

Annual Report 2021-22

Office of the Inspector of the Law Enforcement Conduct
Commission



Contents

Introduction to this Annual Report under the LECC Act.....	1
1.1 Introduction	2
The Office of the Inspector of the LECC.....	3
2.1 Office administration.....	4
2.1.1 Premises.....	4
2.1.2 Staff.....	4
2.1.3 Budget and finance	4
2.1.4 Website.....	4
The role of the Inspector of the LECC.....	5
3.1 Functions of the Inspector.....	6
3.2 Powers of the Inspector.....	6
3.3 Other relevant legislation.....	7
3.3.1 <i>Government Information (Public Access) Act 2009</i>	7
3.3.2 <i>Public Interest Disclosures Act 1994</i>	8
3.3.3 <i>Telecommunications (Interception and Access) Act 1979 (Cth)</i>	8
The Inspection Functions.....	9
4.1 Preliminary observations.....	10
4.2 Performance of the Inspection Functions.....	10
4.2.1 <i>Telecommunications (Interception and Access) (New South Wales) Act 1987</i>	10
4.2.2 <i>Surveillance Devices Act 2007</i>	12
4.2.3 <i>Law Enforcement (Powers and Responsibilities) Act 2002 – Covert Search Warrants</i>	13
4.2.4 <i>Law Enforcement (Powers and Responsibilities) Act 2002 – Criminal Organisation</i> <i>Search Warrants</i>	14
4.2.5 <i>Law Enforcement (Controlled Operations) Act 1997</i>	15
The Principal Functions.....	18
5.1 Preliminary observations.....	19
5.2 The complaint handling function.....	20
5.3 The remaining functions – auditing the operations of the Commission and assessing its policies and procedures.....	21
Conclusion.....	25
6.1 Conclusion.....	26
Appendices.....	27
Appendix A: Annual Report on the Inspector’s obligations under the <i>Government Information</i> <i>(Public Access) Act 2009</i>	28

Appendix B: Annual Report on the Inspector’s obligations under the *Public Interest Disclosures Act 1994* 33

1

Introduction to this Annual Report under the LECC Act

1.1 Introduction

This is my Annual Report as Inspector of the Law Enforcement Conduct Commission (the LECC or the Commission) for the year ending 30 June 2022 as required by section 141 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act). Pursuant to sections 142(2) and 145(4) of that Act, I recommend that it be made public immediately.

On 1 July 2017 the LECC commenced operation. It was established to replace the Police Integrity Commission (PIC), the Police Compliance Branch of the NSW Ombudsman and the Inspector of the Crime Commission which ceased operation on 30 June 2017. At the same time, the Office of the Inspector of the PIC also ceased to exist and the Office of the Inspector of the LECC came into existence.

Under section 120 of the LECC Act the Governor, on the advice of the Executive Council, appoints the Inspector. The legislation empowers the Parliamentary Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (the Joint Committee) to veto the proposed appointment.

As well as creating the Office of the Inspector of the LECC, section 128 of the LECC Act provides for the employment of staff who may be referred to as members of staff of the Inspector. The Inspector, together with such staff constitute the Office of the Inspector of the LECC (OILECC).

The period to which this Report relates was the fifth and final year of the term of the Hon Terry Buddin SC as the Inspector of the LECC. My 5-year term as Inspector commenced on 1 July 2022, and so will end no later than 30 June 2027. It is on a part-time basis.



The Office of the Inspector of the LECC

2.1 Office administration

2.1.1 Premises

The OILECC shares premises with the Office of the Inspector of the Independent Commission Against Corruption (OIICAC).

The contact details for the Office are set out below.

Postal address: GPO Box 5341, Sydney NSW 2001

Telephone: (02) 9228 3023

Email: oilcexecutive@oilc.nsw.gov.au

2.1.2 Staff

The Inspector has two staff who work in the Secure Monitoring Unit (SMU). The Inspector also shares two support staff with the Inspector of the ICAC (a Principal Legal Advisor and a Business Coordinator).

2.1.3 Budget and finance

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

Its budgeted expenditure for the financial year from 1 July 2021 to 30 June 2022 was \$817,491. Its actual expenditure for that period was \$844,009, which compares with an actual expenditure of \$900,968 in the previous financial year.

During the reporting period the Inspector was paid a daily rate of \$2,110 and a retainer of \$10,000.

2.1.4 Website

OILECC manages its own website with the support of DPC. Its website address is www.oilecc.nsw.gov.au

The website is reviewed and updated on a continuing basis and contains the Inspector's Reports tabled in Parliament, the Office's policies, information about the Inspector's functions and powers and contact information for the Office.

3

The role of the Inspector of the LECC

3.1 Functions of the Inspector

Section 122(2) of the LECC Act, sets out 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), and
- c. assess the effectiveness and appropriateness of the policies and procedures of the Commission relating to the legality or propriety of its activities.

Section 123(1) of the LECC Act permits the functions of the Inspector to 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 the LECC in any respect (section 123(2)).

Various items of NSW legislation which deal with the use of covert investigative powers that are exercised by certain investigative and law enforcement agencies confer functions on the Inspector, including the:

- *Telecommunications (Interception and Access) (New South Wales) Act 1987*
- *Surveillance Devices Act 2007*
- *Law Enforcement (Controlled Operations) Act 1997*
- *Law Enforcement (Powers and Responsibilities) Act 2002* (limited to Criminal Organisation Search Warrants and Covert Search Warrants issued under Part 5).

The Inspector performs the functions of an inspecting officer under the legislation referred to. Until 1 July 2017 the NSW Ombudsman performed those functions. I deal with the performance of these functions during the reporting period in chapter 4 of this Report.

