Administrative Arrangements (Administration of Acts – General) Order 2017* (NSW), while responsibility for the administration of the remainder of the LECC Act was allocated to the Minister for Police. Following representations including in April 2019 from this Office to the Premier, it was recognised that such a state of affairs was untenable as it placed the Minister for Police in the invidious position of having to simultaneously administer both the NSW Police Force and the NSW Crime Commission as well as LECC, the independent body charged with responsibility for their oversight. Accordingly, responsibility for the administration of the entirety of the LECC Act is

now allocated jointly to the Premier and the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts by virtue of the *Administrative Arrangements (Administration of Acts – General) Order (No.2) 2019 (NSW)*. That remained the situation for the duration of the reporting period except for a short period of time during which the Attorney-General assumed the responsibilities of the Special Minister of State.

During the reporting period the support staff consisted of Angela Zekanovic as the Principal Legal Advisor and Jenny Gotham as the Business Coordinator. Ms Gotham was on secondment from the Office of the Director of Public Prosecutions during the reporting period. Each of them has performed their services at a very high level, a matter for which I am most grateful. Ms Zekanovic and Ms Gotham also work in the Office of the Inspector of the Independent Commission Against Corruption (OIICAC).

At the time that the Office was established on 1 July 2017, two full-time staff from the Secure Monitoring Unit (SMU) within the Office of the NSW Ombudsman, Ian McCallan-Jamieson and Heather Brunello, were transferred to OILECC. That was to enable them to continue performing their pre-existing functions which related to the inspection of covert warrants that are issued to duly authorised investigative agencies. They had been performing those functions pursuant to a delegation from the Ombudsman. Section 128A of the LECC Act, which came into effect on 25 September 2017, enabled the Inspector to delegate his inspection functions to nominated members of staff. Appropriate delegations are now in existence and the responsibility for ensuring that those obligations are adhered to is performed by the two SMU staff.

I would particularly like to express my gratitude to all members of staff for ensuring that the Office's work was able to be performed notwithstanding the challenges that were presented by COVID19.

It is my pleasure to present this Annual Report pursuant to s141 of the LECC Act and recommend that this Report be made public immediately pursuant to s145(4) of the Act. This Report relates to the year ending 30 June 2020 which was my third year as the Inspector of LECC.

1.2 ADMINISTRATION

1.2.1 PREMISES

OILECC shares premises with OIICAC. Both Offices relocated to new premises in August 2018 in order to accommodate the SMU staff as well as existing staff.

The contact details for the Office are:

Postal address: GPO Box 5341, Sydney, NSW, 2001

Telephone: (02) 9228 3023

E-mail: oilc executive@oiicac.nsw.gov.au

1.2.2 STAFF

The two SMU staff members report to the Inspector. As was indicated earlier, the Inspector also shares two staff, the Principal Legal Advisor and the Business Coordinator, with the Inspector of ICAC.

1.2.3 BUDGET AND FINANCE

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

Information provided by the finance section of DPC reveals that the actual expenditure for the 2019-2020 financial year was \$883,716 as against the projected budget which was \$750, 607.

The Inspector is paid a daily rate of \$1910 and also receives an annual retainer of \$10, 000.

1.2.4 WEBSITE

The website of OILECC was reviewed and updated during the reporting period. It contains all relevant statutory and other information including details about its complaint handling processes for the benefit of members of the public.

As will become apparent, there are various Acts of Parliament which require the Inspector to provide reports concerning the monitoring of the use of covert powers by various investigative agencies. Those reports appear on the website after they have been tabled in Parliament.

The website address is www.oilecc.nsw.gov.au.

PART 2: THE ROLE OF THE OFFICE OF THE INSPECTOR OF LECC

2.1 FUNCTIONS OF THE INSPECTOR

Pursuant to s122(1) of the LECC Act, the Inspector is required to perform the functions of an inspecting officer. Those functions are conferred under various NSW Acts which deal with the use of covert powers that are issued to duly authorised investigative agencies. As has already been observed those functions were previously performed by the Ombudsman prior to the creation of the position of Inspector of LECC.

Pursuant to s122(2) of the LECC Act, the Inspector also has what are described as the principal functions of the Inspector which are to:

- a) audit the operations of the Commission for the purpose of monitoring compliance with the law of the State and
- b) deal with (by reports and recommendations) conduct amounting to agency maladministration on the part of the Commission and conduct amounting to officer misconduct or officer maladministration on the part of officers of the Commission, whether or not the subject of a complaint (this function also extends to former Officers of the Commission).
- c) assess the effectiveness and appropriateness of the policies and procedures of the Commission relating to the legality or propriety of its activities.

Pursuant to s123(1) of the LECC Act, the functions of the Inspector in relation to the matters set out above 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 misconduct information of which the Inspector becomes aware, or in response to a reference by the Joint Committee or by the Ombudsman, the ICAC, the Crime Commission, or any other government agency or member of a government agency. The Inspector is not subject to LECC in any respect (s123(2)).

2.2 POWERS OF THE INSPECTOR

Pursuant to s124 of the LECC Act, the Inspector is able to investigate any aspect of the Commission's operations or any conduct of its officers. The Inspector is entitled to full access to the records of the Commission and to take or have copies made of them. The Inspector is able to require officers of the Commission to supply

information or to produce documents or other things about any matter, or any kind of matter, relating to the Commission's operations or any conduct of its officers. The Inspector is able to require officers of the Commission to attend before the Inspector to answer questions or to produce documents or other things relating to the Commission's operations or any conduct of its officers.

The Inspector is able to investigate and assess complaints about the Commission or its officers and is able to refer matters relating to the Commission or its officers to other agencies for consideration or action. The Inspector may also recommend disciplinary action or criminal prosecution against officers of the Commission.

Pursuant to s126 of the LECC Act, the Inspector is empowered to make or hold inquiries. The powers, authorities, protections and immunities conferred on a Commissioner by the *Royal Commission Act of 1923* are conferred on the Inspector when holding an inquiry. Any witness summoned by or appearing before the Inspector also has the benefit of the protection and immunities under the *Royal Commission Act*.

2.3 OTHER RELEVANT LEGISLATION

2.3.1 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 NO. 52 (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*. Section 43 of the GIPA Act prevents an access application from being made to an agency for 'excluded information' of the agency.

Schedule 2(2) of the GIPA Act provides that so far as OILECC is concerned, the 'excluded information' is information relating to its operational auditing, handling of misconduct matters (within the meaning of the LECC Act) investigative and reporting functions.

Schedule 1 of the GIPA Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information held by OILECC, the disclosure of which is prohibited by the LECC Act. Section 180(2) of the LECC Act provides that the Inspector or an officer of the Inspector must not, except for the purposes of carrying out their functions under the LECC Act, make a record of or divulge any information acquired in the exercise of the person's functions under

the Act. Section 180(5) provides that such information may however be disclosed in certain circumstances which are identified.

