

Annual Report 2022 – 23

Office of the Inspector of the Independent Commission
Against Corruption



**Office of the Inspector of the Independent Commission Against
Corruption**



30 October 2023

The Hon. Ben Franklin, MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon. Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Annual Report 2022 – 23

Dear Mr President and Mr Speaker

In accordance with section 77B of the *Independent Commission Against Corruption Act 1988* (ICAC Act), I furnish to each of you for presentation to the Parliament the Annual Report of the Inspector of the Independent Commission Against Corruption for the year ended 30 June 2023.

Pursuant to section 78(1A) of the ICAC Act, I recommend that the Report be made public forthwith.

Sincerely

A handwritten signature in black ink, appearing to read "Gail Furness".

Gail Furness SC
Inspector of the Independent Commission Against Corruption

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1

Introduction and overview to this Annual Report prepared under the ICAC Act

1.1 Foreword

I am pleased to present this Annual Report pursuant to section 77B of the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) and recommend that it be made public forthwith pursuant to section 78(1A) of the ICAC Act. This Report relates to the year ended 30 June 2022. While this is my second Annual Report as the Inspector of the Independent Commission Against Corruption (the ICAC or the Commission), it is the first that is concerned with matters that have occurred during my first year as Inspector.

There were a number of notable events in the reporting year.

First, in August and September 2022, Chief Commissioner the Hon John Hatzistergos AM and Commissioners the Hon Helen Murrell SC and the Hon Paul Lakatos SC were appointed. On 26 September the Chief Commissioner and I signed a fresh Memorandum of Understanding (MOU) to guide the relationship between our offices and the sharing of information.

Over the past 11 months there has been a co-operative working relationship with the Commission and its staff and my Office. Strong and effective oversight is essential for the public to continue to have confidence in the ICAC and the significant work it does. For that oversight to be productive, the Commission needs to provide my Office with timely and relevant information. I am satisfied that the Commission has provided my Office with that information.

Secondly, I completed an audit of the welfare of those involved in Commission investigations, about which I will say more later in this report.

Thirdly, the Commission furnished to Parliament its report into Operation Keppel on 29 June 2023. I then commenced an investigation into the time taken to furnish that report. My investigation resulted in a report that was tabled in Parliament on 30 August 2023.

Fourthly, the Parliamentary Joint Committee on the ICAC, overseeing the Commission and the Inspector, released a report on its Review of Aspects of the ICAC Act in December 2022 (the Committee Report).

Part 5.3 of this Annual Report provides a summary of the complaints that were received by my Office during the reporting period and an explanation as to how they were dealt with.

In short, during the reporting period the Office received 51 complaints, an increase of 22 from the previous year. The Inspector finalised 44 of those complaints within the reporting period. Seven complaints received during the period remained open as of 30 June 2022, but have since been finalised.

1.2 The Inspector's functions and powers

The Inspector's functions and powers are prescribed by Part 5A of the ICAC Act.

Under section 57A of the ICAC Act the Inspector is appointed by the Governor of NSW.

The principal functions of the Inspector are set out in section 57B(1) of the ICAC Act. These are to

- audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

The definition of maladministration is set out under section 57B(4) of the ICAC Act as follows

action or inaction of a serious nature that is –

- a. contrary to law, or
- b. unreasonable, unjust, oppressive or improperly discriminatory, or
- c. based wholly or partly on improper motives.

Section 57B(2) of the ICAC Act enables the Inspector to exercise the prescribed statutory functions on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector, or in response to a reference by the Joint Committee or any public authority or public official.

Section 57B(3) of the ICAC Act provides that the Inspector is not subject to the Commission in any respect.

Under section 77A of the ICAC Act the Inspector may make special reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector.

Under section 77B of the ICAC Act the Inspector is required to report annually to Parliament.

Pursuant to both sections 77A and 77B, reports are to be made to the Presiding Officer of each House of Parliament.

Section 57C of the ICAC Act establishes the powers of the Inspector. The Inspector may investigate any aspect of the Commission's operations or any conduct of any officers of the Commission.