3.2 Powers of the Inspector

Section 124(1) of the LECC Act empowers the Inspector to:

- a. *investigate any aspect of the Commission's operations or any conduct of officers of the Commission,*
- b. *require officers of the Commission to supply information or produce documents or other things about any matter, or any kind of matter, relating to the Commission's operations or any conduct of officers of the Commission,*
- c. *require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission,*
- d. *investigate and assess Commission misconduct matters,*
- e. *refer matters relating to the Commission or officers of the Commission to other agencies for consideration or action,*
- f. *recommend disciplinary action or criminal prosecution against officers of the Commission.*

The Inspector is entitled to full access to the records of the Commission and to take or have copies made of them (section 124(2)).

The Inspector has the power to make a special report to the Presiding Officer of each House of Parliament on any matters affecting the Commission, including, for example, its operational effectiveness or needs, any administrative or general policy matter relating to the functions of the Inspector, any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 122 (Functions of Inspector) that the Inspector considers warrants the making, in the public interest, of a special report (section 140 which appears in Part 11 of the LECC Act).

Sub-section 124(4) provides that without affecting the power of the Inspector to make a report under Part 11, the Inspector may at any time:

- a. *make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and*
- b. *provide the report or recommendation (or any relevant part of it) to the Commission or an officer of the Commission, a person who made a complaint or any other affected person.*

Sub-sections 124(5)-(6) grant further powers to the Inspector in respect of such reports and recommendations, including power to require the Commission to provide to the Inspector, within a reasonable time specified by the Inspector, advice as to whether it intends to implement the recommendation and, if not, the reasons for not doing so.

Section 126 of the LECC Act empowers the Inspector to make or hold inquiries. Sub-section 126(2) confers the same powers, authorities, protections and immunities as are conferred on a Commissioner by the *Royal Commissions Act of 1923* are conferred on the Inspector when holding an inquiry under section 126(1). Any witness summoned by or appearing before the Inspector also has the benefit of the protection and immunities under the *Royal Commissions Act*.

The Inspector has incidental powers under section 127 of the LECC Act to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions.

3.3 Other relevant legislation

3.3.1 Government Information (Public Access) Act 2009

The object of the *Government Information (Public Access) Act 2009* (GIPA Act), as set out in section 3 is, in general terms, to:

- authorise and encourage the proactive public release of government information by agencies
- give members of the public an enforceable right to access government information, and
- provide that access to government information is restricted only when there is an overriding public interest against disclosure.

The GIPA Act provides that an agency must make government information that is its open access information publicly available unless there is an overriding public interest against disclosure of the information. The OILECC's open access information is available on its website www.oilecc.nsw.gov.au

As required by section 20 of the GIPA Act, OILECC has an [Agency Information Guide](#)¹ available on its website. It provides information about the Inspector's functions and the structure of the Office.

¹ <https://www.oilecc.nsw.gov.au/assets/oilecc/AGENCY-INFORMATION-GUIDE.pdf>

The GIPA Act entitles members of the public to make access applications for information held by an agency. However, in respect of information held by the Inspector, it provides that a valid access application cannot be made for “excluded information” held by the Inspector relating to operational auditing, handling of misconduct matters (within the meaning of the LECC Act), investigative and reporting functions. It also provides that there is a conclusive presumption that there is an overriding public interest against disclosure of information held, the disclosure of which is prohibited by the LECC Act (unless the Inspector has consented to the disclosure).

Section 125 of the GIPA Act requires an agency, which includes the Inspector, to prepare an Annual Report on performance of its obligations under the Act. The Inspector’s Report is set out in Appendix A.

3.3.2 Public Interest Disclosures Act 1994

The *Public Interest Disclosures Act 1994* (PID Act) provides certain protections to public officials who report serious wrongdoing in the public sector. It encourages and facilitates the disclosure of:

- corrupt conduct
- maladministration
- serious and substantial waste
- government information contraventions, and
- local government pecuniary interest contraventions.

The Inspector is an investigating authority pursuant to section 4 of the PID Act. To receive protection under the PID 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 of the PID Act requires each public authority, including the Inspector, to prepare an Annual Report on its obligations under the Act. The Inspector’s PID Report is set out in Appendix B.

On 13 April 2022 the *Public Interest Disclosures Act 2022* received assent. It will commence 18 months after the date of assent or an earlier day or days to be appointed by proclamation. Until commencement of that Act, the *Public Interest Disclosures Act 1994* remains in force. The 2022 Act is a re-write of the 1994 Act intended to simplify the public interest disclosure process, provide more comprehensive protections and clarify the duties that agencies have to take steps in response to the disclosures received. The Inspector will be required to comply with the 2022 Act.

3.3.3 Telecommunications (Interception and Access) Act 1979 (Cth)

The Inspector is an “eligible authority” for the purposes of the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act). The Office provided an Annual Report to the Attorney-General under section 96 of the TIA Act, which indicated that the Inspector did not carry out any relevant activity and therefore had no information to disclose.

4

The Inspection Functions

4.1 Preliminary observations

As already indicated the Inspector has various inspection functions in respect of the use of controlled operations, criminal organisation search warrants, covert search warrants, surveillance devices and telecommunications interceptions by certain investigative agencies. Such powers involve significant intrusions into the privacy of individuals and, to provide the community with some degree of assurance that those powers are being used lawfully, the agencies are subject to legislative controls designed to ensure a measure of accountability through reporting and record keeping obligations.

The Inspector has delegated inspection functions to his support staff who work in the SMU. Those staff also assist the Inspector to prepare statutory reports to the Minister or to Parliament, although the reporting function itself has not been delegated. During the reporting period, the structure and content of those reports was revised and updated and updates to the SMU's standard operating procedures were completed.