In compliance with s125 of the GIPA Act and clause 8(b) of the Regulation, OILECC advises that there were no access applications made under the GIPA Act to OILECC during the current reporting period.

Section 20 of the GIPA Act requires each agency to have an agency information guide. The Office's agency information guide is available on its website at www.oilecc.nsw.gov.au.

In compliance with s7(3) of the GIPA Act and 8(a) of the Regulation, OILECC advises that it has conducted a review of its program to proactively release information which is in the public interest. All such information appears on the Office website.

In compliance with s7 of the GIPA Act, OILECC also reviewed the website content to assess what, if any, further information could be proactively released. During the reporting period, OILECC made available on its website a number of reports concerning inspections conducted by the SMU.

2.3.2 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. Pursuant to s4 of the PID Act the Inspector is an investigating authority to whom a public disclosure can be made under the Act.

Pursuant to s125(1) of the LECC Act a public official within the meaning of the PID Act may complain to the Inspector about the conduct of LECC, an officer of LECC or an officer of the Inspector.

Pursuant to s12A(2) of the PID Act, to be protected by the Act, a disclosure by a public official to the Inspector must:

- (a) be made in accordance with the LECC Act and

- (b) be a disclosure of information 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 LECC, a LECC officer or an officer of the LECC Inspector.

Section 31(1) of the PID Act requires each public authority within 4 months after the end of each reporting year to prepare an annual report on the public authority's obligations under the PID Act.

The following information is provided pursuant to s31(1) of the PID Act and clause 4(2) of the PID regulation which specifies the information to be included in reports by public authorities:

- a) The number of public officials who made a public interest disclosure to the Inspector – 3
- b) The number of public interest disclosures received by the Inspector:
 - i. Corrupt conduct – 1
 - ii. Maladministration – 2
 - iii. Serious and substantial waste of public money – 0
 - iv. Government information contraventions - 0

All three matters that were treated as public interest disclosures were finalised during the reporting period albeit two of them had been received during the previous reporting period.

Section 6D(1) of the PID Act requires each public authority to have a policy that provides for its procedures for receiving, assessing and dealing with public interest disclosures. During the reporting period OILECC reviewed and further developed its PID policy and procedure which is available on its website at www.oilecc.nsw.gov.au.

PART 3: THE INSPECTION FUNCTION

3.1 PRELIMINARY OBSERVATIONS

As has already been observed, there are various pieces of legislation which provide duly authorised investigative agencies with the power to investigate criminal activities. Those powers can involve significant intrusion into people's lives. In order to provide the community with some degree of assurance that those covert powers are being used lawfully, the agencies in question are subject to legislative measures that are designed to ensure a measure of accountability.

Reporting and record keeping obligations are imposed upon those agencies which are authorised to use those powers. Provision is also made for the safe keeping and destruction of information obtained from the use of those powers.

While the inspections of records include an examination of the matters which are specified in the relevant legislation, they do not examine the sufficiency or otherwise of the information provided in support of the application as that is the function of the relevant judicial or other authorised officer.

Prior to 1 July 2017, the NSW Ombudsman was required to conduct inspections of the records of those investigative agencies in order to determine the extent of compliance by those agencies and their officers with the relevant legislation. As has been noted, the functions previously carried out by the NSW Ombudsman were transferred to the Inspector of LECC following its establishment on 1 July 2017. As from that date, the Inspector has taken possession of all relevant information, documents and records previously held by the Ombudsman in relation to those functions and has also taken over the Ombudsman's work in progress.

The inspection and monitoring process is not only designed to foster agency compliance with the relevant legislation but also to provide public accountability through regular reporting to the relevant Minister and/or Parliament. The records of each agency are examined in order to determine if there has been compliance with those record and document keeping requirements. There is also a focus upon such other aspects of compliance as can be determined from those records as well as what can be gleaned from asking questions of relevant officers.

Such deficiencies as are identified as a result of the inspection and monitoring process are brought to the attention of the relevant agency prior to the furnishing of the final report. In due course, the head of each agency is provided with a copy of the section of the final report which pertains to the inspection of their particular agency.

Finally, I wish to acknowledge the professionalism which the two SMU staff members, Mr McCallan-Jamieson and Ms Brunello, have displayed in performing their functions.

3.2 THE PARTICULAR LEGISLATIVE REQUIREMENTS

3.2.1 TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) (NSW) ACT 1987

In accordance with s 51 of the Australian Constitution, the *Telecommunications (Interception and Access) Act 1979* (Cth) (the Commonwealth Act) covers the field in relation to the interception of telecommunications in this country. The legislation provides that the Commonwealth Ombudsman is the relevant inspecting authority of that material. However, its role under s 83 of the Act is confined to inspecting such records of Commonwealth agencies only. Complementary state legislation mirrors the inspection functions in the various states. In NSW those functions are provided for in the *Telecommunications (Interception and Access) Act 1987 (NSW)* (the State Act).

Sections 4 and 5 of the State Act require the ‘chief officer of an eligible authority’ to keep certain information which is connected with the issue of warrants or the interceptions. Sections 6 and 7 of the State Act require that certain reports be furnished to the relevant Minister (currently that is the NSW Attorney-General). Section 8 makes provision for the keeping and destruction of restricted records.

Section 10(1) of the State Act provides that an “inspecting officer” must inspect the records of an “eligible authority” at least twice during each financial year. The purpose of the inspections is to ascertain the extent to which the authority’s officers have complied with the requirements of Part 2 of the State Act (ss4-8) which imposes certain obligations upon eligible authorities.

Section 11(1) of the State Act requires an inspecting officer to provide a written

report to the Minister about the inspections as soon as practicable and no later than three months after the end of the financial year. Section 11(2) of the State Act requires that the inspecting officer must include the following information in the report:

- (a) a summary of the inspections conducted in the financial year
- (b) particulars of any deficiencies identified that impact on the integrity of the telecommunications interception regime established by the Commonwealth Act,
- (c) particulars of the remedial action (if any) taken or proposed to be taken to address those deficiencies by the eligible authority.

Section 11(4) of the State Act requires that the chief officer of an eligible authority must be provided with a copy of the report.

An inspection officer may also, pursuant to s12 of the State Act, include information concerning contraventions of the Act in the report to the Minister.

Inspecting officers are also provided with specific powers to enable them to obtain relevant information from an eligible authority: s13 and s14 of the State Act.

Inspections were conducted at the NSW Police Force, NSW Crime Commission, Independent Commission Against Corruption and Law Enforcement Conduct Commission for the reporting period 1 July 2019 to 30 June 2020. The overwhelming majority of all telecommunications interception warrants sought during the reporting period were made by the New South Wales Police Force.

Since no certified records or lawfully obtained information was received by the Inspector of ICAC during the reporting period no inspections of the records of that agency was conducted.

