

# Annual Report 2023–24

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Office of the Inspector of the Independent Commission  
Against Corruption

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## Acknowledgement of Country

The Office of the Inspector of the Independent Commission Against Corruption acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people.

Annual Report 2023–24

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Office of the Inspector of the  
Independent Commission Against Corruption



Ref: AD03-2425/A615048

31 October 2024

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

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Re: Annual Report 2023–24

Dear Mr President and Mr Speaker

In accordance with s 77B of the *Independent Commission Against Corruption Act 1988* (NSW) (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 2024.

Under s 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

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## 1.1 Foreword

I am pleased to present this Annual Report under s 77B of the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) and recommend that it be made public forthwith under s 78(1A) of the ICAC Act. This Report relates to the year ended 30 June 2024 (the reporting period).

During the year, I continued to have a cooperative and effective working relationship with the Chief Commissioner, the Deputy Commissioners, and senior staff of the Independent Commission Against Corruption (the Commission or ICAC). I have appreciated the timely and fulsome responses to all my requests for information.

There have been several notable events in the reporting year. First, the Commission furnished to Parliament its report on 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.

Parliament passed laws relating to the issue of timeframes and related matters, and the Commission put in place changes that reflected most of my recommendations.

Second, the *Public Interest Disclosures Act 2022* (NSW) (2022 PID Act) came into effect on 1 October 2023.

Finally, I was appointed the inaugural Inspector to the National Anti-Corruption Commission (NACC) on a part-time basis for a 7-year term commencing on 1 July 2023. The NSW Attorney-General consented to the appointment.

Part 5.3 of this Annual Report provides a summary of the complaints received by my Office during the reporting period and an explanation as to how they were dealt with. There was a small increase in the number of complaints, with the Office of the Inspector of the Independent Commission Against Corruption (the Office) receiving 54 complaints this reporting year.

I finalised all those complaints together with 7 that remained open as at 1 July 2023.

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## 1.2 The Inspector's functions and powers

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

Under s 57A, the Inspector is appointed by the Governor of NSW.

The principal functions of the Inspector are set out in s 57B(1). These are to:

- audit the operations of the Commission for the purpose of monitoring compliance with the law of the State
- 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
- 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
- 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 s 57B(4) 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) enables the Inspector to exercise the prescribed statutory functions on her 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 Parliamentary Joint Committee (PJC) or any public authority or public official.

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

The Inspector may make special reports on any matters affecting the Commission, on any administrative or general policy matter relating to the functions of the Inspector, and any other matter relating to the exercise of a function to audit, deal with or assess any matter under s 57B (s 77A).

The Inspector is required to report annually to Parliament (s 77B).

Under ss 77A and 77B, reports are to be made to the Presiding Officer of each House of Parliament.

Section 57C sets out 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. 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), except for s 13 of that Act. I have not made any inquiries under s 57D.

A joint committee of members of the NSW Parliament called the 'Committee on the Independent Commission Against Corruption' (the Committee) was 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.

On commencement of the PID Act, Part 8A was inserted in the ICAC Act. An object of the Part is to adopt protections for the makers of complaints or disclosures of misconduct or wrongdoing that are substantially aligned with the protections available to the makers of public interest disclosures (PIDs) under the PID Act.

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## 1.3 Legislative reforms and other legal developments

### 1.3.1 Litigation

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

### 1.3.2 ICAC and LECC Legislation Amendment Act 2023 (NSW)

This amending Act inserted s 57C (2), (3) and (4) into the ICAC Act to provide that if the Inspector makes a recommendation or report to the Commission, the Inspector may require the Commission to advise the Inspector, within a reasonable time, whether the Commission intends to implement the recommendation or report and, if not, the reasons for not doing so.

If the Inspector is not satisfied the Commission has duly and properly taken action, the Inspector may make a report to the Presiding Officer of each House of Parliament.

A new s 74E requires the Commission to publish information about the time within which reports on referred matters will be prepared and given to the Presiding Officer of each House of Parliament. This includes the Commission's standard timeframes for the preparation of the reports, how the Commission monitors progress and what action the Commission takes if the standard timeframes are not met. The ICAC must report on its performance against the time standards in each report and provide reasons for any failure to comply with the time standards.