During inspections, the SMU staff examine the records of each agency to determine if there has been compliance with the relevant record keeping requirements. The SMU staff consider such other aspects of compliance as can be determined from examining those records and questioning the relevant officers. Exceptions or deficiencies identified by the inspection and monitoring process are brought to the attention of the head of the relevant agency prior to the furnishing of the reports required under the respective legislation.

In the last Annual Report, there was reference to the *Report of the Comprehensive Review of the Legal Framework of the National Intelligence Community* (the Comprehensive Review) led by Dennis Richardson AC and the Commonwealth Government's acceptance of a recommendation made in it that the Commonwealth Ombudsman should have oversight responsibility for the use of Commonwealth electronic surveillance powers by all agencies other than ASIO. The review also recommended the repeal of the *Telecommunications (Interception and Access) Act 1979 (Cth)*, *Surveillance Devices Act 2004 (Cth)*, and parts of the *Australian Security Intelligence Organisation Act 1979 (Cth)* to be replaced by one consolidated Act.

By way of update, in late 2021 the Commonwealth Government revealed its Electronic Surveillance Reform project led by the Department of Home Affairs (DHA). In December 2021 DHA released a public discussion paper and invited public submissions. The Inspector did not make a submission in response to the paper as it was indicated that there would be further opportunity to comment on an exposure draft of the proposed electronic surveillance legislation.

4.2 Performance of the Inspection Functions

4.2.1 Telecommunications (Interception and Access) (New South Wales) Act 1987

The *Telecommunications (Interceptions and Access) Act 1979 (Cth)* ("the Commonwealth Act") is the primary legislation covering the interception of telecommunications and access to telecommunications data. Warrants for interception and access are applied for by "agencies" under that Act. The Commonwealth Ombudsman is the relevant inspecting authority for the records of those agencies, but only in relation to the records of Commonwealth agencies. The States and Territories have complementary legislation which enables certain State and Territory authorities to be declared as agencies for the purposes of the Commonwealth Act. So far as NSW is concerned, the *Telecommunications (Interception and Access) (New South Wales) Act 1987 (NSW)* ("the NSW Act") is the relevant complementary legislation. That legislation also imposes record keeping requirements upon those authorities.

The record keeping requirements in NSW apply to all “eligible authorities” within the meaning of that term under section 3 of the NSW Act. Those authorities are the:

- NSW Police Force (NSWPF)
- NSW Crime Commission (NSWCC)
- Independent Commission Against Corruption (ICAC)
- Law Enforcement Conduct Commission (LECC)
- Inspector of the ICAC

The Inspector of the ICAC is an eligible authority of a State for the purposes of both the Commonwealth Act and the NSW Act. The Inspector is therefore subject to the inspection requirements of the NSW Act if the Inspector is ever in receipt of restricted records or lawfully obtained information.

The Inspector of the Law Enforcement Conduct Commission is an eligible authority of a State under the Commonwealth Act. However, the Inspector is not an eligible authority of a State under the NSW Act and is therefore not subject to the record keeping requirements of the NSW Act.

Part 2 of the NSW Act (sections 4 – 8) sets out the administrative responsibilities of the eligible authorities with respect to their procedures and record keeping functions in relation to the issue of telecommunications interception warrants. Sections 4 and 5 of the NSW 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 NSW Act require that certain reports be furnished to the relevant Minister (who is currently the NSW Attorney General). Section 8 makes provision for the keeping and destruction of restricted records.

Part 3 of the NSW Act confers upon the Inspector of LECC the functions of independently inspecting the records of eligible authorities required to be kept under Part 2 of that Act and then reporting about those inspections. Section 10(1) of the NSW Act provides that for inspections to occur as follows:

An inspecting officer must inspect the records of an eligible authority at least twice during each financial year in order to ascertain the extent to which the authority’s officers have complied with Part 2 since the last inspection under this Part (whether before or after the commencement of this section as substituted by the Law Enforcement Conduct Commission Act 2016). (Emphasis added.)

The inspection functions are performed under delegation by the SMU staff. An inspection officer may also, pursuant to section 12 of the NSW Act, include information concerning contraventions of the Act in the report to the Minister. Inspecting officers are also provided with specific powers, pursuant to sections 13 and 14 of the NSW Act, to enable them to obtain relevant information from an eligible authority.

Inspections were conducted at each of the eligible authorities (excluding the Inspector of the ICAC) during the 1 July 2021 to 30 June 2022 reporting period. The overwhelming majority of all telecommunications interception warrants sought during the reporting period were made by the NSW Police Force.

The requirement for the Inspector to report about those inspections is set out in section 11 of the NSW Act which is in the following terms:

(1) An inspecting officer must, as soon as practicable, and in any event within 3 months, after the end of each financial year, report to the Minister in writing, in relation to an eligible authority, about the results of the inspections under section 10 (1), during that financial year, of the authority’s records.

(2) The inspecting officer must include the following in each report under subsection (1) in relation to a financial year –

(a) a summary of the inspections conducted in the financial year under section 10,

(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.

Note—

In complying with this section, the inspecting officer remains bound by section 63 of the Commonwealth Act, which prohibits the disclosure of intercepted information or designated warrant information.

(3) *The inspecting officer may report to the Minister in writing at any time about the results of an inspection under this Part and must do so if so requested by the Minister.*

(4) *The inspecting officer must give a copy of a report under subsection (1) or (3) to the chief officer of the eligible authority to which the report relates.*

In compliance with that requirement, the Attorney General was provided with a report in September 2022 detailing the results of inspections conducted of agency records for the period from 1 July 2021 to 30 June 2022. There is no provision requiring the tabling of the report in Parliament. However, section 20 of the NSW Act provides that the Attorney General 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 Attorney-General).