The report that related to the reporting period 1 July 2019 to 30 June 2020 was delivered to the relevant Minister (the Attorney General) on 25 August 2020. There is no provision requiring the Minister to table the report. However, s 20 of the Act provides that the Minister shall as soon as practicable after receiving the report provide a copy of the report to the Minister administering the Commonwealth Act (currently that is the Minister for Home Affairs).

In addition, the Inspector is included as an “eligible authority” for the purposes of the Commonwealth Act. In accordance with reporting requirements under s96(1) of that Act, the Minister for Home Affairs was advised by the Inspector that there was no usage of the relevant provisions of the Commonwealth Act during the reporting period.

3.2.2 SURVEILLANCE DEVICES ACT 2007

The *Surveillance Devices Act 2007* (NSW) (the Act) provides for the use of surveillance devices to investigate certain offences and to enable evidence to be obtained of the commission of such offences as well as the identity and/or the whereabouts of potential suspects. The Act covers the installation, use and maintenance of listening, optical, tracking, and data surveillance devices. It also places restrictions upon the communication and publication of private conversations, surveillance activities and other information obtained from the use of such devices.

Surveillance device warrants are issued by an ‘eligible judge’ of the Supreme Court or an ‘eligible Magistrate’ in the case of a surveillance device warrant which authorises the use of a tracking device only, or for a retrieval warrant in respect of a tracking device. Applications must include certain required information and must be accompanied by an affidavit setting out the grounds for seeking the warrant.

The investigative agencies which were the subject of inspections for the reporting periods in question were:

- NSW Police Force
- NSW Crime Commission
- Independent Commission Against Corruption
- Law Enforcement Conduct Commission

All surveillance device warrant files at each agency which applied for a surveillance device warrant were inspected. Inspections focussed upon the extent of compliance with the following parts of the Act:

- Part 3 which deals with warrants and emergency authorisations

- Part 5 which covers compliance and monitoring, including dealing with records obtained by the use of surveillance devices, the use, communication or publication of protected information, reporting and record keeping
- Part 6 which requires notification to the Attorney General about warrants sought, as well as notification to the subject of surveillance if so directed by the eligible judge

The inspection process included examining the application, the warrant itself, the required notice to the Attorney General under s17(5A) and s21(5A) of the Act, as well as the subsequent report to the issuing judicial officer and the Attorney General which is required under s44 of the Act, and any other information which was contained on the file.

The Inspector is required, pursuant to s49(1) of the Act, to report to the Minister at six monthly intervals on the results of inspections. The Minister is required by s49(2) to lay the report or cause the report to be laid before both Houses of Parliament within 15 days after receiving the report.

In compliance with that requirement, on 17 March 2020 the Attorney General was provided with a report detailing the results of inspections conducted of agency records for the period from 1 July 2019 to 31 December 2019.

On 11 September 2020 the Attorney General was provided with a report detailing the results of inspections conducted of agency records for the period from 1 January 2020 to 30 June 2020. Those reports are available on the OILECC website at: <https://www.oilecc.nsw.gov.au/reports/>

During the reporting period the *Surveillance Devices Amendment (Statutory Review) Act No 90* commenced on proclamation on 28 October 2019. A number of new provisions in the Act were inserted including s17(5A) and s21(5A) referred to earlier. Section 51A of the Act was inserted to create the position of the Surveillance Devices Commissioner. The Commissioner, under delegation from the Attorney General, receives advance notice of surveillance device warrant applications, has the right to be heard by a Judge in relation to the granting of a warrant and receives reports about the use of a warrant from law enforcement agencies.

Also during the reporting period, the *Justice Legislation Amendment Act (No 2) 2019* was assented to on 22 November 2019. The Act amended the information which is required to be included in the notice served on the Attorney General so as to include the grounds upon which the warrant was sought. It also allows information obtained from the use of body-worn video by police officers to be used in connection with the education and training of students of policing.

Inspections were of course conducted in accordance with those legislative amendments.

3.2.3 LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002 – COVERT SEARCH WARRANTS

Sections 46C and 47 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (the Act) provide that duly authorised persons within the NSW Police Force, the NSW Crime Commission and, since 1 July 2017, the Law Enforcement Conduct Commission may apply to an ‘eligible judge’ of the Supreme Court for “a covert search warrant”.

Covert search warrants give eligible law enforcement agencies, and their officers, authority to enter and search premises without the knowledge of the occupiers, in relation to the investigation of serious offences. The occupier of the property does not need to be told about the search until the time specified in the warrant by the issuing Judge which will usually be several months after the search.

It is not intended that covert search warrants are to be used as a routine investigative tool as covertly entering and searching premises is a significant departure from traditional entry and search powers. Nevertheless, an application may be made to the Supreme Court for a covert search warrant in the investigation of ‘serious offences’ as defined in s46A(2) of the Act.

The Act provides that applications may be made by telephone if the issuing Judge is satisfied that a warrant is required urgently and the application cannot be made in person.

Applications are made by using a prescribed form which contains all the relevant information that s62 of the Act requires to be considered for a covert search warrant application.

Before granting a covert search warrant, the issuing Judge must also be satisfied that it is necessary for the entry and search to be conducted without the occupier's knowledge.

While the initial searching may be done covertly, the occupier must eventually be given formal notice that it has occurred. The length of time before the occupier's notice must be served is determined by the issuing Judge who may authorise delaying service of the notice for up to six months at a time. In exceptional circumstances the service of the notice may be delayed beyond 18 months, but it must not be delayed beyond three years in any circumstances. Covert search warrants expire 10 days after the date on which they are issued, unless the warrant specifies an earlier expiry date. Warrants may be granted to allow a search for a particular thing or things, or a kind of thing or things.

Within 10 days of executing the warrant, or of the warrant expiry date if the warrant is not executed, the executing officer is required under s 74A of the Act to provide a report in writing to the issuing Judge.

The Inspector is required to inspect the records of law enforcement agencies to check on their compliance, and the compliance of their officers, with Part 5 of the Act. Each covert search warrant file for the reporting period was inspected, a process that involved an examination of the application, the warrant itself, the occupier's notice, and the report to the issuing Judge, together with any other information contained on the file, to ensure that there had been compliance with the various statutory requirements.

Records about the execution of covert search warrants and those relating to entry and seizures to ascertain the accuracy of the reports to the issuing Judge were also examined. This also involves follow up inspections to confirm that occupier's notices have been served as soon as any period of postponement has expired.

Pursuant to s242(1) of the Act inspections must take place at least every 12 months. During the reporting period, only the NSW Police Force applied for covert search warrants and as such only those records were inspected for the purposes of this Act.

