

2022 Review of Annual Reports of Oversighted Bodies

Answers to questions taken on notice by the Inspector of the Law Enforcement Conduct Commission during the public hearing on 28 September 2022

Question 1: The Chair of the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (at page 14) of the uncorrected transcript asked:

The CHAIR: In relation to the, I guess, role that you're now in, and accepting that it being a very short period and even shorter when you're factoring in I guess a farewell tour, the complaints that you're actually receiving about the LECC, is it from members of the public primarily, or is it more members of say the police force who feel that the investigation hasn't accurately viewed or assessed what has occurred? I'm just curious as to how those two processes where you have one body being the police force that's obviously – their conduct is being investigated, but then you've also got the public who have the police force engaging with them and out of that can be born a complaint process, but then ultimately ends up at the LECC. Is there an equal feeling that there is perhaps concern as to – on those two bodies as to how the LECC is conducting itself?

Mr McCLINTOCK: The complaints come from both sources. You get complaints from members of the public who feel that their complaint about the police has been dismissed and that they think the complaint is justified. There are also complaints from police who complain about the processes and about the result. I'm not in a position to give you a proportionate breakdown of what they are. Perhaps Ms Delahunty might be able – yes, but we can take – can't do it right now, we could take that on notice, but they do come from both sources. The police complain about not being accorded procedural fairness and things like that.

Response:

In response to this question, I provide statistics relating to the financial year which immediately preceded the commencement of my appointment as Inspector.

During the 2021-22 financial year, the then Inspector received 52 complaints. Of those, 2 were made by current NSW Police Force Officers and 50 were made by other members of the public.

Question 2: Mr Adam Searle of the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (at page 15) of the uncorrected transcript asked:

The Hon. ADAM SEARLE: I find that interesting, Mr McClintock, because there are of course procedural fairness requirements on the LECC, the reports are anonymised, and unless I'm mistaken, I think in the whole time the LECC has existed it has not used its powers to conduct any public hearings, totally contrary, for example, to your experience at the ICAC where public hearings are quite frequent. So police, even the ones found to have engaged in unsatisfactory conduct, in one sense are not in the same position as a person in front of the ICAC found to have also done wrong. Their names are withheld.

Mr McCLINTOCK: Yes, but there is a difference though because they can be dismissed.

The Hon. ADAM SEARLE: They can be.

Mr McCLINTOCK: Whereas ICAC can't. ICAC simply makes a finding. I'm not suggesting that...

The Hon. ADAM SEARLE: It tends to have the same effect though.

Mr McCLINTOCK: It can have the same effect, but indirectly. But I'm not suggesting a finding of corrupt conduct by the ICAC is a pleasant thing to have happened to anyone, but I think what you're really — and you're right as I understand it that there have been no public hearings. I do remember Chief Commissioner Adams in 2016 informally consulting me about a particular matter where he thought it might be appropriate to have the very first public hearing but it didn't go ahead, as I recall. Ms Delahunty reminds me there was a public hearing in Operation Tabor. Perhaps we should — perhaps I should write a letter to you or write a letter to the Chairman expressing — mentioning what that matter was.

The CHAIR: That would be very interesting.

Mr McCLINTOCK: I will. I will.

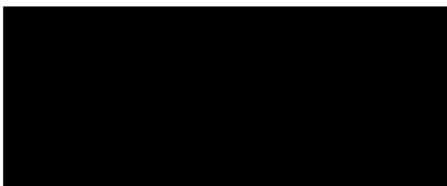
Response:

In 2018 the Law Enforcement Conduct Commission (LECC) held public hearings in Operation Tabor and presented a report to Parliament about it under section 132 of the *Law Enforcement Conduct Commission Act 2016*. The LECC has an active webpage with information relating to that Operation: <https://www.lecc.nsw.gov.au/investigations/past-investigations/2018/operation-tabor>

The LECC has also held public hearings for its investigations in:

- Operation Cusco
- Operation Gennaker
- Operation Brugge
- Operation Corwen (for the purpose of submissions only, evidence was taken from the involved officers in private examinations).

For further information about the LECC's investigations and public hearings, the Committee may wish to contact the Commission directly.



Bruce McClintock SC
Inspector, Law Enforcement Conduct Commission

7 October 2022

Memorandum of Understanding
between
the Law Enforcement Conduct Commission
and the Inspector of the Law Enforcement Conduct Commission

1. Parties

- 1.1 This Memorandum of Understanding (MOU) is made on the ^{27th} September 2022 between the Law Enforcement Conduct Commission ("the Commission") and the Inspector of the Law Enforcement Conduct Commission ("the Inspector").