4.2.2 Surveillance Devices Act 2007

The *Surveillance Devices Act 2007* (SD Act) provides a comprehensive framework for law enforcement agencies to use surveillance devices in criminal investigations and covertly gather evidence for criminal prosecutions. It provides strict requirements around the installation, use and maintenance of surveillance devices, which include listening devices, optical surveillance devices, tracking devices and data surveillance devices. Law enforcement officers, within the meaning of the SD Act, may apply for surveillance device warrants and retrieval warrants.

Section 48(1) requires:

(1) The Inspector must, from time to time, inspect the records of each law enforcement agency (other than the Australian Crime Commission) to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.

Note—

Under section 55 of the Surveillance Devices Act 2004 of the Commonwealth, the Commonwealth Ombudsman is required to inspect the records of the Australian Crime Commission to determine the extent of the Commission's compliance with this Act. Under section 61 of that Act, the Commonwealth Ombudsman is required to report the results of the inspection to the Commonwealth Minister, lay the report before the Commonwealth Parliament and send a copy of the report to the Minister administering this Act.

Sections 48(2) and (3) contain additional provisions that enable the Inspector to access the necessary records of the law enforcement agencies. The inspections are performed under delegation by the SMU staff.

The law enforcement agencies which were the subject of inspections during the reporting period were the:

- NSW Police Force
- NSW Crime Commission
- ICAC and
- LECC.

The majority of surveillance device warrant files for the reporting period were inspected, a process that involved an examination of the application, the warrant, the required notice to the Surveillance Devices Commissioner (as the Attorney-General's delegate) under sections 17(5A) and 25(5A) and the report to the eligible Judge who issued the warrant and to the Surveillance Devices

Commissioner (as the Attorney-General's delegate) as required by section 44, together with any other information contained on the file to ensure that there had been compliance with the various statutory requirements.

The Inspector is required, pursuant to section 49(1) of the SD Act, to report to the Minister (being the Attorney General) at six monthly intervals on the results of inspections. The Attorney General is required by section 49(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, the Attorney General was provided with a report in March 2022 detailing the results of inspections conducted of agency records for the period from 1 July 2021 to 31 December 2021, and a report in September 2022 detailing the results of inspections conducted of agency records for the period from 1 January 2022 to 30 June 2022. The [March 2022 report](#)² and the [September 2022 report](#)³ is available on the OILECC website.

4.2.3 Law Enforcement (Powers and Responsibilities) Act 2002 – Covert Search Warrants

The power to seek and issue covert search warrants is contained within the *Law Enforcement (Powers and Responsibilities) Act 2002* ("LEPR Act"). Covert search warrants provide eligible law enforcement agencies, and their officers, with the authority to enter and search premises without the knowledge of the occupiers, in relation to the investigation of serious offences. Further if it is necessary to do so in order to enter the subject premises, the executing officers are also authorised to enter premises adjoining or providing access to the subject premises (adjacent premises), without the knowledge of the occupier of the adjacent premises, impersonate another person for the purposes of executing the warrant, and to do anything else that is reasonable for the purpose of concealing anything done in the execution of the warrant from the occupier of the premises.

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 a "serious offence" as defined in section 46A of the LEPR Act.

Sections 46C and 47 provide that an "eligible applicant" from within the:

- NSWPF
- NSWCC and
- LECC

may apply to an "eligible issuing officer" (that is an "eligible judge" of the Supreme Court) for "a covert search warrant", which is defined in section 3 of the Act as being "a search warrant issued under Division 2 of Part 5 that may be executed covertly."

While the initial searching may be done covertly, the occupier must eventually be given formal notice that it has occurred. Section 67(8) provides that the executing officer must serve the occupier's notice as soon as practicable after the warrant is executed, unless the service of the notice is postponed by the issuing Judge under section 67A. Service may be delayed for up to six months at a time and is usually delayed for several months after the search. 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.

Section 242(1) of the LEPR Act requires the Inspector to "inspect the records of the NSW Police Force, the New South Wales Crime Commission and the Law Enforcement Conduct Commission

² <https://www.oilecc.nsw.gov.au/assets/oilecc/reports/inspection-reports/OILECC-Report-under-Section-491-of-the-Surveillance-Devices-Act-2007-For-the-period-ending-31-December-2021.PDF>

³ <https://www.oilecc.nsw.gov.au/assets/oilecc/reports/inspection-reports/Report-under-section-491-of-the-Surveillance-Devices-Act-2007-for-the-period-ending-30-June-2022.pdf>

under Part 5 in relation to covert search warrants every 12 months after the substitution of this section by the amending Act for the purpose of ascertaining whether or not the requirements of that Part (in so far as it relates to covert search warrants) are being complied with.” Section 242(2) also provides the Inspector with powers to access records in relation to the warrants that are the subject of inspection.

The inspections were performed under delegation by the SMU staff. 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. Follow up inspections to confirm that occupier’s notices had been served as soon as any period of postponement had expired were also conducted.

Pursuant to section 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 to the Minister for Police. The Attorney General is required by section 242(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.

In compliance with that requirement, the Attorney General and the Minister for Police were each provided with a report in June 2022 detailing the results of inspections conducted of agency records for the period from 29 May 2021 to 28 May 2022. That report will be published on the website after it has been tabled in the NSW Parliament.

4.2.4 Law Enforcement (Powers and Responsibilities) Act 2002 – Criminal Organisation Search Warrants

The power to seek and issue criminal organisation search warrants is also contained within the *Law Enforcement (Powers and Responsibilities) Act 2002* (“LEPR Act”). Criminal organisation search warrants authorise any executing officer for the warrant to enter the subject premises, and to search the premises for things connected with a particular searchable offence in relation to the warrant.

