



Committee on the Independent Commission Against Corruption

Report 1/57 – November 2019

Review of the 2017-2018 Annual Reports of the ICAC and the Inspector of the ICAC



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Chair's foreword

This report by the Committee on the Independent Commission Against Corruption (ICAC) deals with the Committee's review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC.

The Committee's report has two chapters. The first chapter considers the operations of the ICAC and the Inspector during the reporting year. The second chapter considers the reputational impact of being named in an ICAC investigation and how this is, and could be, addressed. This issue arises from questioning by the Committee at the public hearings, rather than examination of the annual reports of the ICAC and the Inspector.

Operations of the ICAC and the Inspector

The Committee was pleased to hear that the three Commissioner structure at the ICAC is continuing to work well. However, we have recommended a review of the *Independent Commission Against Corruption Act 1988* in 2021 to determine whether it continues to be effective and appropriate. The Committee is satisfied that the Act does not need to be reviewed now. However, given the recent structural changes to the ICAC, including the three Commissioner model and the creation of the Chief Executive Officer position, the formulation of policies relating to procedural fairness and exculpatory evidence, and the special powers conferred on the ICAC more generally, the Committee considers that a future review would be beneficial.

The Committee commends the ICAC for significantly increasing its output in a number of areas in the reporting year and in developing useful tools such as the Strategic Intelligence Research Unit and the Witness Cooperation Policy.

The Committee agrees with the Chief Commissioner of the ICAC and the Inspector that it is appropriate to consider a funding model for the ICAC which is separate from that which applies to other agencies. The Committee acknowledges that there are a number of important differences between the ICAC and other agencies. The Committee has therefore recommended that the NSW Government examines a new independent funding model for the ICAC in the current budget cycle.

We are also pleased that the Inspector has finalised the outstanding complaints from when he started his role. The Committee has recommended that the Inspector publishes procedures and guidelines on how he assesses and manages complaints to better inform the public about his role. We will also be interested to examine the Inspector's important audits on counsel assisting the ICAC and the welfare of ICAC witnesses.

Reputational impact and remedies

The Committee continues to receive representations from people describing the impact to their reputations from being adversely named in ICAC investigations in various ways and a lack of suitable remedies to alleviate this impact.

A number of remedies already exist such as the ICAC's procedural fairness guidelines and exculpatory evidence policy and the Inspector's audit and complaint handling functions.

However, the Committee has found that the reputational impact experienced by those named adversely in ICAC's investigations where no or little evidence is forthcoming, can be serious and is not addressed fully by the available remedies. The Committee has also found that an exoneration protocol is one possible remedy to address reputational impact in this context. However, the protocol does not cover all the circumstances in which the ICAC's investigations may impact on an individual's reputation.

Given that the question of reputational impact for people adversely named in the ICAC's investigations and where little or no evidence is brought forward, remains unresolved, the Committee has decided to examine the issue in 2020.

The Committee looks forward to reviewing the 2018-2019 annual reports of the ICAC and the Inspector next year and continuing to consider these important issues.

I thank the Inspector, the ICAC Commissioners and senior staff from the ICAC for their contributions at the public hearings. I also thank my fellow Committee Members for their interest and input into this review. Finally, I thank the Committee staff for their assistance.



Tanya Davies MP
Chair

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Chapter One – Operations

The ICAC Act should be reviewed again in 2021

Recommendation 1

The Committee recommends that this Committee reviews the *Independent Commission Against Corruption Act 1988* in 2021 to determine whether it continues to be effective and appropriate.

- 1.1 In this chapter the Committee finds that the changes to the ICAC Act which established the three Commissioner model for the ICAC are working well.
- 1.2 The Committee also acknowledges the value of regular independent reviews of the ICAC Act, as were undertaken in 2005 and 2015, and recommends a similar review be undertaken in 2021.

Structure of the Commission

The three Commissioner model is effective

Finding 1

The three Commissioner structure at the Independent Commission Against Corruption is continuing to work well.

- 1.3 The Committee is pleased to hear from both the Independent Commission Against Corruption (ICAC) and the Inspector of the ICAC (Inspector) that the three Commissioner model is effective. The Committee will continue to monitor whether this structure remains appropriate in the long-term or whether any further changes are needed.
- 1.4 The Chief Commissioner of the ICAC told the Committee about the ICAC's work in establishing the new structure:
- Over the past two years the three Commissioner model has sought to build upon the experience, the skills and the methodologies in the investigation of corrupt conduct that have been built up over many years of the Commission's operations, whilst at the same time pursuing innovation and change considered necessary to meet emerging risks in the present-day operating environment.¹
- 1.5 The Chief Commissioner attributed the three Commissioner model and the capacity to hold overlapping investigations as 'a principal reason' why the ICAC was able to generate such a large output of work in 2017-18.²
- 1.6 The ICAC substantially increased its output in a number of different areas in the 2017-2018 reporting year. For example the ICAC:

¹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 2.