Section 57D of the ICAC Act empowers the Inspector to make or hold inquiries for the purposes of the Inspector's functions. Under section 57D(2) any inquiry made or held by the Inspector under this section provides the Inspector with the powers, authorities, protections and immunities of a Royal Commissioner as conferred by Division 1 of Part 2 of the *Royal Commission Act 1923* (NSW), with the exception of section 13 of that Act. There have been no inquiries held pursuant to section 57D to date by me or my predecessors.

A joint committee of members of the NSW Parliament called the 'Committee on the Independent Commission Against Corruption' (the Committee) is established by Part 7 of the ICAC Act. The Minister is to refer a proposal to appoint a person as a Commissioner or Inspector of the ICAC and the Committee is empowered to veto the proposed appointment.

1.3 Legislative reforms and other legal developments

The Inspector was not a party to any litigation during the reporting period.

The Inspector's views were sought on an amendment to the ICAC Regulation 2017, in circumstances where it was due for automatic repeal on 1 September 2023. The Regulation among other things, establishes the Commission's jurisdiction concerning the conduct of ministers and prescribes the NSW Ministerial Code of Conduct as an applicable Code of Conduct. I made a number of submissions as to further changes which might be considered by the Government.

As at 30 June 2023, there had been no amendment made.

In relation to the jurisdiction of the ICAC, a Bill was introduced into Parliament on 24 May 2023 to enable the ICAC to direct a person, specified in an order made by a magistrate or registrar of the Local Court, to give the officer information or assistance reasonable and necessary to enable the officer to access data held in or accessible from a digital device or copy or convert data to another device. (*Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Bill 2023*).

The Act was assented to on 13 July 2023.

A private member's Bill, the *Independent Commission Against Corruption Amendment (Validation) Bill 2023*, was introduced on 9 November 2022 to amend the ICAC Act to provide that the validation provision inserted into the Act by the *Independent Commission Against Corruption Amendment*

(Validation) Act 2015 does not apply in relation to persons who had pending Supreme Court proceedings challenging corruption findings.

The Bill lapsed on prorogation on 27 February 2023.

2

Annual Reports prepared under other legislation

2.1 *Government Information (Public Access) Act 2009 (NSW)*

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 open access information publicly available. However, if there is an overriding public interest against disclosure of the information, that requirement does not apply. The Office of the Inspector of the Independent Commission Against Corruption (OIICAC) makes its open access information available on its website www.oicac.nsw.gov.au

As required by section 20 of the GIPA Act, OIICAC has an Agency Information Guide available on its website. It provides information about the Inspector's functions and the structure of the Office.

The GIPA Act entitles members of the public to make access applications for information held by an agency. However, in respect of information of the Inspector held by the Inspector, it provides that a valid access application cannot be made for information relating to their operational auditing, complaint handling, 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 ICAC Act (unless the Inspector has consented to disclosure).

Section 125 of the GIPA Act requires the Inspector to prepare an Annual Report on their obligations under the Act. The Inspector's Report is set out in Appendix A.

2.2 *Public Interest Disclosures Act 1994 (NSW)*

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 ICAC Act, and
- b. be a disclosure 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 Commission, an officer of the Commission or an officer of the ICAC Inspector.

A public official can make a public interest disclosure to the NSW Ombudsman about the Inspector in the circumstances set out in section 12C(3) of the PID Act.

Section 31 of the PID Act requires the Inspector to prepare an Annual Report on their obligations under the Act. The Inspector's report is set out in Appendix B.

This reporting period is the last complete financial year to which the PID Act applies. On 1 October 2023, the *Public Interest Disclosures Act 2022* commenced operation.

2.3 *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). An Annual Report was provided to the Attorney-General in accordance with reporting requirements under section 96 of the TIA Act. In short, the report indicated that the Inspector did not carry out any relevant activity and therefore had no information to disclose.

3

Office administration

3.1 Premises

The OIICAC shares premises with the Office of the Inspector of the Law Enforcement Conduct Commission (OILECC).

The contact details for the OIICAC are set out below.

Postal address: GPO Box 5341, Sydney NSW 2001

Telephone: (02) 9228 3023

Email: oiicac_executive@oiicac.nsw.gov.au

3.2 Staff

The Inspector shares two staff with the Inspector of the LECC, a Principal Legal Advisor and a Business Coordinator.

The Inspector's staff attended training on a number of topics including complaint handling, respectful workplaces, public interest disclosures and cyber security awareness.