Sections 46D and 47 of the Act provide that a NSWPF officer who is an “eligible applicant” may apply to an “eligible issuing officer” (that is an “eligible judge” of the Supreme Court) for a “criminal organisation search warrant”, which is defined in section 3 of the Act as being 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 issuing Judge for a criminal organisation search warrant in respect of the premises.

A “searchable offence” is defined in section 46A 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”. Section 46AA in turn, amongst other things, defines “organised criminal activity” and “serious violence offence”.

Section 242(4) of the LEPR Act requires the Inspector to “inspect the records of the NSW Police Force under Part 5 in relation to criminal organisation search warrants every 2 years after the substitution of this section by the amending Act for the purpose of ascertaining whether or not the requirements of that Part (in so far as they relate to criminal organisation search warrants) are being complied with.” Section 242(5) also provides the Inspector with powers to access records in relation to the warrants that are the subject of inspection.

Each criminal organisation search warrant file held by the NSWPF for the reporting period was inspected, a process that involved an examination of the application, the warrant itself, the

occupier's notice, 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. Other records which were held by the NSWPF relating to the execution of criminal organisation search warrants were also examined in a further endeavour to ensure that there had been compliance.

Pursuant to section 242(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 to the Minister for Police. The Attorney General is required, pursuant to section 242(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.

In compliance with that requirement, the Attorney General was provided with a report on 3 September 2021 detailing the results of inspections conducted of agency records for the period from 7 August 2019 to 6 August 2021. The September 2021 report⁴ is available on the OILECC website.

The next Report in respect of inspections conducted between 7 August 2021 and 6 August 2023 is due to be presented to the Attorney-General as soon as practicable after 6 August 2023.

4.2.5 Law Enforcement (Controlled Operations) Act 1997

The *Law Enforcement (Controlled Operations) Act 1997* ("LECO 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 LECO 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),*
- being an operation that involves, or may involve, a controlled activity.*

A "controlled activity" is defined in section 3(1) as "an activity that, but for section 16, would be unlawful." (Section 16 will be referred to in due course.)

Section 3(1) 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.*

⁴ <https://www.oilecc.nsw.gov.au/assets/oilecc/reports/inspection-reports/Report-under-section-2426-of-the-Law-Enforcement-Powers-and-Responsibilities-Act-2002-COSW-2021.pdf>

Section 5(1) enables a law enforcement officer to apply to the “chief executive officer” (which is defined in section 3(1) of the Act) of the law enforcement agency to conduct a controlled operation on behalf of the agency. Provision is made in section 5(2) for the making of an urgent application. Section 5(2A) 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 Law Enforcement (Controlled Operations) Regulation 2017 (“LECO 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.

Part 4 of the Act provides for the monitoring by the Inspector of controlled operations which are authorised by the chief executive officer of an agency. Section 21 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 LECO Regulation.

Section 22(1) 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) provides that the provisions of the *Telecommunications (Interception) (New South Wales) Act 1987* 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 under sections 13 and 14 of the NSW Act to enable them to obtain relevant information from an eligible authority.

The process of monitoring controlled operations may be contrasted with the process for monitoring other covert investigative methods, such as the use of surveillance devices and telecommunication interceptions. Furthermore, those covert investigative methods are authorised externally by means of a warrant which is issued by a judicial officer whereas controlled operations are authorised internally by the law enforcement agencies empowered to conduct operations under the LECO Act.

Accordingly, inspections are conducted in a manner that is designed to ensure that 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, are carefully scrutinised. 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.

The Inspector is required, pursuant to section 23(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) requires that the report must include, for each law enforcement agency, certain particulars including, among other things, 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.

In compliance with that requirement, a report was furnished to the Presiding Officer of each House of Parliament on 19 November 2021 detailing the results of inspections conducted of agency records for the period 1 July 2020 to 30 June 2021. The November 2021 report⁵ is available on the OILECC website.

⁵ <https://www.oilecc.nsw.gov.au/assets/oilecc/reports/inspection-reports/Annual-Report-pursuant-to-s231-of-the-Law-Enforcement-Controlled-Operations-Act-1997-for-the-12-months-ending-30-June-2021-19-November-2021.pdf>

5

The Principal Functions

5.1 Preliminary observations

In addition to the inspection functions described in the previous chapter, the Inspector also performs an oversight role in relation to the activities of LECC. The principal functions, as stated above, are set out in section 122(2) of the LECC Act. It is important, I consider, for effective performance of the oversight functions set out in that provision that the appropriate working relationship exists between the Inspector's Office and the LECC.

To that end, my predecessor and the then Chief Commissioner executed a Memorandum of Understanding (MOU) on 17 May 2018. It was that MOU that applied during the relevant reporting period. The present Chief Commissioner and I entered into a fresh MOU on 27 September 2022. Both documents set out arrangements for communication and information exchange between the Inspector and the Commission concerning issues such as the referral of complaints, access to information and points of contact between both agencies. A copy of the current MOU⁶ appears on the OILECC website, replacing the previous version.

The primary point of contact is between the Inspector and the Chief Commissioner. Such contact includes the exchange of correspondence as well as meetings at which issues concerning the Inspector's functions and the conduct, operations and governance of the Commission may be discussed.

In addition to maintaining contact with members of the Executive Team, OILECC often meets or corresponds with other members of staff who occupy significant leadership roles at LECC. There is also continuous contact between key members of LECC's operational staff and members of OILECC staff.

In previous years the Inspector and the Principal Legal Advisor have been able to attend a number of conferences in an endeavour to obtain additional insights as to how the role of the Inspector might most usefully be performed. In a similar vein, a number of meetings were conducted with the LECC and external agencies in previous years. The capacity to do so during the current reporting period was significantly reduced because of the impact of COVID-19.