² The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 9.

- received and managed an extra 262 matters compared to the previous reporting year, bringing the total to 2,751
- commenced 41 new preliminary investigations compared with 27 in the previous year
- held four public inquiries over 47 days compared to two public inquiries over 31 days the previous year
- delivered 248 anti-corruption presentations and training workshops in NSW to approximately 7,100 people face-to-face compared to 106 reaching approximately 2,500 people face-to-face the previous year.³

1.7 The Inspector explained that the decline in complaints to his office after the end of the 2017-2018 year was influenced by the new model at the ICAC:

...the decline in complaints can be attributed probably in large part to the fact that ICAC itself is working extremely well in my observation. The three person Commissioner model adopted by Parliament has been effective.⁴

1.8 The new structure for the ICAC was implemented following recommendations from the Committee to restructure the ICAC from a sole Commissioner model to a three Commissioner panel to optimise its decision making.⁵

The development of SIRU and the Witness Cooperation Policy are achievements of the ICAC

1.9 The Committee commends the ICAC for developing a proactive intelligence-based approach to its investigation and corruption prevention work through the Strategic Intelligence Research Unit (SIRU). The Committee was interested to learn about how the establishment of the unit has bolstered the ICAC's intelligence capability.

1.10 The Committee was also interested to hear that the ICAC has developed a Witness Cooperation Policy to assist those who wish to come forward with information about potentially corrupt conduct. The Committee was pleased to hear that the Chief Commissioner already believes this has been helpful in investigations.

SIRU uses information databases to identify trends and connections

1.11 The Chief Commissioner told the Committee that SIRU started operating in July 2018 and is staffed by intelligence analysts. He described the unit's two main functions:

The first is the provision of strategic intelligence products that identify emerging corruption risks and trends and which might be referred to as hotspots. Secondly, generating proactive lines of investigations through large-scale data collection and analysis, SIRU has developed its own strategic intelligence databases, which assist in

³ Independent Commission Against Corruption, [Annual report 2017-18](#) (October 2018) p 10.

⁴ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 3.

⁵ Committee on the Independent Commission Against Corruption, [Report 3/56 Review of the 2014-2015 and 2015-2016 Annual Reports of the Inspector](#) (September 2017).

the identification of trends, hotspots and activities that present proactive investigation opportunities of the Commission's own motion.⁶

1.12 The Chief Commissioner explained that the ICAC 'had an immense database' for a long time, 'but sometimes it was not altogether easy to draw the connections between companies, corporations, personnel and so on.'⁷

1.13 The Chief Commissioner described the practical aspects of how SIRU will benefit the ICAC's work:

SIRU can work its magic by putting in a number of key search terms and so on and an unbelievable range of connections come up as a result. The names of many people whose names we have seen over and over again – we suspect they are regular performers in the corrupt conduct area but there has never been enough evidence in any one of them to launch a full investigation.

It is very frustrating. You know they are up to no good. But with the SIRU capacity there are now ways and means of tracking some of their activities.⁸

1.14 The ICAC's 2017-18 annual report describes some of the resources SIRU will rely on:

The SIRU will leverage the resources of the Commission's data holdings, available open source data and strategic alliances with partner agencies in an effort to identify current and emerging behaviours that are indicative of corrupt conduct. The unit will also work with the Corruption Prevention Division on projects where proactive enquiries may identify behaviours, and/or situations that are corrupt or have the potential to develop into corrupt activities.⁹

1.15 The Chief Commissioner identified an operation being undertaken with the assistance of SIRU:

It is approaching the stage where we will be considering the preliminary investigation in certain areas that SIRU has been over. We would never have detected this potential issue without having had SIRU pick up on it.¹⁰

1.16 The Chief Commissioner explained that the program and other software was designed and developed by SIRU and therefore remains the intellectual property of the ICAC.¹¹ The ICAC's work through SIRU has been recognised by the Australian Institute of Professional Intelligence Officers in August this year with its 2019 organisation award.¹²

The Witness Cooperation Policy encourages persons to cooperate with ICAC investigations

1.17 Another achievement of the ICAC is the development of the Witness Cooperation Policy. It was created so the ICAC has an official public policy which encourages

⁶ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

⁷ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 7.