Annual reports by the Commission are to include the information on its performance against time standards mentioned (s 74E(3)(a) and (b) of the ICAC Act).

The ICAC Act now clarifies that it is not a contravention of a direction under s 112(3), restricting publication of evidence, to publish any evidence to a registered medical practitioner or registered



psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling to a person who:

- has given or may be about to give evidence at a compulsory examination or public inquiry
- has been given a notice requiring the person to produce a statement of information
- has been given a notice requiring the person to attend before a person specified in the notice to produce a document or other thing specified in the notice.

The ICAC Act provides that a person may not hold the office of Inspector for terms totalling more than 10 years (clause 4, Schedule 1A of the ICAC Act).

### **1.3.3 ICAC Amendment Act 2024 (NSW)**

The *ICAC Amendment Act 2024* (NSW) received assent on 3 April 2024 and made amendments to the secrecy provisions of the ICAC Act (s 111).

### **1.3.4 Telecommunications (Interception and Access) Act 1979 (Cth)**

The *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) currently limits the ability of state and territory oversight bodies, including the Inspector, to receive interception warrant information and interception information from integrity agencies within their respective jurisdictions.

A Bill is currently before the Commonwealth Parliament to amend the TIA Act to enhance the ability of the Inspector and other oversight bodies to receive intercepted information and interception warrant information under the TIA Act (Crimes and other Legislation Amendment (Omnibus No.1) Bill 2024).

# 2

## Annual reports prepared under other legislation

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

The object of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act), as set out in s 3 of the GIPA Act, 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
- 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 makes its open access information available on its website at [www.oicac.nsw.gov.au](http://www.oicac.nsw.gov.au).

As required by s 20 of the GIPA Act, the Office 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 apply for access to 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 her operational auditing, complaint handling, and 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.

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## 2.2 Public Interest Disclosures Act 2022 (NSW)

The 2022 PID Act commenced operation on 1 October 2023. An annual report to the Ombudsman to record PIDs made between 1 July 2023 and 30 September 2023 is required under s 78 of the *Public Interest Disclosures Act 1994* (1994 PID Act). An annual return for any PIDs made from 1 October 2023 to 30 June 2024 is required under the 2022 PID Act.

The 2022 PID Act provides certain protections for public officials who report serious wrongdoing in the public sector. For example, it is a criminal offence for someone to harass, injure or discriminate against a person for making a PID. Serious wrongdoing includes:

- corrupt conduct
- serious maladministration
- a government information contravention
- a local government pecuniary interest contravention
- a privacy contravention
- serious and substantial waste of public money.

Under s 19 of the 2022 PID Act, the Inspector is an integrity agency.

The Inspector's policy and procedure to assess and manage any disclosures made under the 2022 PID Act to the Inspector can be found in her Public Interest Disclosure Policy.

A public official can make a PID to the Inspector or the NSW Ombudsman about the Inspector or the Inspector's staff if the person making it honestly believes, on reasonable grounds, that the information shows or tends to show serious wrongdoing.

The Inspector's report is set out in Appendix B.

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## 2.3 Telecommunications (Interception and Access) Act 1979 (Cth)

The Inspector is an 'eligible authority' for the purposes of the TIA Act. An annual report has been provided to the Attorney-General, in accordance with reporting requirements under s 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

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## 3.1 Premises

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

The contact details for the Office are:

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

**Telephone:** (02) 9228 3023

**Email:** [oiicac\\_executive@oiicac.nsw.gov.au](mailto:oiicac_executive@oiicac.nsw.gov.au)

The NSW Premier's Department entered into a Memorandum of Understanding (MOU) on 16 October 2023 with the Commonwealth Attorney-General's Department to secure access to the premises the Inspector occupies in Sydney in her role as the Inspector of the NACC. The Commonwealth Attorney-General's Department pays \$18,252 per annum for this access to the NSW Government.

Effectively, Inspector Furness SC uses the Sydney office to carry out her role and functions as Inspector of ICAC and Inspector of the NACC. Appropriate measures have been put in place to ensure the confidentiality of information.

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## 3.2 Staff

The Inspector shared 2 staff members with OILECC, a Principal Legal Advisor and a Business Co-ordinator.