3.3 Budget and finance

During the reporting period the Office of the Inspector was a cost centre within the NSW Department of Premier and Cabinet (DPC).

The budgeted expenditure for the financial year from 1 July 2022 to 30 June 2023 was \$973,568. The Office's actual expenditure for that period was \$832,775 which compares with an actual expenditure of \$548,103 in the previous financial year. During the year, the Inspector carried out an audit of the ICAC and engaged a consultant to assist in that task.

During that period, Inspector Gail Furness SC was paid a daily rate of \$5,065 being the Attorney General's rate paid to Senior Counsel at the time of the Inspector's appointment on 1 July 2022. The Inspector's pay is subject to an annual cap of \$390,000.

3.4 The Inspector's website

OIICAC managed its own website with the support of DPC.

It contains the Inspector's reports tabled in Parliament, the Office's policies as well as information for members of the public about the Inspector's functions and powers, how to make a complaint and how to contact the Office.

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Liaison and communication

4.1 Liaison with the ICAC

There is a Memorandum of Understanding (MOU) between the Inspector and the ICAC dated 26 September 2022. It sets out the arrangements for liaison between the Commission and the Inspector concerning the referral of matters, access to information and points of contact between both agencies. It is on the Inspector's website.

In accordance with the MOU, the ICAC notifies the Inspector of misconduct or possible misconduct by officers of the Commission, which includes Commissioners. Notifications are registered as complaints and the ICAC's handling of these matters is considered by the Inspector.

The Inspector met at least quarterly with the Commissioners. The key issues raised during the reporting year with the ICAC were

- the progress of completing reports in the Operations which carried over from the previous Commissioners and time frames for reporting more generally
- information handling practices by the Commission
- the welfare of witnesses and others engaged with the Commission's coercive powers
- the continuing issue of access under the TIA Act
- the Committee's report on Reputational Impact of Individuals being adversely named in the ICAC's investigations.

The Inspector also met once with the outgoing Chief Commissioner and Commissioners.

The Inspector and/or Principal Legal Advisor attended most of the quarterly meetings of the Audit and Risk Committee, as observers.

On 18 October 2022 the Inspector and Principal Legal Advisor received a presentation by ICAC staff of its case management system.

4.2 Parliamentary Joint Committee and conferences

On 19 August 2022, the Inspector and Principal Legal Advisor met with the Committee and discussed, among other things, the MOU, time frames for reporting and the Inspector's proposed welfare audit.

On 19 October 2022, the Inspector presented the Annual Report 2021-22 to the Speaker of the Legislative Assembly and the President of the Legislative Council.

On 4 November 2022, the Inspector gave evidence before the Committee in response to its Review of aspects of the ICAC Act.

On 15 November 2022, the Inspector and Principal Legal Advisor attended the meeting of National Inspectors, Parliamentary Commissioners and Reviewers in Sydney.

On 16 and 17 November 2022, the Inspector and Principal Legal Advisor attended the National Anti-Corruption Conference in Sydney.

On 22 February 2023, the Inspector presented her *Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations* to the Speaker of the Legislative Assembly and the President of the Legislative Council.

5

Performance of the Inspector's statutory functions

5.1 Auditing and assessment of the ICAC's operations and procedures

The Inspector primarily monitors the operations of the ICAC through audits, the regular receipt of information from the ICAC as set out in the MOU, by dealing with complaints and requesting specific information from the ICAC.

Information relevant to the Inspector's functions is also obtained from other sources, such as by referral from the Committee and through review of information available in the public domain, for example via media reporting, material on the ICAC's website or audit reports published by other agencies to which ICAC is accountable.

This section of the Annual Report provides an overview of those flows of information during the 2022-23 financial year and relevant action taken by the Inspector.

Assessment of information received from the ICAC

The assessment of information received from the ICAC occurred through various processes.

First, the ICAC has compulsory powers to seek and obtain information under sections 21, 22, 23 and 35 of the ICAC Act. In addition, it has the power to issue search warrants under Division 4 of Part 4 of the ICAC Act to which Division 4 of Part 5 (other than sections 69-73A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPR Act) applies.

