

# Annual Report 2021 – 22

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Office of the Inspector of the Independent Commission  
Against Corruption



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# 1

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

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## 1.1 Foreword and observations

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. It is my first Annual Report as the Inspector of the Independent Commission Against Corruption (ICAC or Commission) and concerns matters which occurred during the term of my predecessor Mr Bruce McClintock SC. I was appointed on 1 July 2022 for a five year term.

As has consistently been the case during the last 5 years, most of the complaints received by the Office did not enliven the Inspector's jurisdiction pursuant to section 57B(1)(b) of the ICAC Act. That is, there was no basis for determining that ICAC or an officer of ICAC engaged in abuse of power, impropriety or other forms of misconduct or maladministration.

Table 1 in part 5.4 of this Annual Report provides a summary of the complaints that were received by the Office during the reporting period and a short explanation as to how they were dealt with.

During the reporting period the Office received 29 complaints, an increase of 8 from the previous year. Of the 29 complaints

- 4 were received by way of notification from the ICAC under the Memorandum of Understanding (MOU) with the Inspector's Office
- 23 were received from the complainant or a person acting on their behalf, and
- 2 were received by notification under the MOU and directly from the complainant or a person acting on their behalf.

During the reporting period the Inspector finalised 29 complaints. 28 of those were received during that period and one was received during the 2020-21 period. One complaint received during the period remained open as of 30 June 2022.

Of the 29 complaints finalised, the Inspector

- considered the ICAC's handling of all of complaints notified under the MOU to be satisfactory
- decided that 16 were out of jurisdiction based on the information initially provided by the complainant or the person complaining on their behalf
- decided that 6 were not sustained after requesting and reviewing further information from the complainant, person complaining on their behalf, other parties and/or the ICAC
- decided to take no further action in respect of 2 after the complainant did not provide information that was requested
- referred 5 complainants to a more appropriate review body (such as the Law Enforcement Conduct Commission (LECC)), and
- dealt with 2 by way of a Special Report to Parliament.

Most complaints were dealt with by letter or email to the complainant explaining the Inspector's determination of their complaint. Both of the complaints that were the subject of a Special Report to Parliament concerned the Commission's Operation Keppel.

The first matter that was the subject of a Special Report concerned the Commission's handling of a telephone call between Mr Daryl Maguire and the former Consul-General of Japan in Sydney which was intercepted under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act). It came to the Inspector's attention during the previous reporting period, but the report to Parliament was furnished on 27 August 2021.

The Inspector did not find that the ICAC or its officers had engaged in maladministration, however, did conclude that the Commission should have exercised more caution and discretion in its dealings with the intercepted call. The Inspector made various recommendations to the ICAC which were

accepted and resulted in amendments to the Commission's Operations Manual Policy and Procedure.

The second Special Report was made on 29 October 2021. It concerned the Commission's decision to conduct a further public inquiry in Operation Keppel to investigate allegations concerning the former Premier of NSW, the Hon Gladys Berejiklian.

The Inspector investigated whether, in determining to hold the public inquiry and in making its announcement of it, the ICAC had engaged in 'maladministration' within the meaning of the ICAC Act. The Inspector found that it had not and further noted that in coming to his conclusions, he was not expressing a view as to whether the allegations concerning the former Premier would or would not be sustained by the ICAC.

As my predecessor stated in the previous Annual Report in relation to other complaints concerning Operation Keppel, a finding that the ICAC has not engaged in maladministration should not be construed as something that diminishes the seriousness of the matter or the significance of the consequence.

Another matter warrants mention in this Introduction. A complaint was made to the ICAC about its decision to vary its submissions timetable in Operation Keppel. The complainant and the ICAC copied the Inspector into their correspondence. Following an exchange of information with the Commission, the Inspector suggested the Commission introduce steps into its procedure for monitoring the progress of counsel assisting so as to avoid circumstances in which a request for an extension is made close in time to the expiration of a timeframe. In response the Commission indicated that it formalised its procedure in its relevant Operations Manual procedure.

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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 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 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.

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## 1.3 Legislative reforms and other legal developments

From 3 July 2020 until 20 December 2021, administration of the ICAC Act was jointly allocated to the Premier and the Special Minister of State, Minister for the Public Service and Employment Relations, Aboriginal Affairs and the Arts pursuant to the Administrative Arrangements (Administration of Acts – Amendment No 5) Order 2020.