⁸ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 16.

⁹ Independent Commission Against Corruption, [Annual report 2017-18](#) (October 2018) p 28.

¹⁰ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 7.

¹¹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹² The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

people to cooperate in its investigations¹³ The Chief Commissioner described the effect of the policy:

After consultation with the Australian Securities and Investments Commission (ASIC) as to its approach on such matters, the Commission determined that it would develop and supplement its investigative methodologies with a policy that would encourage persons, including in particular those at particular levels of involvement in corrupt schemes, to cooperate and disclose their involvement and/or their knowledge of corrupt activities or of corrupt schemes and/or the way in which schemes operated.¹⁴

- 1.18 The Chief Commissioner explained that the policy sets out appropriate incentives for cooperating with the ICAC.¹⁵
- 1.19 The final draft of the proposed policy was sent to the Inspector and the Director of Public Prosecutions (DPP) for comment. The ICAC adopted suggestions made by the Inspector. The DPP indicated that the policy was acceptable from his point of view.¹⁶ The policy is now published on the ICAC's website.¹⁷
- 1.20 The Chief Commissioner said that without such a policy there was always a risk that persons with particular knowledge may have been uncertain or hesitant about approaching the ICAC to assist with its investigations.¹⁸
- 1.21 The Chief Commissioner believes:
- ...the policy has already assisted the Commission in particular in its investigations and I believe it will continue to do so.¹⁹

The Inspector's approach to complaints with pending criminal proceedings is appropriate

- 1.22 The Committee supports the Inspector's approach to dealing with complaints about the ICAC where there are relevant unresolved criminal proceedings.
- 1.23 The Inspector's annual report for 2017-18 highlights his method for approaching these kind of complaints. Where relevant criminal proceedings are pending, the Inspector will wait until after those proceedings are finally determined before determining the complaint.²⁰
- 1.24 The Inspector explained why he was concerned about how such complaints should be managed:

I was concerned that it would inhibit my decision-making process because if, say, I made a finding that the Commission had engaged in this conduct in relation to a matter that was the subject of pending criminal proceedings, that could have two

¹³ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹⁴ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹⁵ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹⁶ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹⁷ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹⁸ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

¹⁹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

²⁰ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2018](#), p 3.

effects. Firstly, it could be used in those proceedings; and second, it would receive publicity and that might influence a jury, for example. It worried me because they are serious matters.

I would wish to come to those things unhampered by the concern that it might have an impact outside of the actual terms of the report.²¹

- 1.25 The Inspector further described how he would manage such a complaint once the relevant criminal proceedings were resolved:

...when those cases are resolved, I will write to the complainants and ask them whether they wish me now to resolve the complaints. That is only a postponement. It is not a rejection or a dismissal.²²

- 1.26 The Inspector sought the views of the Chief Commissioner about his proposed approach:

The Chief Commissioner considered that "to be a prudent approach to take in general" and suggested that it may be appropriate to consider exceptions to the general rule where any criminal proceedings are being dealt with summarily or otherwise without a jury. This of course is an issue that I will deal with on a case by case basis.²³

- 1.27 The Inspector also sought the views of the DPP, who said it is a matter for the Inspector, but is supportive of the Inspector's decision generally.²⁴

The ICAC Act has been reviewed previously with good effect

Finding 2

The *Independent Commission Against Corruption Act 1988* is working well. However, there should be a review of the Act in 2021 to determine whether it continues to be effective and appropriate.

- 1.28 As discussed earlier in this chapter, the Committee heard from both the Chief Commissioner and the Inspector that the new three Commissioner structure for the ICAC is continuing to work well.
- 1.29 The Committee is satisfied that the ICAC Act does not need to be reviewed now. However, given the recent structural changes to the ICAC, and the special powers conferred on the ICAC more generally, the Committee recommends a review of the ICAC Act in 2021. This is to determine whether the legislative framework continues to be effective and appropriate.
- 1.30 In making this recommendation, the Committee notes earlier independent reviews of the ICAC Act (such as those in 2005 and 2015).

²¹ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, pp 12-13.

²² Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, pp 12-13.

²³ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2018](#), p 3.

²⁴ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 12.