During the reporting period the Inspector was routinely provided with a schedule in respect of the Commission's use of its statutory powers under the ICAC Act. The schedule includes the following information in respect to the investigation to which they relate

- number of preliminary investigations commenced and completed pursuant to section 20A
- notices issued pursuant to section 22
- notices issued pursuant to section 23
- injunctions granted by the Supreme Court pursuant to section 27
- number of compulsory examinations conducted pursuant to section 30
- number of public inquiries conducted pursuant to section 31
- number of summons issued pursuant to section 35
- number of search warrants issued pursuant to section 40
- number of reports prepared pursuant to section 74.

Secondly, the Inspector was routinely provided copies of the meeting papers and minutes for the ICAC's monthly Investigation Management Group (IMG) and quarterly Executive Management Group (EMG) as well as quarterly statistics concerning its assessment of complaints and progress of investigations.

Thirdly, as set out in Section 4, the Inspector and/or the Principal Legal Advisor attends the ICAC's Audit and Risk Committee as an observer. Copies of the meeting papers and minutes are provided to OIIAC.

The schedule and meeting papers are useful in enabling the Inspector to discharge their principal functions, in particular under sections 57B(1)(a) and (d). Furthermore, they provide the Inspector with an overview of aspects of the Commission's activities and may assist in the assessment of complaints received.

Fourthly, during the reporting period, there was a particular focus on ICAC's review of its information handling practices, a matter that was mentioned in the Inspector's 2020-21 and 2021-22 Annual Reports.

The ICAC sent the Inspector 5 notifications under the MOU of seven occasions where an officer of the Commission ‘inadvertently released information that should not have been released’. The Inspector will monitor developments in this area during 2023-2024.

Finally, the Inspector and her Principal Legal Advisor monitored the ICAC’s exercise of its public inquiry powers by watching segments of its live streams and reviewing other inquiry material (such as transcripts and exhibits) made available on its website, in relation to Operation Hector.

Assessment of information obtained from other sources

The ICAC may also exercise various investigative powers under the following NSW and Commonwealth legislation

- *Law Enforcement and National Security (Assumed Identities) Act 2010* (NSW)
- *Law Enforcement (Controlled Operations) Act 1997* (NSW)
- *Surveillance Devices Act 2007* (NSW)
- *Surveillance Devices Act 2004* (Cth)
- TIA Act (Cth)

The ICAC is required to perform annual internal audits under the *Law Enforcement and National Security (Assumed Identities) Act 2010* (NSW).

The ICAC’s compliance with and record keeping in respect of its use of powers under the *Law Enforcement (Controlled Operations) Act 1997* (NSW), *Surveillance Devices Act 2007* (NSW) and Chapter 2 of the TIA Act (Cth) is the subject of regular inspection by the Inspector of the Law Enforcement Conduct Commission (LECC).

Its compliance and record keeping in respect of its use of powers under the *Surveillance Devices Act 2004* (Cth) and Chapters 3 and 4 and Schedule 1 of the TIA Act (Cth) is the subject of regular inspection by the Commonwealth Ombudsman.

Each of the Inspector of the LECC and the Ombudsman is required to prepare statutory reports about the results of their inspections, some of which are made available to the public.

During the reporting period the Inspector did not audit the Commission’s annual internal audit reports or its use of any powers that were the subject of inspection by the Inspector of the LECC or the Commonwealth Ombudsman.

In 2022, the Commonwealth Ombudsman reported on ‘Monitoring agency access to stored communications and telecommunications data under Chapters 3 and 4 of the TIA Act’.

The Ombudsman made 10 suggestions and two better practice suggestions to the Commission in relation to Chapter 3 powers. The Inspector asked the Commission for advice as to the Commission’s response to the report.

The Inspector reviewed the Commission’s response and was satisfied that it was an appropriate approach to the Ombudsman’s report.

5.2 Audit conducted

During the 2022-23 financial year the Inspector conducted an audit of the welfare of witnesses and other people involved in ICAC investigations.

The Inspector did so because there is no doubt that the process of investigations is often long and emotionally demanding for those involved. They can negatively impact on a person’s psychological wellbeing as well as those close to that person. It is not only when the outcome of an investigation is known, but the investigative process itself that can threaten the reputation, employment and welfare of those involved. When a hearing is attended by significant media attention, the impact can be heightened.

In order for the Commission to maintain public trust it is necessary that it ensures that witnesses and other involved persons are appropriately and effectively supported throughout its investigations.