Pursuant to s 242(3) of the Act, the Inspector must as soon as practicable after 28 May 2017 and as soon as practicable after the expiration of each subsequent year, prepare a report of the Inspector's work and activities under subsection (1) and furnish a copy of the report to the Attorney General and the Minister for Police. The Attorney is required by s242(7) of the Act to lay the report, or cause the report to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

Reports detailing the results of inspections conducted for the period between 29 May 2019 and 28 May 2020 were sent to the Attorney General and the Minister for Police respectively on 14 August 2020. That report is available on the OILECC website at: <https://www.oilecc.nsw.gov.au/report>

3.2.4 LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002 – CRIMINAL ORGANISATION SEARCH WARRANTS

A duly authorised police officer may apply to an 'eligible judge' of the Supreme Court for a "criminal organisation search warrant", which is defined in s3 of the Act as a "a search warrant issued under Division 2 of Part 5 in relation to an organised crime offence".

If an eligible applicant has reasonable grounds to suspect that there is, or within 7 days there will be, in or on nominated premises a thing connected with a searchable offence, they may apply to an eligible issuing officer for a criminal organisation search warrant in respect of the premises. Under the Act an *eligible issuing officer* for the purposes of a criminal organisation search warrant means an *eligible judge*.

A "searchable offence" is defined in s46A of the Act as, in so far as it relates to a criminal organisation search warrant, an "organised crime offence".

An "organised crime offence" is defined as "any serious indictable offence arising from, or occurring as a result of, organised criminal activity".

The terms "organised criminal activity", "serious violence offence" and "serious indictable offence" are defined in s46AA of the Act.

The Act also provides that applications may be made by telephone if the eligible issuing officer is satisfied that the warrant is required urgently and the application cannot be made in person.

Applications are made by using a prescribed form which contains all the relevant information that s62 of the Act requires to be considered for a search warrant application - and in particular the requirements of s62(2A) which are specifically related to criminal organisation search warrants.

The Regulation also prescribes the form of the warrant and the occupier's notice. These forms cover the criteria set out in s66 and s67 of the Act in relation to these documents.

The time specified for the expiry of a criminal organisation search warrant is 7 days after the date on which the warrant is issued.

The reporting requirements for a criminal organisation search warrant are the same as those for standard search warrants, which are set out in s74 of the Act. The report must be furnished to the eligible issuing officer within 10 days after the execution of the warrant or the expiry of the warrant, whichever occurs first. The report must comply with the terms of the prescribed form.

The Inspector is required to inspect the records of the NSW Police Force to check for compliance with Part 5 of the Act. Pursuant to 242(4) of the Act those inspections must take place every 2 years.

Each individual criminal organisation search warrant file held at the NSW Police Force Covert Applications Unit (CAU) was inspected (the CAU is the "clearing house" for all applications for covert warrants made on behalf of the NSW Police Force). Inspections were conducted on 12 August 2019. This inspection involved checking to ensure that the relevant statutory requirements had been complied with. The inspections involved an examination of the application, the warrant itself, the occupier's notice, the report to the issuing judicial officer and any other information contained on the file.

Other records which were held by the NSW Police Force relating to the execution of criminal organisation search warrants were also examined in a further endeavour to ensure that the statutory requirements had been complied with.

Pursuant to s242(6) of the Act the Inspector must, as soon as practicable after 7 August 2017 and as soon as practicable after the expiration of each subsequent 2-year period, prepare a report of the Inspector's work and activities under

subsection (4) and furnish a copy of the report to the Attorney General and the Minister for Police. The Attorney General is required, pursuant to s242(7) of the Act to lay the report, or cause the report to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

The report for the period 7 August 2017 – 6 August 2019 was presented to the Attorney-General on 10 September 2019. That report is available on the OILECC website at: <https://www.oilecc.nsw.gov.au/reports/>

The next Report in respect of inspections conducted between 7 August 2019 and 6 August 2021 is due to be presented to the Attorney-General as soon as practicable after 6 August 2021.

3.2.5 LAW ENFORCEMENT (CONTROLLED OPERATIONS) ACT 1997

The *Law Enforcement (Controlled Operations) Act 1997* (the Act) enables a ‘controlled operation’ to be authorised in certain circumstances. It also regulates their use as well as providing for immunities to be granted to participants involved in them.

Section 3(1) of the Act defines a ‘controlled operation’ as being an operation which is conducted for the purpose of:

- (a) obtaining evidence of criminal activity or corrupt conduct, or
- (b) arresting any person involved in criminal activity or corrupt conduct, or
- (c) frustrating criminal activity or corrupt conduct, or
- (d) carrying out an activity that is reasonably necessary to facilitate the achievement of any purpose referred to in paragraph (a), (b) or (c),

That section also provides that each of the following is a ‘law enforcement agency’:

- (a) the NSW Police Force,
- (b) the Independent Commission Against Corruption,
- (c) the New South Wales Crime Commission,
- (d) the Law Enforcement Conduct Commission,

- (e) such of the following agencies as may be prescribed by the regulations as law enforcement agencies for the purposes of this Act:
 - (i) the Australian Federal Police,
 - (ii) the Australian Crime Commission,
 - (iii) the Commonwealth Department of Immigration and Border Protection.

Section 5(1) enables a law enforcement officer to apply to the 'chief executive officer' (which is defined in s3(1) of the Act) of the law enforcement agency to conduct a controlled operation on behalf of the agency. Provision is made in s5(2) for the making of an urgent application. Section 5(2A) of the Act requires that every application must include certain specified particulars of the operation.

Section 6(1) provides that the chief executive officer may either authorise or refuse the application. Section 6(2) provides that an authority may not be granted unless a code of conduct is prescribed by the regulations in relation to that agency. A comprehensive code of conduct is contained in Schedule 2 to the Regulation and casts a number of obligations upon applicants. Section 6(3) states that an authority to conduct a controlled operation may not be granted unless the chief executive officer is satisfied about a number of matters which are identified, including that there are reasonable grounds to suspect that criminal activity or corrupt conduct has been, is being or is about to be conducted in relation to matters within the administrative responsibility of the agency.

Section 7 identifies situations in which an authority must not be granted.

Section 8(2) provides that an authority to conduct a controlled operation (even if it is urgent) must also identify a number of other matters which are set out.

Section 13 of the Act provides that an authority for a controlled operation authorises each law enforcement participant and civilian participant (if any) to engage in the particular controlled activities specified in the authority in respect of that participant.

Section 14 of the Act provides that the chief executive officer may grant a retrospective authority in certain limited circumstances.

Section 16 of the Act provides that an activity that is engaged in by a participant in an authorised operation in the course of, and for the purposes, of the operation is not unlawful so long as it is authorised by, and is engaged in in accordance with, the authority for the operation.

Section 19 of the Act provides that persons involved in an authorised operation are excluded from civil liability so long as their conduct was in good faith and was for the purpose of executing the Act.

Part 3A of the Act makes provision for cross-border controlled operations.