The Principal Legal Advisor attended training on several topics during the year, including PIDs, inclusive leadership, leading performance development, Aboriginal cultural awareness, code of conduct, and cybersecurity awareness. The Business Co-ordinator also attended training on topics relevant to her position.

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## 3.3 Budget and finance

During the reporting period, the Office was a cost centre within the NSW Premier's Department.

The budgeted expenditure for the financial year from 1 July 2023 to 30 June 2024 was \$830,426. The Office's actual expenditure for that period was \$817,872, which compares with an actual expenditure of \$832,775 the previous financial year.

Inspector Furness SC is paid in accordance with the Attorney-General's daily rate for senior counsel, which is currently \$5,217.74.

The Inspector's pay is subject to an annual cap of \$398,064.

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## 3.4 The Office's website

The Office managed its own website with the support of the NSW Premier's Department.

It contains the Inspector's annual reports, special reports and audit 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.

# 4

## Liaison and communication

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## 4.1 Liaison with the Commission

There is an MOU between the Inspector, and the Commission 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 Commission 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 on 3 occasions with the Chief Commissioner and one or more of the Commissioners. The key issues raised during the reporting year with the Commission were:

- the PID legislation
- litigation involving the Commission
- the progress of completing reports on the operations which carried over from the previous Commissioners and timeframes for reporting more generally
- information handling practices by the Commission
- the welfare of witnesses and others engaged with the Commission's coercive powers.

The Inspector spoke at the ICAC Women's Network on 20 July 2023.

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

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## 4.2 Parliamentary Joint Committee and conferences

On 14 November 2023, the Inspector and Principal Legal Advisor attended the meeting of National Inspectors, Parliamentary Commissioners and Reviewers in Sydney, chaired by the Inspector in her capacity as Inspector of the NACC.

On 15 February 2024, the Inspector gave evidence before the PJC about her *Annual Report 2022-23*. The transcript is available on the PJC [website](#).

The Inspector attended the Rebuilding Public Service, Trust and Integrity conference on 25 June 2024, at which the Chief Commissioner was a keynote speaker.



# 5

## Performance of the Inspector's statutory functions

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## 5.1 Auditing and assessment of the Commission's operations and procedures

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

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

This section of the Annual Report provides an overview of those flows of information during the 2023–24 financial year and relevant action taken by the Inspector.

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## 5.2 Assessment of information received from the Commission

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

First, the Commission has compulsory powers to seek and obtain information under ss 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 ss 69–73A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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 under s 20A
- notices issued under s 22
- notices issued under s 23
- injunctions granted by the Supreme Court under s 27
- number of compulsory examinations conducted under s 30
- number of public inquiries conducted under s 31
- number of summons issued under s 35
- number of search warrants issued under s 40
- number of reports prepared under s 74.

Second, the Inspector was routinely provided copies of the meeting papers and minutes for the Commission's monthly Investigation Management Group and quarterly Executive Management Group as well as quarterly statistics concerning its assessment of complaints and the progress of its investigations.

Third, 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 the Office.

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

Fourth, during the reporting period, the Inspector continued to focus on the Commission's review of its information handling practices.

Finally, the Inspector and her Principal Legal Advisor monitored the Commission's exercise of its public investigation powers by watching segments of its live-streamed hearings in relation to Operation Mantis.

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## 5.3 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) (Assumed Identities Act)
- *Law Enforcement (Controlled Operations) Act 1997* (NSW) (Controlled Operations Act)
- *Surveillance Devices Act 2007* (NSW) (Surveillance Devices Act (NSW))
- *Surveillance Devices Act 2004* (Cth) (Surveillance Devices Act (Cth))
- TIA Act.

The Commission is required to perform annual internal audits under the Assumed Identities Act.

The ICAC's compliance with and record keeping in respect of its use of powers under the Controlled Operations Act, Surveillance Devices Act (NSW) and Chapter 2 of the TIA Act is subject to regular inspection by the Inspector of the LECC.

The Commission's compliance and record keeping in respect of its use of powers under the Surveillance Devices Act (Cth) and Chapters 3 and 4 and Schedule 1 of the TIA Act is subject to regular inspection by the Commonwealth Ombudsman. The Inspector of the LECC and the Commonwealth Ombudsman are required to prepare statutory reports about the results of their inspections, some of which are made available to the public.