This is not only important for the mental health of those the Commission engages with, but there are also potential benefits to the Commission providing effective welfare support including witnesses being able to participate more fully or at all.

Notwithstanding the existence of risks to welfare, it is widely accepted that an effective ICAC is critical in instilling and maintaining trust and confidence in public administration. It does this by, among other things, investigating, exposing and preventing corruption in public office, in accordance with the law. Along with other integrity bodies, the Commission has significant coercive powers including requiring persons to produce documents and attend compulsory examinations, which are held in private, as well as public inquiries. These powers can be exercised many times during the course of an investigation.

The Audit Report contained recommendations around improving policies and procedures and training staff. The recommendations included

- establishing a policy that describes the role of ICAC staff, and their accountabilities for the wellbeing and psychological safety of witnesses and others involved in the ICAC investigation activities
- establishing the extent and limits of the obligations and responsibilities held by those staff in terms of the mental health of witnesses and others involved in the ICAC investigation activities within ICAC policy.

Of primary importance was that the ICAC does not provide treatment or primary health services to witnesses and persons of interest. It should be focused on identifying and managing critical risks to the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities and referring and/or connecting them to appropriate supports.

It was recommended that the Commission introduce a wellbeing management officer to support staff and witnesses and others.

The Audit found that a witness who is summonsed to appear and give evidence can disclose to a registered medical practitioner or registered psychologist various matters which would otherwise not be permitted, while a person who is required to produce things, cannot disclose such matters to such a health practitioner. The Inspector recommended changes to legislation to remedy that.

On 1 August 2023, the ICAC and LECC Legislation Amendment Bill 2023 was introduced in the Legislative Council to make those amendments.

The Commission supported the recommendations made by the Inspector and is in the process of implementing them. The Commission advised me that the establishment of the wellbeing management officer role is budget dependent. I support the request by the Commission to NSW Treasury for funding for this position and understand that, after the conclusion of the reporting period, that funding was approved.

5.3 Complaint handling

The Inspector is empowered to deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission (section 57B(1)(b)) and conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission (section 57B(1)(c)).

Each complaint received is assessed and a decision is made as to whether it is within jurisdiction and, if so, whether there is any substance to the complaint and, if so, whether it warrants investigation.

The Inspector is not empowered to deal with complaints against other bodies. Further, the Inspector is not empowered to tell or compel the ICAC to investigate or not to investigate a particular complaint, nor is there power to tell the ICAC how an investigation should be conducted.

A substantial proportion of complaints to the Inspector involve the ICAC declining to investigate a particular complaint. In effect, in these complaints, the complainant seeks a review of the decision of the ICAC by the Inspector. When assessing such complaints, the Inspector must decide whether there is any evidence of ICAC engaging in the type of misconduct or maladministration prohibited by the ICAC Act.

As indicated in the foreword, during the reporting period the Office received 51 complaints, an increase of 22 from the previous year. Of the 51 complaints

- 17 were received by way of notification from the ICAC under the MOU with the Inspector, and
- 34 were received from the complainant or a person acting on their behalf.

During the reporting period the Inspector finalised 44 of the complaints received during the reporting period and 1 complaint which was received in the 2021-22 reporting period.

7 complaints remained open as of 30 June 2022 and have since been finalised.

Of the 45 complaints that were finalised during the reporting period

- 16 were received by way of notification from the ICAC under the MOU. The Inspector considered the ICAC's handling of all of complaints notified under the MOU to be satisfactory
- 29 were received from the complainant or a person acting on their behalf and of those
 - 10 were closed because there was no indication of misconduct or maladministration based on the material provided by complainant
 - 19 were closed after requesting and reviewing further information from the complainant, person complaining on their behalf, other parties and/or the ICAC because there was no indication of misconduct or maladministration
 - the Inspector decided there was no indication of misconduct or maladministration in 3 after the complainant did not provide information that was requested
 - the Inspector referred 6 complainants to an alternative or additional appropriate review body (such as the Law Enforcement Conduct Commission (LECC)).

The average time for handling a complaint was 27.5 days and the median time was 13.5 days.