Near the end of the reporting period, there were significant changes in the leadership of the LECC. On 11 April 2022 the 5-year term of Commissioner the Hon Lea Drake ended and on 16 May 2022 the 5-year term of Commissioner Anina Johnson commenced. The term of then Chief Commissioner the Hon Reginald Blanch KC was extended until 3 July 2022 and on 4 July 2022 the Hon Peter Johnson SC commenced a 5-year term as Chief Commissioner.

Another development during the reporting period was the NSW Government's response to the report of the Legislative Council's Public Accountability Committee entitled "*Budget process for independent oversight bodies and the Parliament of New South Wales Final Report*" and the Auditor-General's October 2020 report entitled "*The effectiveness of the financial arrangements and management practices in four integrity agencies*". As part of its response, the Government outlined its decision to change the funding arrangements for integrity agencies in NSW, including the LECC. The Government's new model, to be implemented during the 2022-23 financial year includes the following measures, among others:

- removal of the LECC from the Premier and Cabinet cluster financial management processes
- establishment of a specialist integrity agency unit within NSW Treasury to manage the funding process
- provision of funding decisions to integrity agencies in writing and, if relevant, reasons for variation from a funding bid.

⁶ <https://www.oilecc.nsw.gov.au/assets/oilecc/reports/mou/Signed-MOU-27-September-2022.pdf>

The Government has indicated that a Treasurer's Direction, which will be drafted in consultation with the integrity agencies, will be made to codify the arrangements.

5.2 The complaint handling function

The Inspector's powers in respect of complaint handling under the LECC Act are very specific. They are confined by section 122(2)(b) to dealing, by way of reports or recommendations, with conduct amounting to agency maladministration on the part of the LECC and conduct amounting to officer misconduct or officer maladministration on the part of officers of the LECC, whether or not the subject of a complaint.

The Inspector is not empowered to deal with 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 or operations. He 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 does the Inspector have power to alter or reverse a decision made by LECC. Finally, OILECC does not exercise an appellate function in which it engages in a "merits review" of a decision made by LECC.

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.

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

- 52 new complaints (1 of which was anonymous) were received, whereas during the previous reporting period 43 new complaints had been received.
- Of the 52 new complaints received, 40 were finalised during the period and 12 remained open at the end of the period.
- A total of 47 complaints were finalised during the period, including 7 from a previous reporting period.

The following observations may be made about the complaints that the Inspector dealt with during the reporting period:

- Several complaints were outside the Inspector's jurisdiction, for example, because the complaint concerned agencies other than LECC, such as the NSW Police Force itself. In those instances, the complainant was, where possible, provided with the contact details of the appropriate complaint handling body.
- In respect of several complaints a substantial volume of correspondence was exchanged with the complainant in order to clarify the specific conduct complained of and to determine whether the Inspector did in fact have jurisdiction to deal with it. In some instances, the complaint lapsed or was not proceeded with in circumstances where the complainant failed to provide material to establish that the Inspector's jurisdiction was enlivened.
- On a few occasions, the complaint concerned a matter that was still being considered by the LECC. In those circumstances the complainant was generally informed that the appropriate time to make a complaint to the Inspector was when LECC had concluded its handling of the matter.
- Several complaints were dismissed because, upon close analysis, they expressed mere dissatisfaction with the LECC decision and in respect of which the complainant was seeking a review on the same material. Those complaints were assessed but only to determine whether the conduct alleged was of a kind which fell within the terms of section 122(2)(b) of the LECC Act.
- There were also several complaints which clearly fell within the Inspector's jurisdiction. Although there was no instance on which a complaint was sustained, there were occasions on which complainants did raise what appeared to be legitimate concerns about the way 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 matters were referred to the LECC for a response, it accepted responsibility for them and indicated that it would address them.

As he had during previous reporting periods, the then Inspector provided the Chief Commissioner of the LECC with a schedule of information concerning the resolution of complaints which it had received about the conduct of LECC and/or its officers. The information provided in that schedule was nevertheless designed to ensure, wherever necessary, that the confidentiality of individuals was also protected.

5.3 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 section 122(2)(a) and (c) of the LECC Act therefore 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.

As indicated earlier, section 122(2)(c) requires the Inspector to assess the “effectiveness and appropriateness” of LECC’s policies and procedures “relating to the legality or propriety of its activities”. To assist the Inspector in performing that task, LECC regularly provided him with updated copies of its policies and procedures concerning all areas of its activities.

The Inspector also receives the agenda, the background papers and, in due course, the minutes from each of the meetings of LECC’s most important committees. Those committees and the frequency with which they are scheduled to meet are set out below:

- Strategic Operations Committee (monthly)
- Executive Committee (weekly)
- Audit and Risk Committee (quarterly)
- Complaints Action Panel (weekly).

That material was routinely read by the Inspector and occasionally additional information and/or clarification was sought about matters arising from it. For example, the Inspector (and support staff on his behalf) corresponded with the LECC about the policies it had in place to guide its decision-making process to determine under which section of the LECC Act the Commission will furnish a report about its investigations, complaint handling or other work. As a result of that correspondence, the LECC indicated it would develop a guideline for that purpose, which will in turn inform its decisions as to whom its reports will be released.

The LECC CEO also routinely forwards to the Inspector’s Office a weekly update email that she sends to Commission staff about operational and staffing matters. Other material which is also regularly provided includes the Monthly Activities report and the results of the People Matter Employment Surveys (PMES). That material gives insight into LECC’s workplace culture.