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## 5.4 Information handling

Over the reporting period, the Inspector received 3 complaints about mistakes in information handling by officers of the Commission. The Inspector continued to correspond with the Commission about the changes it made to information handling as a result of a number of inadvertent disclosures that were referred to in the previous annual report. In short, over the reporting period, the Commission has:

- continued to make changes to its case management system to improve policy controls for email exchanges
- updated relevant policies
- put place an audit system that identifies the use of personal storage devices to copy Commission information
- engaged its internal auditors, who have completed their work in this area and are in the process of drafting their report.

The Inspector is satisfied that the Commission has taken appropriate measures to reduce the number of inadvertent disclosures by Commission officers.

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## 5.5 Audits

The Inspector commenced an audit into the Commission's compliance with laws and policy in relation to search warrants. It will report its findings to Parliament in due course.

In the *Annual Report 2022–23*, the Inspector reported on her audit into the welfare of witnesses and other people involved in Commission investigations. In this Annual Report, the Inspector reports on the legislative amendments made that were consistent with her recommendations (section 1.3).

The Inspector has been kept regularly informed as to the progress made by the Commission in implementing the recommendations. The Inspector notes that:

- a Witness Liaison Officer has been appointed
- a provider of witness counselling and staff training has been engaged and commenced delivery of training workshops to Commission staff
- the Commission's *Operations Manual* has been updated to reflect new policies and procedures associated with witness wellbeing
- the Commission's case management system, Resolve, has been configured to include witness wellbeing fields that capture the status of individual witnesses.

## 5.6 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 (s 57B(1)(b)) and conduct amounting to maladministration of a serious nature (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission (s 57B(1)(c)).

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 Commission how an investigation should be conducted.

### 5.6.1 Process

Each complaint received is assessed to determine if it is within jurisdiction and, if so, whether there is any substance to the complaint and, if so, whether it warrants investigation. Generally, the Inspector obtains from the complainant or the Commission a copy of the complaint and the Commission's response to it. In many cases, that is sufficient information to assess the complaint. However, on occasion during the reporting period, the Inspector engaged in much correspondence with the Commission and the complainant to complete her assessment.

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.

### 5.6.2 Number of complaints

The Inspector received and finalised **54 complaints** this reporting year. Generally, complaints were made by the individuals concerned. However, a few were made by third parties, and those were largely by legal advisors. The Inspector made no findings of misconduct or maladministration by the Commission or its officers during the reporting period.

In respect of the complaints received, there were a number of themes, which are set out below.

#### Themes

##### Conflict of interest

The Inspector received 6 complaints alleging a conflict of interest. Two complaints concerned the activities of relatives of Commission officers in circumstances where the complainants believed that those activities had or had the potential to adversely affect the honest and impartial exercise of functions of the Commission officers.

In the first case, the Inspector asked the Commission to investigate and interview relevant persons. The Inspector was satisfied, on a review of the information obtained, that there was no evidence of maladministration or misconduct by the Commission or an officer of the Commission.

In the second case, separate complaints were made by 3 persons and an MOU notification was received about the same subject matter. Each was concerned that correspondence unrelated to a function of the Commission, by a relative of a Commission officer, suggested that the Commission officer may not be impartial in their conduct as a Commission officer. After detailed enquiries, the Inspector was satisfied that there was no evidence of maladministration or misconduct by the Commission or an officer of the Commission.

In the third case, the Inspector received an MOU notification of a complaint to the Commission that the Commission had accepted as a PID. That PID primarily concerned an allegation of a conflict of interest in recruitment and the manipulation of timesheets.

The Commission appointed an external investigator to investigate the allegations. The investigator conducted interviews and considered that there was insufficient evidence as to the timesheet manipulation complaint. However, the ICAC agreed that the investigator could pursue the conflict of interest matter.

The investigator found that to the extent there was a potential perceived conflict of interest, it was managed appropriately and recommended that the Commission clarify its processes.

The key issue was how to manage internal recruitment where, almost inevitably, there will be colleagues being interviewed, some of whom have a closer working relationship with members of the panel than others.

The Inspector agreed with the findings and that the Commission should clarify the relevant policy. The Inspector was advised that changes have been made to the recruitment policy, in particular to deal with conflict of interest in recruitment processes, which she considered appropriate.