As to the subject matter of most complaints received directly or by MOU

- 20 complaints were that the Commission did not investigate the complaint made to the ICAC by the complainant
- 3 complaints did not concern the Commission
- as earlier stated, 5 notifications under the MOU concerned 7 occasions of the 'inadvertent disclosure' of information by Commission officers
- 6 complaints concerned the time taken to complete Operation Keppel
- 4 complaints alleged the misuse of information by ICAC officers
- 3 complaints concerned Operations which had been finalised.

The Inspector made no findings of misconduct or maladministration by the Commission or its officers during the period.

All complaints made to the Inspector by a complainant or person acting on their behalf were finalised by letter or email to the complainant explaining the Inspector's decision and giving reasons for that decision. While in many cases, the complainant did not receive the decision they wanted, they were informed that their complaint was appreciated. The Inspector welcomes all complaints.

5.4 Special Reports made to the Presiding Officer of each House of Parliament

The Inspector made no Special Reports pursuant to section 77A of the ICAC Act during the reporting period other than the Audit Report referred to earlier in this Report.

5.5 Parliamentary Inquiry into Review of Aspects of the ICAC Act (report 6/57)

In December 2022, the Committee released its report on its Review of Aspects of the ICAC Act. The Inspector made a submission and gave evidence before the Inquiry.

The Committee recommended that

- the Government amend the ICAC Act to require the ICAC to develop and publish time standards for completing section 74 reports and to report on its own performance against these standards
- the ICAC provide an update in its next annual report on whether the increased funding made available in the 2022-2023 budget shortens the time in which investigations are undertaken and reports finalised
- the NSW Government amend the ICAC Act to provide the Inspector with broader powers to investigate maladministration and require the ICAC to respond to the Inspector's recommendations, escalating to the Minister if dissatisfied with the response.

On 25 August 2023, amendments were made to the Inspector's powers to require the ICAC to respond to any report or recommendation made by the Inspector in exercising her functions under s 57B. In addition, the ICAC Act was amended in accordance with the first recommendation. That amendment will commence on 26 November 2023.

6

Conclusion

6.1 Conclusion

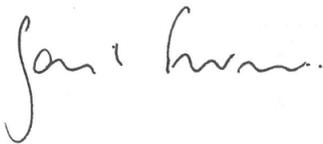
The highlights of the year to June 2023 have been, first, the attention given to the timeframes for the ICAC reporting to Parliament following its public investigations and, secondly, the positive response to my audit on the welfare of those engaged with the Commission's investigations. They are both welcome advances.

It has remained constant over the last few years that many complaints concern the decision of the Commission not to investigate a particular complaint. As I cannot simply come to a different view from the Commission or in other words, conduct a 'merits review' of that decision, these complaints will only be upheld if the Commission's decision is tainted by misconduct or maladministration. No complaints were upheld this year on that basis.

Of particular interest over the next year will be the operation of the new *Public Interest Disclosures Act 2022* and progress towards amending the *Telecommunications (Interception and Access) Act 1979* Act to permit me to access material under that Act for the purposes of audits. Those matters will be monitored by my Office.

Finally, there have been two noteworthy amendments made to the ICAC Act by the *ICAC and LECC Legislation Amendment Act 2023*, which were assented to after 30 June 2023. These amendments arose from events during the reporting period. The first was to expand the powers of the Inspector to require the Commission to give the Inspector advice about its intentions in respect of recommendations made by the Inspector. The second was to permit people who are required to produce things to the Commission to disclose information to their treating medical practitioner or psychologist, arising out the welfare audit conducted in February 2023.

I will report in the next Annual Report as to the operation of these amendments.



Gail Furness SC
Inspector of the Independent Commission Against Corruption
30 October 2023

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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 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)	0
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	0
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 interests disclosures policy which is published on its website. The policy under the PID Act was superseded on 1 October 2023 by the Inspector's policy under the *Public Interest Disclosures Act 2022*.

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, that staff member attended public interest disclosure training provided by the NSW Ombudsman.

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

Table J: the number of public officials who made a PID during 2022-23

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	0	0	0
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	0	0	0

Table K: Types of allegations made in PIDs during 2022-23

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	0	0	0	0	0	0
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	0	0	0	0	0	0

OFFICIAL

GPO Box 5341
Sydney NSW 2001

T: 02 9228 3023

E: oiicac_executive@oiicac.nsw.gov.au

W: oiicac.nsw.gov.au



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