- 1.31 At the hearings with the ICAC and the Inspector, Committee members asked whether there could be any further improvements to the ICAC's functioning or the ICAC Act.
- 1.32 The Inspector did not support changes to the governance structures and internal operations of the ICAC at this stage:
- In terms of actual governance, though, my perception is that it is working well at the present time, I do not perceive, myself, in relation to the governance structures and the internal operations of the Commission, a need to impose any more prescriptive things on it. I also suspect it probably would be unwise to do so at this stage.²⁵
- 1.33 However, the Inspector believes that a future review may be appropriate:
- I do not think there is any pressing need for change right now but these things should always be kept under review. My own personal view is that a review next year or the year after would not be a bad thing at all – specifically focusing on how the most recent legislative changes are operating.²⁶
- 1.34 The Inspector provided the Committee with suggestions as to who may carry out this review:
- Whether it is done by an appointee like I was or the committee itself doing it formally and having public hearings where people are called to give evidence – not just people like me, there are a lot of people who have an interest in the area.²⁷
- 1.35 In response to similar questioning from the Committee, the Chief Commissioner said he could 'foresee that a review from time to time would be perhaps useful.'²⁸
- 1.36 The Chief Commissioner further described to the Committee examples of matters that may benefit from review:
- One matter is that the three Commissioner model, when it was established by amending legislation, to my knowledge there does not appear to have been much consideration given to what practically that would involve in terms of funding and in terms of who would do what. We have, as it were, made up the rules as we have gone because there are no rules. There was no explanation in terms of what it would mean in terms of funding or needing to have additional resources and staffing...We have a heightened level of activity which clearly could not be maintained unless the resources were increased. That would be the sort of matter that would warrant another look at.²⁹

The 2005 inquiry

- 1.37 In 2004, before his appointment as the Inspector of the ICAC, Mr McClintock was commissioned to take over and conclude an inquiry into the ICAC Act. The inquiry

²⁵ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

²⁶ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

²⁷ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

²⁸ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 13.

²⁹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 13.

had originally been commenced by the Hon Jerrold Cripps QC. In January 2005, the final report was released.

1.38 In his executive summary to the report, Mr McClintock noted that he was 'satisfied that the terms of the Act remain generally appropriate for securing its objectives'.³⁰

1.39 Nevertheless, the report made a number of recommendations. In particular, two key changes to the legislative framework were suggested:

The first is to establish an independent Inspector to audit ICAC's operations and deal with complaints about ICAC. The second is to limit availability of contempt of ICAC by publication.³¹

1.40 The report also contained recommendations in relation to matters such as:

- objectives and principles of the Act
- functions of the ICAC
- corrupt conduct
- jurisdiction
- powers
- accountability.³²

The 2015 inquiry

1.41 A second independent review of the ICAC Act was undertaken by the Hon Murray Gleeson AC (Chair) and Mr McClintock.³³ The panel delivered its report on 30 July 2015. The report recommended:

- changes to the definition of 'corrupt conduct'
- widening the jurisdictional basis for the ICAC's advisory, educational and prevention functions
- changes to the legislation to include breaches of electoral and lobbying laws as within the ICAC's jurisdiction, if Parliament considered this appropriate

³⁰ Mr B McClintock SC, [Independent review of the Independent Commission Against Corruption Act 1988 final report](#) (January 2005) p ix.

³¹ Mr B McClintock SC, [Independent review of the Independent Commission Against Corruption Act 1988 final report](#) (January 2005) p ix.

³² Mr B McClintock SC, [Independent review of the Independent Commission Against Corruption Act 1988 final report](#) (January 2005) pp xi to xvi.

³³ The Hon. Murray Gleeson AC and Bruce McClintock SC, [Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption](#) (30 July 2015) p vii.

- that the power of the ICAC to make findings of corrupt conduct should only occur in cases of serious corrupt conduct.³⁴

Management of complaints by the Inspector of the ICAC

Recommendation 2

The Committee recommends that the Inspector of the ICAC publishes procedures and guidelines on how the Inspector assesses and manages complaints.

- 1.42 One of the primary functions of the Inspector is to investigate and assess complaints made against the ICAC. Under the ICAC Act, the Inspector's principal functions are to:
- audit the operations of the ICAC for the purposes of monitoring compliance with the law of the State
 - to deal with (by reports or recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the ICAC or officers of the ICAC
 - to 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 ICAC or officers of the ICAC
 - to assess the effectiveness and appropriateness of the procedures of the ICAC relating to the legality or propriety of its activities.³⁵
- 1.43 While the Committee noted that there was some information available on the Office of the Inspector of the ICAC's website and in the Inspector's Annual Report for the period ending 30 June 2018, the Committee asked for a more detailed description of the complaints handling process.
- 1.44 In response the Inspector advised there is an explanation on the Inspectorate's website about how complaints are handled. The Inspector agreed, however, to consider adding more detail:
- ...I am more than prepared to consider even quoting that extract of the report on the website so that people can see it and understand. With respect, it is a very good idea to do that. I am perfectly happy to consider it and probably adopt it.³⁶
- 1.45 Mr McClintock noted that there were 23 outstanding legacy complaints as at 1 July 2017, when he took over the role of Inspector.³⁷ At the time of writing the

³⁴ The Hon. Murray Gleeson AC and Bruce McClintock SC, [Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption](#) (30 July 2015) pp ix to xii.