### **The conduct of public hearings**

The conduct of public hearings was the subject of 2 complaints.

At the commencement of a public inquiry, a direction under s 112 of the ICAC Act was made that all references to AB and images of AB should not be published pending their appearance at the public inquiry.

Before AB was scheduled to give evidence in public, the Commission invited submissions as to the continuation of the direction. AB's solicitors made submissions, as did counsel assisting. Ultimately, the Commissioner made a further direction that had the effect that AB's image was shown on the live stream, although their name remained subject to a non-publication order.

AB complained to the Inspector that they had applied to the Commission for 'full closure' of their identity and provided the Commission with evidence of their mental health. AB's application was denied. They had lost 2 jobs, and their reputation had been adversely affected as had their mental health after their employer saw their image on the live stream.

The Inspector read all relevant transcripts, correspondence and submissions made by AB and counsel assisting and the various decisions and directions made by the Commissioner.

The Inspector was satisfied in making the non-publication directions, the Commission did not abuse its power, act with impropriety or engage in other forms of misconduct and its conduct did not amount to maladministration in that it was unreasonable, unjust, oppressive or improperly discriminatory. The Inspector gave the following reasons for that finding.

First, AB's lawyers did not press the submission that AB's image not be published on the live stream. Nevertheless, the Commission did address the impact the live stream may have on AB's employment.

Second, AB did not provide any evidence supporting the submission that their employment might be jeopardised by their image being live streamed.

Third, the Commission took into account AB's mental health.

The Commission had regard to the relevant legal principles for the exercise of its power under s 112 of the ICAC Act, considered all submissions received and weighed the evidence before it. In addition to the medical evidence, it took into account broader matters of public interest and other matters such as that hearing protocols were such that parties participated remotely on live stream, hearing room capacity was restricted to 18 persons at any one time and accordingly it would be necessary to 'present the evidence in a way that is comprehensible to those participating remotely'. It was further noted 'to completely suppress the name and identity would mean that other parties authorised to appear may not be able to follow important parts of the evidence and obtain instructions in relation to that evidence'. The practical application of the Commission's s 112 directions was that during the public inquiry there could be references to AB's name and projection of AB's image on the live stream. However, there could be no further publication of AB's name or image.

The Inspector concluded that while she understood that AB believed that they were dealt with unjustly, the reasons given by the Commission for the direction were well based and sound. The Inspector acknowledged that appearing in a public inquiry held by the Commission can adversely impact a witness in terms of their mental health and job prospects.

A second complaint alleged procedural unfairness by the Commission in that they were not given an opportunity to make submissions in relation to an application for a non-publication order.

After seeking the Commission's response and reviewing the correspondence, the Inspector was satisfied that, contrary to the complainant's assertion, they were given opportunities to make submissions.

### **Coercive powers**

The use of the Commission's coercive powers was the subject of 4 complaints.

One concerned the execution of a search warrant by the Commission. The complainant alleged, among other matters, that the Commission officers were disrespectful, were in their house for 8 hours and searched unnecessarily and inappropriately through personal effects. No complaint was made about the lawfulness of the search.

The Inspector sought and obtained the Commission's response to this complaint. The Inspector also watched and listened to relevant parts of the recording of the execution of the search warrant from the officers' body worn cameras. While acknowledging that their experience was stressful, disrupting and confronting, the Inspector formed the view that the tone of the Commission officers was not disrespectful, and the search was conducted in an orderly and proper manner.

They also complained that the search warrant document was not on formal letterhead and did not identify the signature of the person who signed the warrant. The document was in the form prescribed by the Law Enforcement (Powers and Responsibilities) Regulation 2016 (NSW) and it was a matter for the authorised person to complete it.

The same complainant later complained about their mobile phone not being returned after seizure under a warrant. The Inspector was satisfied that its retention was reasonably necessary for the purposes of the relevant investigation, as required under s 47 of the ICAC Act.

The third complaint was about a mobile phone that was lawfully seized under an s 22 Notice to Produce. Due to technical difficulties, the mobile phone was not able to be returned in the timeframe the Commission had anticipated and conveyed to the complainant. There was personal material on the phone, which the complainant wished to access. Following considerable correspondence with the Commission and the complainant, the phone was returned. The Commission acted appropriately throughout.