Part 4 of the Act provides for the monitoring of controlled operations which are authorised by the chief executive officer of an agency. This is in contrast to other covert investigative methods, such as the use of surveillance devices and telecommunication interceptions, which are authorised externally by means of a warrant which is issued by a judicial officer. The public interest therefore requires adherence to the highest standards of compliance. Accordingly, inspections are designed to carefully scrutinise the documentation which is relied upon at all stages of the authorisation process as well as the reporting obligations which are placed on agency personnel. All authorities and variations to authorities granted during the reporting period are inspected as is the supporting documentation. A sample of records held by the principal law enforcement officers responsible for the conduct of the operation may also be examined in order to ascertain how those officers have accounted for the controlled activities which have been conducted.

Section 21 of the Act provides that the Inspector must be notified of each authority that is granted under the Act, of all variations to an authority, and of each report on a controlled operation that is received by the chief executive officer of an agency. Notices must be provided by the chief executive officer to the Inspector within 21 days of the event to which it relates. In the case of a retrospective authority having been granted, the required details must be provided no later than 7 days after it was granted. Requirements as to the content of those notices are set out in the Regulation to the Act.

Section 22(1) of the Act requires the Inspector to conduct inspections of the records of each of the law enforcement agencies in order to assess whether or not the requirements of the Act are being complied with. Inspections of the law

enforcement agencies records must be conducted at least once every twelve months although they may be inspected at any time.

Section 22(2) of this Act provides that the provisions of the [Telecommunications \(Interception\) \(New South Wales\) Act 1987](#) (the State Act) apply to an inspection conducted under this section in the same way as they apply to an inspection conducted under that Act. Accordingly, inspecting officers are also provided with specific powers to enable them to obtain relevant information from an eligible authority: s13 and 14 of the State Act.

The Inspector is required, pursuant to s23(1) of the Act to report to Parliament on the Inspector's work and activities under the Act for the 12-month period ending on 30 June each year and to do so as soon as practicable after that date.

Section 23(2) of the Act requires that the report must include, for each law enforcement agency, certain particulars including the number of formal authorities that have been granted or varied by the chief executive officer of that agency, the number of urgent authorities granted and the nature of the criminal activity against which the controlled operations conducted under those authorities were directed. The report for the 12-month period ending 30 June 2019 was presented on 25 November 2019. That report is available on the OILECC website at: <https://www.oilecc.nsw.gov.au/reports/>

During inspections conducted in June 2020, an issue was identified concerning the use of assumed names by civilian participants in controlled operations in contravention of the legislation. When inspecting officers from this Office brought this to the attention of the manager of the CAU, he immediately directed that the "practice" cease. This Office was subsequently advised that in none of the operations in respect of which the "practice" had been identified, had the civilian participants actually used an "assumed name" or represented themselves to be other than who they actually are. Since that time, inspecting officers and staff at the CAU have worked cooperatively with a view to improving existing practices in this area.

As part of that process, I wrote to the Commissioner of Police and drew his attention to s 21(1) and (2) of the Act (which were referred to earlier). As a result of my correspondence with the Commissioner, it has now been agreed that in future the

following additional information will be provided to this Office. First, the number of participants who are authorised to operate under an assumed name will be included in the notifications of the granting or variation of authorities. Secondly, the details of each participant who did in fact operate under an assumed name will be included in reports of the conduct of a controlled operation.

Inspecting officers from my Office and staff at CAU are now in the process of determining how to implement the new practice. It is anticipated that the 2020-2021 OILECC Annual Report will provide an update as to how that new practice is working.

Part 4: THE OVERSIGHT FUNCTION

4.1 PRELIMINARY OBSERVATIONS

In addition to the inspection functions described in the previous chapter, the Inspector also performs an oversight role but only in relation to the activities of LECC. Those functions, as indicated earlier, are set out in s 122(2) of the Act. In due course I will address those functions, commencing with section 122(2)(b) of the Act which concerns the Inspector's functions to deal with complaints about the conduct of LECC and/or its officers.

It is apparent that the Inspector is required to perform a critical role in the oversight of LECC and its operations. Accordingly, it is highly desirable that an appropriate working relationship should exist between the two agencies to enable the required monitoring function to operate at an optimum level. Considerable efforts have been made by both agencies to achieve that objective. The result, in my view, is that the relationship between the two agencies has been at all times both professional and productive.

The starting point is a mutual expectation on the part of the Inspector of LECC and the Chief Commissioner of LECC that each will comply with their statutory functions. To that end, a Memorandum of Understanding was developed between the Inspector and the Commission which was formally entered into on 17 May 2018. It clearly sets out arrangements for communication and information exchange between the Inspector and the Commission concerning referral of matters such as complaints, access to information and points of contact between both agencies. A copy of the MOU appears on the OILECC website.

The primary point of contact is between the Inspector and the Chief Commissioner. Such contact includes the exchange of formal correspondence as well as periodic meetings at which issues concerning the Inspector's functions and the conduct, operations and governance of the Commission are regularly discussed. There is also frequent contact between members of LECC staff and members of OILECC staff.

During the reporting period, significant changes occurred at the helm of LECC. The inaugural Chief Commissioner, the Hon. Michael Adams QC, completed his term of Office on 31 January 2020. He deserves due acknowledgement for his significant

role in leading the Commission in its first years of operation. The Commissioner for Oversight, Mr Patrick Saidi, had his appointment terminated by the Governor on 15 January 2020 pursuant to s 77 of the Government Sector Employment Act 2013. (A legislative amendment which was subsequently introduced provides that a LECC Commissioner can no longer be removed from office under that provision). The position of Commissioner for Oversight has remained vacant since Mr Saidi's departure. His departure occurred in the aftermath of the report prepared by Assistant Inspector Bruce McClintock SC in which he dismissed a number of complaints made by Commissioner Saidi about the conduct of the then Chief Commissioner: *A report dealing with a complaint by the Commissioner for Oversight of the Law Enforcement Conduct Commission against the Chief Commissioner (Special Report 20/01)*.

In a further legislative amendment, s 18(3) of the LECC Act which provided that a person was not eligible to be appointed as Chief Commissioner or to act in that office unless the person was a current or former judge or other judicial officer of a superior court of record of NSW or any other State or Territory of Australia, was repealed. A person who has "special legal qualifications" is now eligible to be appointed as Chief Commissioner.

The Commission was fortunate to have the Hon. R. D. Blanch AM QC assume the role of Chief Commissioner, albeit that he was originally only appointed as Acting Chief Commissioner for a period of 6 months. Mr Blanch has had an unparalleled career in heading up public agencies in the legal sector. The Hon. Lea Drake has been the Commissioner for Integrity since her appointment in 2017. From my observations, the Chief Commissioner and Commissioner Drake have been most effective in leading the Commission during the reporting period and have been doing so in a highly professional and collaborative manner. Discussions will nevertheless no doubt continue as to what model or structure best serves the Commission in the future.