On 21 December 2021 under the Administrative Arrangements (Second Perrottet Ministry – Allocation of Acts and Agencies) Order 2021, administration of the ICAC Act was jointly allocated to the Premier and the Attorney General.

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

On 23 June 2022 the ICAC and LECC Legislation Amendment Bill 2022 was passed. Its object was to

*amend the Independent Commission Against Corruption Act 1988, the Independent Commission Against Corruption (Commissioner) Act 1994 and the Law Enforcement Conduct Commission Act 2016 to—*

- a. *enable a Judge of the Supreme Court or the District Court, who has resigned immediately prior to their appointment to the Independent Commission Against Corruption (ICAC) as a Commissioner, Inspector or Assistant Inspector or to the Law Enforcement Conduct Commission (LECC), as a member of the Commission, Assistant Commissioner or Inspector, to return to their position as a Judge of the same Court, immediately after they cease to hold office for the ICAC or LECC, and*
- b. *provide that, for the purposes of the Judges' Pensions Act 1953, time served by the person as a Commissioner, an Inspector or an Assistant Inspector of ICAC or as a member of the Commission, Assistant Commissioner or Inspector of the LECC, is time served as a Judge of the status equivalent to the judicial office held by the person immediately before their appointment.*

The *ICAC and LECC Legislation Amendment Act 2022* received assent and commenced operation on 27 June 2022.

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



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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* (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](http://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.<sup>1</sup>

The GIPA Act entitles members of the public to make access applications for information held by an agency. However, in respect of information held by the Inspector, it provides that a valid access application cannot be made for information held by the Inspector 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.

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## 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.

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<sup>1</sup> <https://www.oicac.nsw.gov.au/assets/oicac/AGENCY-INFORMATION-GUIDE2.pdf>

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.

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## 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

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## 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](mailto:oiicac_executive@oiicac.nsw.gov.au)

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## 3.2 Staff

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

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## 3.3 Budget and finance

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

Its budgeted expenditure for the financial year from 1 July 2021 to 30 June 2022 was \$767,940. Its actual expenditure for that period was \$548,103, which compares with an actual expenditure of \$618,188 in the previous financial year.

During that period, Inspector Bruce McClintock SC was paid a daily rate of \$4,600 being the Attorney General's rate paid to Senior Counsel at the time of the Inspector's appointment on 1 July 2017. The Inspector's pay was subject to an annual cap of \$350,000.

# 4

## Liaison and communication

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## 4.1 Liaison with the ICAC

There is a Memorandum of Understanding (MOU) between the Inspector and the ICAC dated 2 November 2017. 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.

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. Matters notified under the MOU during the 2021-22 financial year are noted in the table set out under heading 5.3 of this Annual Report.

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## 4.2 Conferences and meetings

On 6 April 2022, the Inspector attended the National Anti-Corruption Investigation Network (NACIN) Conference and on 3 June 2022 he attended the Operation Jersey Forum on Pork Barrelling. Both events were hosted by the ICAC and held in Sydney.

On 2 May 2022, the Inspector gave evidence before the Committee on the ICAC at its public hearing on the review of the Inspector's 2020-2021 Annual Report.

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## 4.3 The Inspector's website

OIIAC manages 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.

In June 2022 the Inspector's staff received training on how to create accessible word documents in order to facilitate the publication of accessible reports and other content on the website in the future.

# 5

## Performance of the Inspector's statutory functions

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

The Inspector primarily monitors the operations of the ICAC through 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 2021-22 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 is invested with 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 of the investigation to which they relate

- number of preliminary investigations commenced and completed pursuant to section 20A
- notices issued pursuant to section 21
- 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, the Principal Legal Advisor attended the ICAC's Audit and Risk Committee (ARC) meeting held on 18 February 2022 as an observer. Copies of the meeting papers and minutes were provided to OIICAC.