2. Background

- 2.1 The Inspector's role was established by Part 9 of the *Law Enforcement Conduct Commission Act 2016* (the LECC Act).
- 2.2 The principal functions of the Inspector are set out in Section 122 of the LECC Act which provides that:
- 2) *The principal functions of the Inspector are:*
 - a) *to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*
 - b) *to deal with (by reports and recommendations) 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 ("**Commission misconduct matters**"), and*
 - c) *to assess the effectiveness and appropriateness of the policies and procedures of the Commission relating to the legality or propriety of its activities.*
- 2.3 The exercise of the functions of the Inspector are set out in 123 of the Act which provides that:
- 1) *The functions of the Inspector may be exercised as follows:*
 - a) *on the Inspector's own initiative,*
 - b) *at the request of the Minister,*
 - c) *in response to a complaint made to the Inspector or misconduct information of which the Inspector becomes aware,*
 - d) *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.*
 - 2) *The Inspector is not subject to the Commission in any respect.*
- 2.4 The oversight powers of the Inspector are set out in Section 124 of the LECC Act which provides that:
- 1) *The Inspector may do any of the following:*
 - 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*

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- 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.*
- 2) *The Inspector is entitled to full access to the records of the Commission and to take or have copies made of any of them.*
 - 3) *A referral of a matter under this section to another agency for consideration or action must specify in writing the terms of the referral.*
 - 4) *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.*
 - 5) *If the Inspector makes a recommendation to the Commission, the Inspector may 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.*
 - 6) *If the Inspector is not satisfied that the Commission has duly and properly taken action in connection with a report or recommendation made to the Commission by the Inspector, the Inspector must inform the Commission of the grounds of the Inspector's dissatisfaction and must give the Commission an opportunity to comment within a specified time.*
 - 7) *If, after considering any comments received from the Commission within the specified time, the Inspector is still not satisfied, the Inspector may submit a report to the Minister setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the Commission and the Inspector.*

3. Purpose

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

4. Intent

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

5. Liaison

- 5.1 The primary point of liaison will be between the Inspector and the Chief Commissioner.
- 5.2 The Inspector and the Chief Commissioner agree to meet periodically to discuss relevant issues and to raise any matters concerning the Inspector's functions and the conduct of the

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Commission. The Inspector and the Chief Commissioner may choose to keep their own short notes of these meetings.

- 5.3 Written correspondence from the Commission to the Inspector will be marked for his attention. It is preferable that all such correspondence is sent to oilc executive@oilc.nsw.gov.au. Alternatively it may be sent via mail and marked as follows:
- “Private and Confidential”
Office of the Inspector of the Law Enforcement Conduct Commission
PO Box 5341, Sydney NSW 2001
- 5.4 To assist the exercise of the Inspector’s functions, liaison for the purpose of general inquiries and requests for information may take place between the Inspector’s staff and Commission officers. Such liaison will ordinarily take place with the persons holding the following offices:
- a) Commissioner
 - b) Chief Executive Officer
 - c) Executive Director Operations
 - d) Director Investigations Integrity
 - e) Director Investigations Oversight
 - f) Team Leader Assessments
 - g) Co-ordinator of the Legal Services Unit.

6. Regular Provision of Information to the Inspector

- 6.1 The Commission will routinely provide to the Inspector copies of:
- a) its reports prepared under sections 132, 134, 135, 136, 138 and 139 of the LECC Act
 - b) weekly ‘catch-up’ emails sent by the Chief Executive Officer to staff
 - c) the monthly ‘audit schedule’ which sets out the Commission’s use of certain statutory powers.
- 6.2 Background papers for, and the minutes of, the following meetings will be routinely provided to the Inspector:
- a) Audit and Risk Committee
 - b) Complaint Action Panel
 - c) Executive Committee
 - d) Misconduct Themes Committee
 - e) Strategic Operations Committee.
- 6.3 Any other meeting minutes or papers as requested by the Inspector will be supplied to the Inspector in a timely manner.

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- 6.4 The Inspector and/or his duly authorised representative(s) may attend any of the meetings referred to above as an observer.
- 6.5 Noting the entitlement of the Inspector to full access to the records of the Commission and to take or have copies made of any of them pursuant to section 124(2) of the LECC Act, the Commission will use its best endeavours to accommodate the Inspector's requests for access to any information, including the Commission's policies, protocols and guidelines, its databases and information technology systems and MOUs with other agencies.

7. Notification of complaints of misconduct and/or maladministration by the Commission to the Inspector

- 7.1 The Commission will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission, where that conduct falls within section 88(6) or section 122(2)(b) of the LECC Act.
- 7.2 Unless urgent and requiring immediate attention all such matters will be communicated to the Inspector by way of written notification. In urgent cases oral communication may be permitted provided that written notification is subsequently furnished as soon as is practicable.
- 7.3 Notification of matters referred to in paragraph 7.1 will also be reported upon by way of a schedule to be provided periodically to the Inspector. The schedule will briefly set out the relevant information as is available and known to the Commission at that time, including any action the Commission has taken to deal with the conduct.
- 7.4 Any request made by the Inspector or his staff for information or material regarding a complaint or any other matter concerning the conduct of any officer of the Commission is to be referred to the Chief Commissioner.
- 7.5 Where the Inspector wishes to interview a member of staff of the Commission in connection with a complaint, the Chief Commissioner will be notified wherever possible. The Commission acknowledges that there may be occasions when the Inspector may need to act unilaterally without prior notification.
- 7.6 The Commission will make information concerning the Inspector's role and functions publicly available. That will include:
 - a) having appropriate and accurate information about the Inspector's principal functions and powers in overseeing the LECC as well a link to the Inspector's website on the LECC webpage;
 - b) providing information to members of the public, whether in writing or orally, that clearly indicates that the Inspector's jurisdiction is limited to dealing with complaints about misconduct or maladministration on the part of LECC and/or its officers.

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8. Signatories

The Hon Peter Johnson SC
Chief Commissioner of the Law
Enforcement Conduct Commission:

Bruce McClintock SC
Inspector of the Law Enforcement
Conduct Commission:

Signed:



Signed:



Date:

27 September 2022

Date:

27 / 9 / 2022