One considerable achievement during the reporting period was the development of a Strategic Plan for the Commission for the years 2020-2023. In order to facilitate the implementation of the Strategic Plan, individual sections within LECC have also developed their own Business Plan. Those plans are designed to provide guidance

to staff within the relevant section and assist them to achieve the ultimate objectives of the Strategic Plan.

The critically important issue of the appropriate funding mechanism for LECC (and for other integrity agencies) was addressed in the Auditor-General's Special Report: *The effectiveness of the financial arrangements and management practices in four integrity agencies* dated 20 October 2020. This Office was consulted both by KPMG, which facilitated the creation of LECC's Strategic Plan, and by the Auditor-General during the course of its audit.

4.2 THE COMPLAINT HANDLING FUNCTION

4.2.1 BACKGROUND

In performing this particular function, this Office is very aware of a number of factors which it bears in mind when it is assessing a complaint made to it about the conduct of LECC and/or its officers. The starting point is that although LECC receives a high volume of complaints, it does not have unlimited resources available to deal with them. Moreover, the legislative scheme which underpins the manner in which it handles complaints means that the vast majority of them will, at least in the first instance, be referred to the NSW Police Force for its consideration. Given that LECC alone is in possession of all the relevant material about the entirety of the complaints it receives, it is uniquely placed to assess, prioritise and determine the best course for addressing complaints.

It is also important to observe that the Inspector's powers, as provided for in the LECC Act, are very specific. They are confined to dealing by way of reports or recommendations with complaints about LECC and/or its officers that constitute agency or officer maladministration or officer misconduct. It follows that the Inspector cannot entertain complaints about any persons or agencies other than LECC and/or its officers. So far as LECC itself is concerned, the Inspector does not have power to direct its activities. It cannot, for example, compel LECC to either investigate or not investigate a particular complaint. Equally there is no power to direct LECC as to the manner in which an investigation is to be conducted. Nor is there power to alter or reverse a decision made by LECC. Finally, in the normal course of events (that is when dealing with what may be described as a routine

complaint), OILECC does not perform some kind of appellate function in which it engages in a “merits review” of a decision made by LECC.

Extensive powers are conferred upon OILECC to enable it to perform its complaint handling function. Nevertheless, it is not in the public interest to engage in costly, time-consuming investigations in order to resolve complaints if some other more effective and/or efficient way of doing so can be utilised. Accordingly, each complaint which is received is initially assessed to determine whether it is capable of attracting OILECC’s jurisdiction. If it does, then a decision is made as to whether there is any basis upon which further investigation of the complaint is warranted.

Clearly enough, the complaint handling function is a vitally important part of OILECC’s work as it is for any agency charged with oversight responsibilities. That said, the performance of that function can present significant challenges. On the one hand, an oversight agency has responsibility to ensure that the body whose activities it is required to monitor, is held accountable for its actions. It is equally important to ensure that its role is performed in a transparent manner. On the other hand, the body which is making the initial decision is often provided with information that is of a confidential nature and/or that is particularly sensitive. The agency being monitored, and indeed the oversight agency itself, need to be mindful of those various considerations and must seek to achieve an appropriate balance between them. Complaints which are made anonymously or, in respect of which a claim is made that it is a public interest disclosure, often serve to further highlight just how difficult it can be to achieve that balance. Suffice it to say, that there were several occasions during the reporting period in which issues of this kind arose. Although they were relatively few in number, they nevertheless occupied a significant amount of OILECC’s time and resources because of the particular challenges which they presented.

It is convenient to say a little more about such matters, although a large measure of circumspection is called for. As stated earlier, OILECC finalised 3 complaints as constituting PIDs.

- One of those PIDs was a referral from a senior figure in the NSW Government. The complaint itself was from an anonymous source. Nevertheless it contained a number of allegations which were clearly capable of constituting agency

and/or officer maladministration and officer misconduct. Given the seriousness of some of the allegations and notwithstanding the obvious challenges associated with an anonymous complaint, a very considerable amount of time was devoted over many months to investigating the matter. In the final analysis, none of the complaints were found to have been substantiated on the basis of the available evidence.

- A further PID which was also anonymous was investigated. It was also not found to have been substantiated.
- The final matter concerned Commissioner Saidi's complaint about Chief Commissioner Adams in which he claimed that his complaint was a PID. As Assistant Inspector Bruce McClintock SC noted in his report to Parliament, Mr Saidi ultimately provided his consent for the matter to be investigated.

Although not treated as PIDs, there were several other instances in which a complaint was made but about which the person complained about was unaware. As it happens, in each instance the person complained about, has now left LECC. Following the departure of those persons from LECC the complainant in each matter was advised that, in the circumstances, no further action was going to be taken.

4.2.2 ANALYSIS OF COMPLAINTS RECEIVED

What follows is a summary of complaints received during the reporting period:

- 47 new complaints (2 of which were anonymous) were received, whereas during the previous reporting period 57 new complaints were received.
- Of the 47 new complaints received, 28 were finalised. In addition to the 19 matters which remain unresolved, there are a further 3 matters from the previous reporting period which have still to be finalised.
- In all a total of 54 complaints were finalised, including a considerable number from previous reporting periods. These included matters which had been finalised, reopened following receipt of new material and then completed for a second time.

Beyond the raw figures, the following observations are to be made:

- A number of complaints on their face simply did not fall within the jurisdiction of OILECC. On a few occasions the complaint concerned an individual or

agency unrelated to LECC or indeed the NSW Police Force. Those persons were directed, where it was possible to do so, to the appropriate agency whose details were also provided. On other occasions, the complaints were related solely to the conduct of members of the NSW Police Force and not, as the legislation requires, to the conduct of LECC and/or its officers. Those persons were advised that they may wish to direct their inquiries to LECC. Where it was considered appropriate to do so, a complainant was provided with the contact details of the most convenient community law centre.

- In some instances, it took considerable time and effort (usually by way of lengthy correspondence) to determine whether OILECC did in fact have jurisdiction.
- In other instances, the complaint simply lapsed or was not proceeded with. That usually occurred after a complainant was unable, despite a number of requests to do so, to provide any material that was relevant.
- On a few occasions, a complainant was informed that their complaint was, in effect, premature as the matter was still being considered by LECC and that the appropriate time for the complaint to be considered was when LECC had finalised its consideration of the matter.
- A number of complaints were dismissed because, upon close analysis, they constituted nothing more than dissatisfaction with the decision at which LECC had arrived and in respect of which the complainant was seeking a review of the decision upon the same material. Those complaints were assessed but only in order to determine whether the conduct alleged was of a kind which fell within the terms of s122(1)(b) of the LECC Act.
- There were also a number of complaints that clearly fell within OILECC's jurisdiction. Although there was no instance on which a complaint was actually sustained, it is to be observed that there were however occasions, albeit relatively few in number, on which complainants did raise what appeared to be legitimate concerns about the manner in which LECC had handled their matters. They included complaints that LECC had not kept them informed as to the progress of their matter, that LECC had not responded to them in a timely fashion and that LECC had not provided them with adequate reasons as to the decisions at which it had arrived. That was particularly so in relation to decisions either to take no further action or to refer the complaint

to the NSW Police Force. When those apparent deficiencies were identified by this Office, LECC accepted responsibility for them and indicated that it would address them.