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 on page 35 of the Inspector's 2020-21 Annual Report. On that topic, the Inspector sought updates from the Commission and was informed that

- on 16 February 2022, the EMG approved updates to a number of policies and procedures relevant to the handling of information including some concerning the complaint assessments process, the Records Management Policy and the Conflict-of-Interest Policy
- as of February 2022, the Records Management Procedures were still under review
- during the 2022 calendar year all ICAC staff will be given training on the updated policies and procedures
- during the 2021-22 financial year, the ICAC deployed software which is intended to assist with data loss prevention and monitoring of the use of Commission ICT systems. The software will be reviewed after one year of operation to ensure it is fit for purpose and suitable for ongoing use, and
- the ICAC is examining what technological means are available to manage the risk of human error resulting in the transmission of email to unintended recipients.

In addition, during the reporting period, the ICAC notified the Inspector of one occasion of the inadvertent release of information. In response, the Inspector enquired into the content and existence of the Commission's data breach policies and procedures and suggested that the ICAC draw upon relevant procedures published by the Information and Privacy Commission. The Commission advised that it had an Information Security Policy and Information Security Incident Response Plan and indicated that it would review the Plan's application to inadvertent disclosures that 'fall below the level of having a significant probability of compromising business operations and threatening information security.'

Finally, the Inspector and his 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. Particular attention was given to the Operation Keppel inquiry held in October 2021. There is further reference to this Operation in section 5.3 of this Report.

### **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 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.

Of particular note, during the reporting period, the Office reviewed public inquiry transcripts published on the Commission's website. That review identified instances in Operation Witney where the Commission had applied ineffective redactions to information that it had suppressed under section 112 of the ICAC Act. The Inspector informed the Chief Commissioner of this on 15 March 2022. On 17 March 2022, the Chief Commissioner advised that the Commission was taking immediate steps to 'identify the extent of the problem' and 'remove affected transcripts from its public website and replace them with transcripts with effective redactions' and further, that work was being done to 'identify why the redactions were not effective and what steps need to be taken to ensure there is no repeat of [the] problem'.

On 21 March 2022, the Chief Commissioner provided a detailed explanation of how the ineffective redactions came about, advised that all affected transcripts were confirmed as being redacted to the appropriate standard and the Commission updated its procedures to provide greater specificity about how to redact transcripts.

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## 5.2 Audits conducted

During the 2021-22 financial year the Inspector did not initiate or complete any audits of the ICAC's operations under section 57B(1)(a) of the ICAC Act.

An audit was initiated in September 2019 concerning the ICAC's practices in respect of the management of witnesses. This audit was outstanding at the end of this reporting period. It was not progressed as the then-Inspector considered that he did not have the expertise required to pursue the audit.

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## 5.3 Complaint handling

The Inspector is authorised 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 matters in which the ICAC declined to investigate or make a finding of corruption. 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's objective is to determine whether there is any evidence of ICAC engaging in the type of misconduct or maladministration prohibited by the ICAC Act, in the context of whether there was evidence of corruption on which the ICAC could have taken more action than it did and, if it could, whether its failure to do so amounts to such misconduct or maladministration.

During the reporting period the Office received 29 complaints, an increase of 8 from the previous year. Of the 29 complaints

- 4 were received by way of notification from the ICAC under the MOU with the Inspector's Office

- 23 were received from the complainant or a person acting on their behalf, and
- 2 were received by notification under the MOU and directly from the complainant or a person acting on their behalf.

During the reporting period the Inspector finalised 29 complaints. 28 of those were received during that period and one was received during the 2020-21 period. One complaint received during the period remained open as of 30 June 2022.

Of the 29 complaints finalised, the Inspector

- considered the ICAC's handling of all of complaints notified under the MOU to be satisfactory
- decided that 16 were out of jurisdiction based on the information initially provided by the complainant or the person complaining on their behalf
- decided that 6 were not sustained after requesting and reviewing further information from the complainant, person complaining on their behalf, other parties and/or the ICAC
- decided to take no further action in respect of 2 after the complainant did not provide information that was requested
- referred 5 complainants to a more appropriate review body (such as the Law Enforcement Conduct Commission (LECC)), and
- dealt with 2 by way of a Special Report to Parliament.

In addition, during the reporting period, the Inspector received an email which did not allege misconduct or maladministration on the part of ICAC or its officers but made suggestions for improvement to the ICAC's governance and operations, including that the appointments of the Commissioners should be staggered in order to provide continuity of leadership. The correspondence was registered as a complaint file (complaint reference: C19 2022) and was dealt with by informing the correspondent that their suggestions would be considered by the Inspector. The Inspector later raised the issue with the Committee during its public hearing on 2 May 2022 and with DPC.