The Inspector also receives the minutes of the Misconduct Themes Committee (MTC) (which serves as a forum for staff across the Commission to participate in the identification and response to systemic issues, emerging trends or themes that may benefit from a coordinated, proactive or strategic response) provides a further opportunity for the Inspector to gain a different perspective about aspects of LECC’s activities.

To better enable the Inspector to perform his audit function under section 122(2)(a) of the Act, LECC also provides, on a confidential basis, an audit schedule which sets out high level details about the performance of its various statutory powers during the preceding month. The schedule contains statistical information about the following matters:

- Section 19(2) decisions
- 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 – including the decision as to whether a private and/or a public hearing is to be 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 134 reports
- Section 135(3) reports
- Section 136 reports
- Requests for information under the GIPA Act
- The number of complaints received that were assessed under the PID Act
- The number of assumed identities acquired
- The number of integrity checks about NSW Police Force personnel which LECC is required to conduct pursuant to sections 24, 34 and 72 of the *Police Act 1990*
- Applications granted under the LECO Act
- Warrants issued under the TIA Act.

LECC also has important audit functions of its own. For example, it is required by legislation to conduct internal audits of some of its own activities such as its use of assumed identities. Furthermore, the Audit and Risk Committee (ARC) of LECC, which includes several external members, performs a critical audit function and is required to oversee the Commission's risk management. On other occasions, outside bodies such as Centium (the LECC's internal auditor which operates as an adjunct to the ARC) or the Auditor-General, review particular aspects of the LECC's activities. The Inspector is particularly mindful of the audit functions performed by those different bodies when determining how OILECC will perform its own and seeks to avoid unnecessary duplication of effort. To that end, during the reporting period the Principal Legal Advisor attended 3 of the LECC's ARC meetings as an observer and the Inspector received all papers presented to each of the LECC's quarterly ARC meetings.

One aspect of LECC's work which was of interest to the then Inspector throughout his term was LECC's performance of its complaint handling function and how it communicates with complainants. During the reporting period the Inspector referred a complaint to then recently appointed Commissioner Anina Johnson so that the Commission might provide a response to the complainant's allegations, but also so that LECC's new leadership could consider how the Commission engages with complainants. Of relevance to the latter issue, in a letter to the Commissioner dated 17 June 2022, the Inspector stated:

...the manner in which complainants are informed about decisions made by LECC is of critical importance to all concerned. Although it is but a single instance, this particular complaint may provide you with some useful insights into the broader question of LECC's decision making processes and the reasons that are communicated to any particular complainant about the decision(s) which LECC has made.

In response, Commissioner Johnson indicated that the LECC was reviewing its correspondence templates. The Commissioner has indicated that LECC will keep the Inspector informed of its progress with that review.

Throughout his term, the then Inspector also had a great interest in the Commission's performance of its critical incident monitoring function under Part 8 of the LECC Act which is handled by its Oversight Division. In the Inspector's 2020-21 Annual Report, he noted:

As this is an area for which LECC first acquired responsibility upon its establishment in 2017, it is timely that its work in this area should now be carefully scrutinised. Moreover, it is also an area of LECC's operations that the Joint Committee in its 2020 review of the Annual Reports of oversight bodies indicated that it would be monitoring. As this is another area of LECC's operations in which this Office has regularly expressed an interest, I am pleased to note that LECC has initiated its own internal report about that aspect of its operations. As I understand the situation, it is anticipated that that report will be completed in the near future and that its findings will then be presented to Parliament.

Following inquiries with senior LECC staff the Inspector received a written briefing on the status of the LECC's draft report. In a letter to the Commission dated 27 June 2022 in which the Inspector commented on the draft, he noted:

A key component in any discussion about critical incidents is the issue of the mental health of the various participants in any particular episode. This is a matter to which I have referred in recent Annual Reports of the Inspector of LECC and, on a more informal basis, with senior members of the Commission. In my view, LECC has the opportunity to play a pivotal role in addressing the challenges that arise in this area.

On 27 May 2022 the Inspector furnished a Special Report under section 140 of the LECC Act to the Presiding Officers of both Houses of Parliament. It was entitled "Special Report on an Audit of the Law Enforcement Conduct Commission's acquisition and use of Assumed Identities and other matters related to the system of oversight of covert investigative powers in NSW".⁷

The Special Report addressed two overlapping issues:

1. an audit of LECC's use of assumed identities under the powers conferred by the *Law Enforcement and National Security (Assumed Identities) Act 2010* (pursuant to sections 122(2)(a) and (c) of the LECC Act)
2. an identification of systemic issues arising from the performance of the Inspector's inspecting and reporting functions (pursuant to section 122(1) of the LECC Act).

The following three recommendations were made:

1. That the NSW Government give consideration to undertaking a comprehensive review of the legal framework concerning the use and external oversight of covert powers by law enforcement agencies in NSW.
2. That the NSW Government give consideration to making legislative provision for a dedicated agency which is authorised to provide external oversight of the use of AIs by law enforcement agencies in NSW.
3. That OILECC conduct regular audits of the use of AIs by LECC.

⁷ <https://www.oilecc.nsw.gov.au/assets/oilecc/reports/special-reports/Special-Report-Office-of-the-Inspector-of-the-Law-Enforcement-Conduct-Commission-May-2022.pdf>

The recommendation in relation to further inspections of LECC was accepted by Chief Commissioner Blanch before the end of his term. The other two recommendations are matters for the NSW Government and the Inspector sent copies of his Special Report to members of the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission and to the Secretary of the Department of Premier and Cabinet and Department of Communities and Justice for their consideration.

6

Conclusion

6.1 Conclusion

This Annual Report concerns the performance of the Inspector's functions before I commenced my term of appointment on 1 July 2022. It is therefore brief in nature. I take this opportunity to acknowledge the work of the Hon Terry Buddin SC, who was the inaugural Inspector of the LECC, and look forward to picking up where he left off to continue effective oversight of the LECC.