In last year's Annual Report I observed that "(w)hilst it is to be acknowledged that LECC's workload has substantially increased during the reporting period, it is nevertheless of some concern that, on a couple of occasions, requests made by OILECC as to the current status of matters being handled by LECC have gone unanswered for considerable periods of time." I am gratified to be able to record that those concerns have now been allayed.

As had occurred during the previous reporting period, OILECC provided the Chief Commissioner of LECC at 6 monthly intervals on a confidential basis with a schedule of information concerning the resolution of complaints which it had received about the conduct of LECC and/or its officers.

4.3 THE REMAINING FUNCTIONS – AUDITING THE OPERATIONS OF THE COMMISSION AND ASSESSING ITS POLICIES AND PROCEDURES

There is considerable overlap between the two functions which are contained in s122(2)(a) and (c) of the LECC Act respectively. Accordingly, it is convenient to deal with them at the same time. Furthermore, material derived from complaints about the conduct of LECC and/or its officers which the Inspector receives pursuant to his complaint handling function also provides useful background information so far as the performance of those two functions are concerned.

I referred earlier to the importance of having appropriate liaison and communication between the Inspector and Chief Commissioner. Very occasionally, a situation will arise in which the Chief Commissioner may feel the need to discuss an issue with someone who is not part of LECC. Given the secrecy provisions of the LECC Act, it may be appropriate on such occasions for the Inspector's opinion or informal advice to be sought and for the Inspector to act as a kind of "sounding board". However, it is important to stress that an Inspector has no role to play in LECC's decision making processes which remains solely a matter for the Chief Commissioner and/or the remainder of the Executive team. Nor, in my view, is there any basis upon which an Inspector could perform any function which could be seen as constituting an endeavour to "micromanage" the organisation.

During the reporting period, issues about which I have been informed have included the restructure of key positions within LECC and associated personnel changes, financial matters including various budgetary and staffing issues, together with other matters about which it is inappropriate to comment further given that they involve matters of considerable sensitivity.

Furthermore LECC has continued on an ongoing basis to provide updated copies of its policies, protocols and guidelines in all areas of its operations. It has also continued to provide copies of MOUs entered into with other agencies as well as enabling access, where possible, to its databases and information systems.

Although s124 of the LECC Act and the MOU between the two agencies require certain information to be provided, it is to be observed that LECC has nonetheless routinely either volunteered such information or provided it upon request.

LECC also continues to provide OILECC on a regular basis with the agenda, the background papers and, in due course, the minutes for a number of its most important committee meetings. Those Committees are listed below:

- Strategic Operations Committee
- Executive Committee
- Audit and Risk Committee
- Complaints Action Panel

Where additional information or clarification about matters arising from that material is sought, it is provided in a timely fashion. The Principal Legal Officer has on occasions attended the meetings of the Audit and Risk Committee but only in the capacity as an observer.

LECC also provides, on a confidential basis, an audit schedule which sets out details about the performance of its various statutory powers during the preceding month. The items included in the schedule have been expanded during the reporting period. The schedule now contains information about the following matters:

- Section 19(2) - determinations made by the Chief Commissioner and at least one other Commissioner
- Section 32 reports

- Section 54 notices – power to obtain information
- Section 55 notices – power to obtain documents or other things
- Section 58 notices – power to enter public premises
- Section 63 examinations - private and public hearings conducted
- Section 69 summons – power to summon witnesses and take evidence
- Section 79 – search warrants
- Section 84 – surveillance device warrants
- Sections 114 and 115 – monitoring of critical incident investigations
- Section 132 reports
- Section 135(3) reports
- GIPA requests
- PID reviews
- Acquisition and use of assumed identities

Also included is information about applications granted under the *Law Enforcement (Controlled Operations) Act 1997* and warrants issued under the *Telecommunications (Interception and Access) Act 1979 (Cth)*.

It is to be observed that the issue as to what needs to be included in the audit schedule is being constantly reviewed. OILECC has requested, in addition to the present arrangements, that LECC in future provide annual figures for each of the items that appear in the schedule.

In considering this Office's role in performing its audit function, it is to be observed that LECC has important audit functions of its own. These relate to various aspects of the activities of the NSW Police Force and the NSW Crime Commission for which it has oversight responsibilities. LECC is also required by legislation to conduct internal audits of some of its own activities e.g. as to its use of assumed identities. Furthermore, the Audit and Risk Committee of LECC, the composition of which includes a number of external members, performs a critical audit function. On other occasions, outside agencies such as Centium or the Auditor-General, embark upon a review of a particular aspect of LECC's activities. This Office is particularly mindful of the audit functions performed by those different bodies when determining how it will perform its own functions. In doing so, not only will it seek

to avoid unnecessary duplication but it must also give due recognition to the fact that it has only limited time, staff numbers and a finite set of skills available to it.

Two areas of LECC's operations which have attracted particular attention from this Office during the reporting period are the Electronic Collections Unit and the Covert Services Unit. Those audits have initially consisted of analysing the policies, procedures and protocols of those units and making suggestions as to their enhancement. Thereafter, issues have also been raised with each of those units concerning their compliance with their own internal policies but also with any legislation which is relevant to their activities. I am pleased to be able to report that not only have there been high levels of compliance with all aspects of the practices of both those units, but also a preparedness to incorporate suggestions which this Office has made as to how those practices could be improved. On-site inspections have also been conducted in order to expand this Office's understanding of the operational activities of those Units. This Office was also able to observe, for example, that the ECU has installed state of the art technology which, on occasions, has been made available to other investigative agencies for their use.

One aspect of LECC's work which has been, and remains of very considerable interest to OILECC concerns the manner in which LECC conducts its complaint handling processes. The importance of this function, and its contribution to LECC's overall standing in the community, cannot be overstated. It remains a primary focus of this Office's attention. Needless to say, LECC is also very aware of the significance of this area of its work.

In last year's Annual Report I observed that *"LECC is to be commended for engaging the services of Centium in order to conduct a comprehensive audit of LECC's Complaint Assessment Process. Its initial report was delivered in June 2019. Suffice it to say that the report canvasses many of the issues which LECC has, for a considerable period of time, identified as matters that needed to be addressed by LECC. I am advised that LECC has now accepted the recommendations contained in the report and am further advised that the process of implementing them is now well advanced"*.