A summary of each complaint received during the reporting period is provided in Table 1 below.

**Table 1: summary of complaints received by the Inspector during the 2021-22 financial year**

Complaint reference	Description of complaint	Inspector's determination of complaint
C01 2022	A complaint that the ICAC ignored information provided about a privacy breach involving a government department.	Further information and clarification were sought from the complainant. No response was received and accordingly the complaint was closed.
C02 2022	A complaint about various matters including Covid-19, some commercial ventures, the handling of a child protection case and disagreement with the ICAC's handling of complaints made to it.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was advised that no further action would be taken by the Inspector.

Complaint reference	Description of complaint	Inspector's determination of complaint
C03 2022	A notification received from ICAC under the MOU about a complaint that an ICAC assessment officer did not investigate or consider a complaint that had been made to the Commission.	The ICAC reviewed the matter complained of and informed the complainant that it had not identified any misconduct on the part of the officer subject of complaint. It informed the complainant of the outcome of its review. The Inspector considered the ICAC's handling of the matter to be satisfactory and decided to take no further action.
C04 2022	A complaint about the NSW Police Force.	The complainant was informed that their complaint should be sent to the LECC and was provided with its contact details. The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was advised that no further action will be taken by the Inspector.
C05 2022	A notification received from ICAC under the MOU about a complaint that an ICAC assessment officer and other staff did not properly consider a complaint of alleged corrupt conduct.	The ICAC reviewed the matter complained of and informed the complainant that it had not identified any misconduct on the part of the officer subject of complaint. It informed the complainant of the outcome of its review. The Inspector considered the ICAC's handling of the matter to be satisfactory and decided to take no further action.
C06 2022	A complaint that ICAC did not investigate complaints made about the NSW Department of Communities and Justice.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was advised that no further action would be taken by the Inspector.

Complaint reference	Description of complaint	Inspector's determination of complaint
C07 2022	A complaint about Kiama Council.	The complaint was made anonymously by post. No contact details were provided. The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the Inspector decided to take no further action.
C08 2022	A complaint about 'treason and mass murder' associated with Covid-19	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act. The Inspector decided to take no further action.
C09 2022	A complaint about the conduct of the ICAC and counsel assisting the Commission prior to and during the public examination of the complainant.	The Inspector investigated the complaint and concluded that a finding of maladministration was not warranted. The Inspector wrote to the complainant's representative and the Commission with the outcome of his investigation.
C10 2022	A notification received from ICAC under the MOU about a complaint that unidentified Commission staff who handled the person's complaint engaged in suspected corrupt conduct.	The ICAC reviewed the matter complained of and informed the complainant that it had not identified any misconduct on the part of any Commission officer. The Inspector considered the ICAC's handling of the matter to be satisfactory and decided to take no further action.
C11 2022	A complaint that senior ICAC officers failed to protect a trust fund by not investigating allegations of corrupt conduct.	The Inspector gave the complainant an opportunity to provide further details of the allegations. After considering the complainant's response, the Inspector determined there was no material to support an allegation that the ICAC or any of its officers engaged in misconduct or maladministration. The Inspector informed the complainant that no further action would be taken.

Complaint reference	Description of complaint	Inspector's determination of complaint
C12 2022	A notification received from ICAC for the Inspector's information about a complaint that information concerning notices issued under the ICAC Act was reported in a media article in breach of s 114 of the ICAC Act.	The ICAC reviewed the matter complained of and noted that it could not comment on media speculation about an ongoing investigation. It informed the complainant that 'should the Commission have evidence that a person has breached the provisions of s 114 of the ICAC Act in relation to any of its investigations it will take such steps as are appropriate in each case to ensure the integrity of the particular investigation.' The Inspector decided to take no further action.
C13 2022	A complaint that a number of parties including solicitors who the complainant had previously engaged committed offences such as fraud and the NSW Police Force had failed to investigate.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act. The complainant was advised that no further action would be taken by the Inspector and informed he may contact the Legal Services Commissioner and the LECC about his concerns.
C14 2022	Several members of the public complained directly to the Inspector that the ICAC inappropriately decided to hold a public inquiry into the conduct of the then Premier of NSW as part of Operation Keppel. Subsequently notification was received from the ICAC under the MOU about a significant number of similar complaints that it had received.	The Inspector conducted an investigation and made a <u>Special Report to Parliament</u> about the matter. <sup>2</sup>  The complainants who complained to the Inspector were sent a copy of the Inspector's report.