The fourth complaint was from a person who claimed that the Commission acted unreasonably and in an oppressive manner in the process adopted to resolve the person's claims of legal professional privilege made over material seized by the Commission. The complainant sought the Inspector's 'intercession to prevent the Commission from accessing the seized material until such time as this matter is resolved'.

The Inspector explained her powers and functions and, in particular, that she could only deal with complaints by making reports and recommendations. The Inspector indicated she would consider

their broader complaint of unreasonable and oppressive behaviour if the complainant wished her to do so. As at the end of the reporting period, the Inspector had received no response.

### **Communication by Commission officers**

The Inspector received 7 complaints alleging poor communication to each of them by Commission officers. The complaints were that the Commission officer had ‘misrepresented’ or made errors in the complainant’s complaint; that the Commission officer had ignored or misunderstood the complaint; and in one instance had sent threatening emails. In respect of each complaint, the Inspector sought and read the relevant correspondence and received a detailed response from the Commission. The Inspector found that the conduct of the Commission did not amount to misconduct or maladministration.

One of these complaints concerned a communication by Commission staff in 2013.

### **5.6.3 MOU notifications**

Fifteen notifications under the MOU were received. Each notification is captured in the information about complaints set out above. About one-third of those notifications concerned matters in respect of which the Inspector had received direct complaints and are reported above. Of the 15:

- 3 related to the disclosure of information by staff
- 3 related to a conflict of interest
- 5 alleged deficiencies in communication by officers
- 2 concerned the use of coercive powers
- one was a complaint about the Operation Keppel report delays.

### **5.6.4 Public interest disclosures**

The Inspector received 2 PIDs. One person made a PID against the Commission alleging that its decision not to investigate her complaint was misconduct or maladministration in that first, it took 11 months to make a decision and second, various mistakes were made in the letter explaining the decision it made.

The Inspector sought a response from the Commission and examined the Commission’s assessment reports. The Inspector concluded the process followed by the Commission was fair, the time taken to make its decision reflected the volume of information provided over months and, finally, that any mistakes of fact or emphasis were unsurprising given the volume and the complexity of the material provided by the complainant.

The second PID against the Commission was anonymous and concerned misuse of staff entitlements. The Inspector referred the PID to the Commission for it to investigate on the basis that there was a low risk of detrimental action being taken against the maker of the PID. The Inspector paraphrased the content of the PID to disguise the writing style of the maker, at their request. The Inspector recommended that the Commission appoint an external investigator, which it did. That external investigator has not yet completed its investigation.

### **5.6.5 Other complaint statistics**

Twenty-one complaints were about the Commission’s decision not to investigate a complaint made to it. Many of those complaints to the Commission were about individual disputes between the complainant and an agency, usually a state department or council.

- The Inspector received 3 anonymous complaints.
- Seven complaints were not about the Commission.
- The Inspector received no response to her request for further information in 3 cases.
- Eight complainants were referred to a more appropriate body.

In about two-thirds of the complaints, the Inspector required further information from the complainant or the Commission to assess and finalise the complaint.

### 5.6.6 Reviews

The Inspector is not obliged to review decisions she has made. However, the Inspector has taken the view that if a person is dissatisfied with her decision and provides reasons and additional information, she will review her decision.

The Inspector reviewed her decision in 10 matters at the request of the complainant.

In each case, the Inspector determined that her decision remained the same; in some cases, after receiving and reviewing further information.

### 5.6.7 Enquiries

The Inspector received about 30 enquiries over the reporting period, of which about half resulted in the enquirer making a complaint. Those complaints form part of the 54 received.

The other enquiries included correspondence that was intended to have been addressed to the Commission and the Office sent them to the Commission. Most others were emails in which the Inspector was copied but did not deal with the Commission.

### 5.6.8 From 2022–23

There were 7 complaints outstanding on 1 July 2023 and each was finalised in July or August 2023.

### 5.6.9 Timeframes

The average time to finalise a complaint (not including her reviews) was 25.23 days. The median time was 16 days.