I now make some short remarks about work performed since I commenced my term as Inspector so that Parliament is aware of the current status of outstanding matters. As of 1 July 2022, there were 12 outstanding complaints from the 2021-22 financial year. At the time of writing this Annual Report, I have finalised 10 of those complaints. In relation to the remaining 2, I have assessed each of them and taken steps in order to progress their investigation or resolution, for example, by requesting information from the LECC and/or the complainant. I anticipate that those complaints will be finalised by the end of the 2022-23 financial year.



Bruce McClintock SC

Inspector, Law Enforcement Conduct Commission

19 October 2022

7

Appendices

Appendix A: Annual Report on the Inspector's obligations under the *Government Information (Public Access) Act 2009*

Section 125 of the GIPA Act requires an agency to prepare an annual report on its functions under the Act. Clause 8 of the Government Information (Public Access) Regulation 2018 (the Regulation) outlines what must be included in the report. The Inspector's report is set out in this appendix.

Section 7(3) of the GIPA Act provides that "an agency must, at intervals of not more than 12 months, review its program for the release of government information under this section to identify the kinds of government information held by the agency that should in the public interest be made publicly available and that can be made publicly available without imposing unreasonable additional costs on the agency."

During the reporting period, the Office's website content was reviewed to assess what, if any, further information could be pro-actively released. The Office ensures that the Inspector's reports that are tabled in the NSW Parliament are made available on its website. Other than those reports and the Annual Reports, there is limited information held by the Office that can be proactively released due to the sensitive and confidential nature of material handled by the Office. However, during the reporting period existing information on the Office website was updated.

The Inspector did not receive any access applications during the reporting period (including withdrawn applications but not including invalid applications).

The Inspector did not receive any applications during the reporting year that it refused, either wholly or partly, because the application was for the disclosure of information referred to in Schedule 1 to the Act (information for which there is conclusive presumption of overriding public interest against disclosure).

Tables A to I over the page provide statistical information about access applications as required by clause 8(d) and Schedule 2 of the Regulation.

Table A: Number of applications by type of applicant and outcome*

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	0	0	0	0	0	0
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not for profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (application by legal representatives)	0	0	0	0	0	0	0	0
Members of the public (other)	0	0	0	0	0	0	0	0

* More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table B.

Table B: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with information	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications*	0	0	0	0	0	0	0	0
Access applications (other than personal information applications)	0	0	0	0	0	0	0	0
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

* A *personal information application* is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual).

Table C: Invalid applications

Reason for invalidity	Number of applications
Application does not comply with formal requirements (section 41 of the Act)	0
Application is for excluded information of the agency (section 43 of the Act)	1
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	1
Invalid applications that subsequently became valid applications	0

Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

	Number of times consideration used*
Overriding secrecy laws	0
Cabinet information	0
Executive Council information	0
Contempt	0
Legal professional privilege	0
Excluded information	0
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Information about complaints to Judicial Commission	0
Information about authorised transactions under <i>Electricity Network Assets (Authorised Transactions) Act 2015</i>	0
Information about authorised transaction under <i>Land and Property Information NSW (Authorised Transaction) Act 2016</i>	0

* More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table E.

Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act

	Number of occasions when application not successful
Responsible and effective government	0
Law enforcement and security	0
Individual rights, judicial processes and natural justice	0
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of Information legislation	0

Table F: Timeliness

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	0
Decided after 35 days (by agreement with applicant)	0
Not decided within time (deemed refusal)	0
Total	0

Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review	0	0	0
Review by Information Commissioner*	0	0	0
Internal review following recommendation under section 93 of Act	0	0	0
Review by NCAT	0	0	0
Total	0	0	0

* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

Table H: Applications for review under Part 5 of the Act (by type of applicant)

	Number of applications for review
Applications by access applicants	0
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	0

Table I: Applications transferred to other agencies under Division 2 of Part 4 of the Act (by type of transfer)

	Number of applications transferred
Agency-initiated transfers	0
Applicant-initiated transfers	0

Appendix B: Annual Report on the Inspector's obligations under the *Public Interest Disclosures Act 1994*

Section 31 of the PID Act requires each public authority to prepare an annual report on its obligations under the Act for the relevant reporting period. Clause 4 of the Public Interest Disclosures Regulation 2011 (PID Regulation) outlines what must be included in the report. The Inspector's report is set out in this appendix.

The Inspector has a public interest disclosures policy⁸ which is published on its website.

During the reporting period the Inspector again provided staff who assist with the handling of PIDs a copy of the legislation and PID policy and drew their attention to its application.

Tables J and K over the page provide statistical information as required by the PID Regulation.

⁸ <https://www.oilecc.nsw.gov.au/assets/oilecc/FINAL-PID-Policy-Mar-19.pdf>

Table J: the number of public officials who made a PID during 2021-22

Type of PID	Number of PIDs	Number of public officials	PIDs finalised
PIDs made by public officials in performing their day-to-day functions as public officials	1	1	1
PIDs made under a statutory or legal obligation (other than those made by public officials performing their day-to-day functions)	0	0	0
All other PIDs	0	0	0
Total	1	1	1

Table K: Types of allegations made in PIDs during 2021-22

Type of PID	Corrupt conduct	Maladministration	Serious and substantial waste	Government information contravention	Local government pecuniary interest contraventions	Total
PIDs made by public officials in performing their day-to-day functions as public officials	1	0	0	0	0	1
PIDs made under a statutory or legal obligation (other than those made by public officials performing their day-to-day functions)	0	0	0	0	0	0
All other PIDs	0	0	0	0	0	0
Total	1	0	0	0	0	1

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