<sup>2</sup> <https://www.oicac.nsw.gov.au/assets/oicac/reports/special-reports/Special-Report-s-77A-ICAC-Act-regarding-the-Decision-to-Hold-a-Further-Public-Inquiry-in-Operation-Keppel-2022-01.pdf>

Complaint reference	Description of complaint	Inspector's determination of complaint
C15 2022	A complaint that ICAC did not investigate a complaint about a local council fencing matter.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was advised that no further action would be taken by the Inspector.
C16 2022	A complaint that senior ICAC officers had engaged in corrupt conduct as they had decided not to investigate the complainant's allegations of corrupt conduct concerning a council.	The complainant was informed that their correspondence contained no material capable of supporting an allegation that the ICAC or its officers had engaged in misconduct or maladministration and the matters raised substantially concerned issues that the complainant had previously raised with the Inspector. The complainant was informed that any future correspondence that does not raise any new issues will be filed without response.
C17 2022	A complaint made to ICAC about its decision to vary its submissions timetable in Operation Keppel. The complainant and the ICAC copied the Inspector into their correspondence concerning the complaint.	<p>The Inspector sought and reviewed information provided by the Commission and suggested the Commission introduce steps into its procedure for monitoring the progress of counsel assisting so as to avoid circumstances in which a request for an extension is made close in time to the expiration of a timeframe.</p> <p>In response the Commission indicated that it formalised its procedure in its relevant Operations Manual procedure, including a requirement that 'any decision to extend the submissions timetable should be made and communicated to relevant parties so that they may have ample notice of any change.'</p>



Complaint reference	Description of complaint	Inspector's determination of complaint
C18 2022	A complaint that an ICAC Assessment Officer wrote an inadequate response to the person's complaint about corruption.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was advised that no further action would be taken by the Inspector.
C20 2022	A complaint about the conduct of the NSW Police Force.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was provided the LECC's contact details.
C21 2022	A complaint relating to court matters and purported interactions with various NSW Government agencies including ICAC.	Complaint did not enliven Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and no further action was taken by the Inspector.
C22 2022	A complaint initially made to the Premier which was referred to the Inspector by the Parliamentary Secretary to the Premier and Western Sydney. It concerned, among other things, a complaint that the person had made to ICAC and that ICAC had declined to investigate.	The Inspector sent a letter to the complainant outlining his powers in respect of the ICAC and requesting information in support of the complaint within a specific timeframe. No response was received, and the complaint was closed.
C23 2022	A notification received from ICAC under the MOU about a complaint that an ICAC officer exercised his functions partially and in breach of public trust by inadequately assessing a complaint made to the Commission about corruption. The complainant later directly contacted the Inspector about their matter and alleged that various NSW government agencies, including the ICAC, were operating a cartel.	The Inspector sent a letter to the complainant outlining his decision to take no further action in respect of the complaint on the basis that he has no power to deal with the conduct of agencies other than ICAC, no credible information was provided in support of the cartel allegation and to the extent that the complaint concerned ICAC, it sought review of its decision not to investigate the person's complaint, which was outside the Inspector's jurisdiction.



Complaint reference	Description of complaint	Inspector's determination of complaint
C24 2022	The Inspector's Office received a voicemail enquiring about reporting Ministers and the ICAC for not investigating corruption.	The Inspector's Office did not receive any further contact from the caller. The Inspector decided to take no further action.
C25 2022	A complaint that the Premier lied at a press conference about the occurrence of flooding in Parramatta River.	The complaint did not enliven Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act and the complainant was referred to ICAC to make a complaint about the Premier.
C26 2022	A complaint about the conduct of staff at a correctional centre.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act. The complainant was advised that no further action would be taken by the Inspector. The complainant was given contact details for the NSW Ombudsman.
C27 2022	A complaint sent to over 30 recipients about abuse by neighbours, community members, police officers and others.	The complaint did not enliven the Inspector's jurisdiction pursuant to s 57B(1)(b) and (c) of the ICAC Act. The Inspector decided to take no further action.
C28 2022	A complaint about comments made by a senior ICAC officer during an NSW Parliamentary Committee hearing.	The Inspector replied to the complainant that he could not take any action in respect of the complaint as the comments made were covered by Parliamentary privilege and therefore beyond the Inspector's powers.