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## 5.7 Reports made to the Presiding Officer of each House of Parliament

On 30 August 2023, the Inspector presented her *Special Report 2023/02: Investigation into the time taken by the ICAC to furnish its Operation Keppel Report to Parliament* to the Speaker of the Legislative Assembly and the President of the Legislative Council.

Between 2017 and 2020, the Commission investigated the conduct of Daryl Maguire MP in an investigation called Operation Keppel. The Commission held its First Public Inquiry in Operation Keppel between 21 September and 16 October 2020.

After the First Public Inquiry, the Commission extended the scope of Operation Keppel to investigate the conduct of the then Premier, the Hon Gladys Berejiklian MP (Ms Berejiklian).

On 30 September 2021, the Commission determined to conduct a further public inquiry to investigate Ms Berejiklian's conduct (the Second Public Inquiry).

The Second Public Inquiry began on 18 October 2021 and concluded on 1 November 2021. The submissions process concluded on 9 May 2022, with one discrete issue being the subject of brief submissions in October 2022. Assistant Commissioner the Hon Ruth McColl AO SC presided over each public inquiry and was assisted by the same 2 counsel assisting.

The Commission furnished its report *Investigation into the conduct of the then Member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel)* (the Report) to Parliament on 29 June 2023. The media was present when the Report was furnished to the Speaker and the President.

There had been much media interest earlier about when the Report would be published and that became intense when it was furnished. There was significant and obvious public interest in the public



inquiries and the Report as the then Premier featured in both, but more so in the Second Public Inquiry. There was a deal of public discussion and commentary on the time taken to furnish the Report to Parliament.

The Inspector received a number of complaints prior to the furnishing of the Report and following its publication, complaining of what they called the 'delay' in reporting.

Following the publication of the Report, the Inspector decided to conduct an investigation under s 57C(a) of the ICAC Act, having regard to the Commission's work after the Second Public Inquiry.

The public interest in this issue was well founded, as the timely publication of decisions is essential to public confidence in judicial and administrative decision-making.

The Inspector concluded that, balancing the impact of the time taken with the complexity, importance and resources available, she was satisfied that the time taken to report to Parliament on Operation Keppel did not amount to maladministration because while the issue was serious, it was not unreasonable, unjust, oppressive or improperly discriminatory.

This was a necessary delay and was not an undue delay.

Nevertheless, the Inspector concluded that the Commission cannot expect to meet its key performance indicators (KPIs) if it continues to work in the same way.

The Inspector made the following recommendations:

1. *I recommend that the Commission review its procedures in relation to the preparation of reports following s 74 investigations and in doing so consider the following:*
  - a. *imposing a limit on the pages of submissions made by counsel assisting and those in reply*
  - b. *the composition of the Review Panel and the priority given by the Review Panel members over its usual duties when considering reports*
  - c. *exploring other means of achieving the efficient proof reading, layout, and printing of reports*
  - d. *updating its procedures and manuals to reflect current KPIs, emphasising the need for timely provision of reports and clarifying how resources are allocated, and*
  - e. *whether the current KPIs are achievable or should be adjusted.*
2. *I recommend that the Commission advise the PJC and myself when it is of the view that its resources will adversely impact its capacity to report to Parliament in accordance with its KPIs.*

The Commission accepted the recommendations except for 1(e) on the basis that that matter had only been recently considered.

On 1 November 2023, the Commission advised the Inspector of the changes made to implement the recommendations. The Inspector appreciates the prompt response to those recommendations.

In addition to the Operation Keppel report, on 20 October 2023, the Inspector presented the *Annual Report 2022-23* to the Speaker of the Legislative Assembly and the President of the Legislative Council.

# 6

## Conclusion

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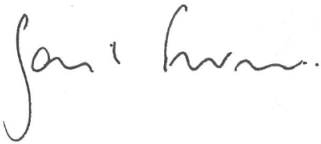
## 6.1 Conclusion

The highlights of the year to June 2024 have been the Commission's positive response to the Inspector's report concerning the publication of the Operation Keppel Report and the continuing co-operation of the Commission with my work.

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 progress towards amending the TIA Act to permit me to access material under that Act for the purposes of audits. Those matters will be monitored by my Office.

I will report on my audit of the Commission's search warrant powers in the next annual report.