Over time, including during the reporting period, very considerable improvements have been made by LECC to its complaint handling processes. It has refined its policies, procedures and protocols. Enhancements to the decision-making process

itself, including the composition of the Complaints Assessment Panel and the streamlining of its practices, have also been made. Those changes have led to considerable reductions in the time within which complaints are assessed. The Assessments Team and its leadership deserve credit for making those improvements.

Three main areas of concern, to which reference was made earlier, however remain. The first concerns the decision-making process itself given the fact that the majority of matters are referred, as the LECC Act envisages, to the NSW Police Force. The other two areas concern issues surrounding communication with complainants (including the timeliness of responses and the adequacy of reasons which LECC provides to them) and data collection (including what is collected and how it is stored). Hopefully, the installation of LOIS (LECC's new case management system) and the increased automation of the complaint handling process will assist in each of those areas. This Office is also aware that a further internal review is currently underway.

One area in which LECC has proved to have been particularly effective is its work in highlighting systemic issues within the operations of the NSW Police Force which deserve attention. Of particular significance is the report codenamed Operation Tusk which revealed a large number of errors in the administration of the Child Protection Register. As the former Chief Commissioner observed in the foreword to the report, it was of significance that the report entailed a high degree of collaboration between LECC and the NSW Police Force and that it had relied heavily upon the efforts of many individuals within those agencies who helped to reveal the deficiencies in the administration of the system. The contribution of the Prevention and Education Team within LECC to this and other projects cannot, in my view, be underestimated. Operation Tepito examined the Suspect Targeting Management Plan which has been conducted by the NSW Police Force for a number of years. LECC presented an interim report concerning the impact of the plan upon children and young people. I am advised that the NSW Police Force has accepted all of the recommendations made by LECC, which is a very positive development.

It is also gratifying that the NSW Police Force has responded to LECC's various investigations into strip searching (together with its interim report) by implementing various changes to aspects of its practices and Standard Operating Procedures.

LECC's investigations into highly important and contentious workplace issues such as discrimination, harassment and bullying within the NSW Police Force were identified in Operation Shorewood. This Office has been advised that that critical work is ongoing.

In a further endeavour to gain an understanding of LECC and its operational activities, the Inspector and the Principal Legal Advisor conducted meetings with a number of members of LECC staff (indeed some meetings with staff occurred on more than one occasion). Obviously enough, there were restrictions as to the number and scope of those meetings due to COVID19.

In order to obtain additional insights into how the role of the Inspector might most usefully be performed, both the Inspector and the Principal Legal Officer attended a number of conferences. To the same end, a number of meetings were also conducted with external agencies.

Details of those occasions appear below:

Date	With Whom	Where	Purpose
1 October 2019	Professor Dan Howard SC, Commissioner, Special Commission of Inquiry into 'Ice'	Sydney	Discussion of matters that fall within the scope of his inquiry
28 October 2019	Meeting with Presiding Officers of NSW Parliament	Sydney	To table Inspector's Annual Report
29-31 October 2019	Conference – conducted by APSAC attended by Integrity Agencies	Melbourne	Approaches of such Agencies to anti-corruption and integrity issues
1 November 2019	National Inspectors Conference	Melbourne	Discussion of matters of mutual interest
18 November 2019	Dugald Saunders, Chair of Parliamentary Committee on the Ombudsman, the Law Enforcement	Sydney	To provide a briefing to new Committee Chair about Inspector's functions

	Commission and the Crime Commission		
20 November 2019	Michael Manthorpe, Commonwealth Ombudsman, Inspector of ACT ICAC	Sydney	Discussion of complaint handling processes
3 December 2019	Donald McKenzie, Surveillance Devices Commissioner	Sydney	To provide briefing to inaugural occupant of new position and to discuss his views of his role
17 December 2019	Paul Cronan, Head of Policy and Dr. Deena Rosalyky, Director of Research, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability	Sydney	To discuss potential research areas for Royal Commission
3 February 2020	David Daniels, Alex Kaiser and Juliana Weingarten, Auditor-General's Office	Sydney	To discuss Inspector's views about LECC's overall performance as part of Auditor General's audit of financial arrangements for Integrity Agencies
12 March 2020	Shane Butler, Director, Electronic Collection Unit, LECC	Sydney	Visit as part of audit of ECU by OILECC
19 May 2020	Adrian Renouf and Shahat Eagle from KPMG	Sydney	To discuss Inspector's views in order to assist KPMG in its role as facilitator of a new Strategic Plan for LECC

In addition to the meetings referred to above, there has been considerable ongoing correspondence and liaison with a number of external agencies.

PART 5: CONCLUSION

During next year's reporting period, it is proposed that there should be a continuation of the type of work upon which the Office embarked in its first three years of operations. To that end, it is proposed that meetings will be conducted with those teams or units within LECC which could not be arranged during the current reporting period. It is also envisaged that there will be follow up meetings and further liaison with other teams, and in particular, the Assessment Team.

However, now that the enhancement of LECC's complaint handling process is well underway, it is appropriate that OILECC should direct its attention to other areas of LECC's operations. A logical area to examine is the Oversight Division and in particular, LECC's powers to monitor critical incident investigations. A critical incident is an incident involving a police operation that results in death or serious injury to a person. It is timely to do so as this is an area for which LECC only acquired responsibility after its creation in 2017. At first blush it would appear that more than adequate time has now passed for LECC to be able to implement and embed its policies, practices and procedures for the Oversight Division. I note however that it was a source of considerable frustration for this Office that it had been unable to obtain the information which it had sought on a number of occasions about the progress of that implementation process whilst Commissioner Saidi had responsibility for the Division. Hopefully, I will have some more positive news to report in next year's Annual Report.

As I observed in the two previous Annual Reports, it is a matter of public record that, on occasions, a civilian who is involved in a critical incident often has issues affecting their mental health. They may also be facing other challenges including drug dependency, intellectual and/or developmental disabilities, domestic abuse and/or non-compliance with medication and homelessness. A real and ongoing challenge for the criminal justice system arises when police in the course of their duties are required to interact with a person in such a condition, especially if that person is in a highly agitated state and in possession of a weapon. Needless to say, the challenge is even greater should a death or serious injury occur in those circumstances.

As I have also previously reported, clearly much useful work has been undertaken over many years, and in particular by the various agencies which have an interest in the area, in an attempt to address the challenges which I have identified. This Office will continue to observe how they are addressed in the future. No doubt given the complexity of the issues involved, any meaningful response will require a concerted and cooperative multi-agency approach.

As LECC is dependent upon public funding, it can be safely assumed that its budgetary situation will continue to present it with challenges, particularly given the current health crisis. That in turn will require it to carefully determine its priorities in allocating its resources. In that context I am pleased that LECC has been, and apparently remains, determined to focus its attention upon systemic issues within the agencies for which it has oversight responsibility.

The Hon. Terry Buddin SC
Inspector LECC
20 November 2020