Complaint reference	Description of complaint	Inspector's determination of complaint
C29 2022	A complaint about various matters with a reference to the ICAC.	The Inspector gave the complainant an opportunity to provide clarification and further details of the allegations. After considering the complainant's response, the Inspector determined there was no material that concerned the conduct of the ICAC or its officers. The Inspector informed the complainant that no further action would be taken.
C30 2022	A complaint that ICAC did not investigate alleged corrupt conduct.	The Inspector asked the complainant's representative to clarify their allegations about the ICAC. A response from the representatives remained outstanding as of 30 June 2022.

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

The Inspector made two Special Reports pursuant to section 77A of the ICAC Act during the reporting period. The reports and implementation of any recommendations made in them are summarised below.

### **Report concerning circumstances surrounding the Independent Commission Against Corruption's use of certain telephone intercept material during Operation Keppel – Special Report 2021/03**

On 27 August 2021 the Inspector made the above report to the Presiding Officers.<sup>3</sup>

It was about an investigation conducted on the Inspector's own initiative that arose from an article titled 'MP says ICAC taps an insult to Japan' published by the Daily Telegraph on 23 November 2020. It was drawn to the Inspector's attention by the Manager of the Committee.

The article reported concerns held by the then Member for Wentworth, Mr Dave Sharma MP, that a telephone call intercepted under the TIA Act for the purpose of Operation Keppel may have amounted to 'a violation of Australia's obligations under international law', in particular, either the Vienna Convention on Diplomatic Relations 1961 (VCDR) or Vienna Convention on Consular Relations 1963 (VCCR). A former Consul-General of Japan was party to the intercepted call.

<sup>3</sup> <https://www.oicac.nsw.gov.au/assets/oicac/reports/special-reports/Report-concerning-circumstances-surrounding-the-Independent-Commission-Against-Corruptions-use-of-certain-telephone-intercept-material-during-Operation-Keppel-2021-03.pdf>

The Inspector did not find that the ICAC or its officers had engaged in maladministration, however, did conclude that the Commission should have exercised more caution and discretion in its dealings with the intercepted call, including by consulting or obtaining advice from the Department of Foreign Affairs and Trade (DFAT).

The Inspector recommended that the ICAC

1. *Establish a clear process for identifying especially sensitive material intercepted under the TIA Act (or obtained through the use of any other methodology or power identified available to the Commission) and assessing whether that material should be disclosed during a public inquiry. That process should include a requirement for any such assessment to be documented.*
2. *To the extent that the exercise outlined in recommendation 1 requires ICAC to establish a process concerning how it deals with material that involves matters of public international law (including but not limited to the VCCR and VCDR), it should consult with DFAT. ICAC should also consult with any other agencies it identifies as having expertise that it may draw on for any other aspect of the exercise.*
3. *Take steps to ensure that any process established in response to recommendation 1 is appropriately incorporated into the Commission's relevant policies and procedures.*
4. *Report to my Office about its progress in implementing the above recommendations within 6 months from the date on which this report is tabled in Parliament.*

On 18 February 2022, the Chief Commissioner sought the Inspector's views on a draft Operations Manual Policy and Procedure intended to address recommendations 1, 2 and 3. The Inspector supported the draft, requested a copy of the Commission's first documented review conducted under it and suggested that the Commission contact DFAT to inform it of the steps taken in response to the recommendations and establish a point of contact for consultation that may be necessary in future. Subsequently the Commission's EMG formally approved the policy and procedure. The Chief Commissioner also provided the requested copy of the first review and confirmed that the Commission would contact DFAT as proposed.