Gail Furness SC  
Inspector of the Independent Commission Against Corruption  
**31 October 2024**

# 7

## Appendices

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## 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 (NSW) (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 proactively 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 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 GIPA Act (information for which there is a 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 or 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 or 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 (s 41 of the Act)	0
Application is for excluded information of the agency (s 43 of the Act)	0
Application contravenes restraint order (s 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 s 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
<b>Total</b>	<b>0</b>

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 s 93 of Act	0	0	0
Review by NCAT	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>

\* 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 s 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

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## Appendix B: Annual report on the Inspector's obligations under the Public Interest Disclosures Act 1994 (NSW) and the Public Interest Disclosures Act 2022 (NSW)

### Public Interest Disclosures Act 1994 (NSW)

Section 31 of the 1994 PID Act required 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 (NSW) (2011 PID Regulation) outlined what must be included in the report. The Inspector's report under the 1994 PID Act is set out in this appendix.

Tables J and K provide statistical information as required by the 2011 PID Regulation.

### Public Interest Disclosures Act 2022 (NSW)

Section 78 of the 2022 PID Act requires each agency to provide an annual return to the NSW Ombudsman in relation to each period of 12 months ending on 30 June. Clause 5 of the Public Interest Disclosures Regulation 2022 (NSW) (2022 PID Regulation) outlines the information that must be included in relation to each voluntary PID received or dealt with by the agency during the return period. The Inspector's return under this Act is also set out in this appendix.

Tables L and M provide statistical information as required by the 2022 PID Regulation.

### PID Policy and staff training

The Inspector has a Public Interest Disclosures Policy (PID Policy), which is published on its website. The policy under the 1994 PID Act was superseded on 1 October 2023 by the Inspector's policy under the 2022 PID Act.

During the reporting period, the Inspector provided the staff member who assists with the handling of PIDs a copy of the legislation and PID policy and drew their attention to its application. That staff member also attended PID training provided by the NSW Ombudsman.

## Report – 1994 PID Act

Table J: The number of public officials who made a PID during 1 July 2023 – 30 September 2023

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
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>

Table K: Types of allegations made in PIDs during 1 July 2023 – 30 September 2023

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
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Annual return –2022 PID Act

Table L: Voluntary PIDs received 1 October 2023 – 30 June 2024

<b>PID 1</b>	
How the agency received the disclosure, including the date on which the agency received the disclosure.	11/03/2024, by email.
The disclosure was a purported public interest disclosure.	The disclosure was deemed a category 2 PID.
The nature of the serious wrongdoing.	Corrupt conduct and serious maladministration.
Relationship between the maker of the disclosure and the public official whose serious wrongdoing the disclosure was about.	Unknown.
The serious wrongdoing involved one public official or more than one public official.	One public official.
Action taken by the agency to deal with the disclosure, including the date on which the agency ceased to deal with the disclosure.	Investigated the alleged serious wrongdoing.
If the agency investigated the serious wrongdoing – a description of the results of the investigation.	Finalised, serious wrongdoing not established.
If applicable – the corrective action taken, proposed to be taken or recommended to be taken by the agency.	Not applicable.

<b>PID 2</b>	
How the agency received the disclosure, including the date on which the agency received the disclosure.	23/11/23, by email.
The disclosure was a purported public interest disclosure.	The disclosure was deemed a category 2 PID.
The nature of the serious wrongdoing.	Corrupt conduct and a serious and substantial waste of public money.
Relationship between the maker of the disclosure and the public official whose serious wrongdoing the disclosure was about.	A coworker.
The serious wrongdoing involved one public official or more than one public official.	One public official.
Action taken by the agency to deal with the disclosure, including the date on which the agency ceased to deal with the disclosure.	Referred the disclosure to the Commission for investigation.
If the agency investigated the serious wrongdoing – a description of the results of the investigation.	The Commission has not finalised the investigation and it is ongoing.
If applicable – the corrective action taken, proposed to be taken or recommended to be taken by the agency.	Not Applicable.

Table M: Purported PIDs received 1 October 2023 – 30 June 2024 that were not in fact PIDs

Disclosures received by the agency during the return period	0
Disclosures that were made by public officials	0
Reasons the agency did not deal with, or ceased dealing with, each of the disclosures as a PID	Not applicable

# The Office of the Inspector of the Independent Commission Against Corruption

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