### **Special Report by the Inspector of the Independent Commission Against Corruption pursuant to section 77A of the Independent Commission Against Corruption Act 1988 regarding the Decision to Hold a Further Public Inquiry in Operation Keppel – Special Report 2022/01**

On 29 October 2021 the Inspector made the above report to the Presiding Officers.<sup>4</sup>

It concerned the Commission's decision to conduct a further public inquiry in Operation Keppel in order to investigate allegations concerning the former Premier of NSW, the Hon Gladys Berejiklian. On 1 October 2021 the Commission issued a media release announcing its inquiry. Soon after, Ms Berejiklian resigned as Premier and indicated her intention to resign from the NSW Parliament. There was much public interest in the matter and complaints were made about it to the Inspector's Office and to the ICAC.

The Inspector investigated whether, in determining to hold the public inquiry and in making its announcement of it, the ICAC had engaged in 'maladministration' within the meaning of the ICAC Act. The Inspector found that it had not and further noted that in coming to his conclusions, he was not expressing a view as to whether the allegations concerning the former Premier would or would not be sustained.

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<sup>4</sup> <https://www.oicac.nsw.gov.au/assets/oicac/reports/special-reports/Special-Report-s-77A-ICAC-Act-regarding-the-Decision-to-Hold-a-Further-Public-Inquiry-in-Operation-Keppel-2022-01.pdf>

# 6

## Going Forward

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## 6.1 Going Forward

There have been a number of matters which have occurred since the end of the financial year and before finalising this Annual Report about which reference should be made.

First, in August and September 2022, Chief Commissioner Hatzistergos AM and Commissioners Murrell SC and Lakatos SC were appointed and have started work. On 26 September the Chief Commissioner and I signed a fresh MOU to guide the relationship between our offices and the sharing of information. I look forward to a co-operative working relationship with the Commission over the next five years. Strong and effective oversight is essential for the public to continue to have confidence in the ICAC and the significant work it does. Equally, the Inspector is somewhat reliant on the ICAC providing timely and relevant information. I know that Mr McClintock SC enjoyed a positive relationship with the ICAC and I am confident that I can continue that in my dealings with the new Commissioners.

Secondly, shortly after commencing the role of Inspector, a tragic event occurred where a witness in a public hearing into Operation Galley, took his own life. That event as well as other similar occurrences in other states has caused me to commence an

- audit of the operations of the ICAC for the purpose of monitoring its compliance with the *Work Health and Safety Act 2011* (NSW), and
- assessment of the effectiveness and appropriateness of the procedures of the ICAC

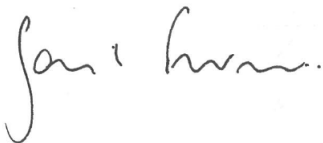
relating to the welfare of witnesses and others involved in the ICAC's investigation activities, pursuant to sections 57B(1)(a) and (d) of the ICAC Act. I hope to be in a position to finalise the audit and assessment in this financial year and report on my findings and recommendations in a Special Report to Parliament and in the next Annual Report.

Thirdly, in June 2022, the Committee decided to inquire into and report on aspects of the ICAC Act to determine whether the Act continues to be effective and appropriate, with particular reference to

1. the time standards in place for the ICAC to finalise reports and the relevant practices in other jurisdictions;
2. the existing mechanism of judicial review;
3. the role and powers of the Inspector of the ICAC.

I have made a submission to that Inquiry and anticipate that I and others will give evidence at public hearings later this year. As I flagged in my submission to the Inquiry, the issue of time standards is one in which I am most interested.

Finally, as set out in this report, there has been a focus on ICAC's information handling practices, that will continue in the next reporting period.



Gail Furness SC

Inspector of the Independent Commission Against Corruption

**19 October 2022**

# 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 (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

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## 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.<sup>5</sup>

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

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

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<sup>5</sup> <https://www.oicac.nsw.gov.au/assets/oicac/FINAL-OIICAC-PID-Policy2.pdf>

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

Type of PID	Number of PIDs	Number of public officials	PIDs finalised
PIDs made by public officials in performing their day-to-day functions as public officials	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 2021-22

Type of PID	Corrupt conduct	Maladministration	Serious and substantial waste	Government information contravention	Local government pecuniary interest contraventions	Total
PIDs made by public officials in performing their day-to-day functions as public officials	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

GPO Box 5341  
Sydney NSW 2001

T: 02 9228 3023  
E: [oiicac\\_executive@oiicac.nsw.gov.au](mailto:oiicac_executive@oiicac.nsw.gov.au)  
W: [oiicac.nsw.gov.au](http://oiicac.nsw.gov.au)