³⁵ [Independent Commission Against Corruption Act 1988 \(NSW\) ss57B\(1\)\(b\), s57B\(1\)\(c\), s57C\(e\)](#)

³⁶ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 12.

³⁷ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2018](#), p 1.

2017-18 Annual Report, the Inspector noted that all outstanding complaints had been finalised.³⁸

1.46 The Inspector explained how he approached the handling of complaints.

I did a triage on them. This is in the report that you and the Chair are examining. I found some that I could dismiss or postpone immediately. For example, there were some complaints that were the subject of court proceedings... I took the view that I should not be determining those complaints while there were outstanding criminal proceedings against those men and so I deferred doing that. That was, in a sense, easy. In relation to the others, though, there were some that were easier to deal with because they did not raise a real question of misconduct or maladministration.³⁹

There were others, however, that were of real substance. In the ultimate, I did not uphold any of the complaints but there were others that had to be approached with a considerable amount of care.⁴⁰

1.47 The Inspector explained that he adopted two methods of dealing with complaints under section 57B(1)(b) and (c) of the Act. The first was to send a letter to the complainant, setting out the reasons for his decision and the second was to address the complaint by making a formal report to the Parliament.⁴¹

1.48 In determining which method to select, the Inspector advised:

In deciding whether to make a formal report to Parliament as opposed to dealing with the matter by letter, I took account of factors such as whether an issue of principle or matter of importance arising under the legislation is involved or whether the complainant has raised particular legal or policy issues that I thought were necessary and in the public interest to make some comment about. To illustrate, in one of the Reports, I dealt with a common misconception that the ICAC is a court, not, as in fact it is, a specialist investigative agency...⁴²

Funding and resourcing

An independent funding model for the ICAC has merit

Recommendation 3

The Committee recommends that the NSW Government examines a new independent funding model for the ICAC in the current budget cycle.

Finding 3

It is appropriate to consider a funding process for the ICAC which is separate from the process that applies to other government or independent agencies.

1.49 The Committee agrees with the Chief Commissioner and the Inspector that it is appropriate to consider a funding model for the ICAC which is separate from the process that applies to other government or independent agencies. As the Chief

³⁸ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2018](#), p 1.

³⁹ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 2.

⁴⁰ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 2.

⁴¹ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2018](#), p 2.

⁴² Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2018](#), p 2

Commissioner and the Inspector have highlighted, there are many important differences between the ICAC and other government or independent agencies. The ICAC's independence must be maintained.

- 1.50 In the Committee's view, the NSW Government should investigate the possible funding model put forward by the ICAC along with any other appropriate independent funding mechanisms. Any model chosen should ensure that the ICAC is sufficiently funded to continue its core work, provisions for CPI and wage rises, and factors in the fluctuating nature of operational costs.
- 1.51 In his evidence, the Chief Commissioner proposed a new funding model for the ICAC. The Chief Commissioner urged that 'consideration be given to a new funding model having the underlying principles of certainty, flexibility, transparency and accountability and ensuring absolutely the Commission's independence'.⁴³
- 1.52 The Committee heard that in December 2018, the ICAC proposed to Government that discussions with stakeholders commence about establishing an independent funding model for the ICAC.⁴⁴ In October 2019, the Chief Commissioner delivered a detailed report to the Premier, *New South Wales Independent Commission Against Corruption report to the Premier – the new ICAC at a funding crossroads*.⁴⁵
- 1.53 The ICAC is currently funded through parliamentary appropriation funding and grant funding from the Department of Premier and Cabinet (DPC).⁴⁶
- 1.54 The Chief Commissioner explained the components of a proposed new funding model:
- Such a model would have two components: firstly, a fixed model or a fixed amount to meet the Commission's core funding needs to maintain its operational effectiveness, including costs associated with optimum staffing levels and the conduct of compulsory examinations and public inquiries; the second component would consist of supplementary funding that the Commission can draw upon to meet unforeseeable or unexpected operational expenses.⁴⁷
- 1.55 The Chief Commissioner also described how such a new model might work in practice:
- Firstly...Parliament alone has authority to determine and sanction the funding resources of the Commission. Next, the Parliament would be assisted by an independent eminent and well-qualified person in the community...to assess, to advise and to recommend to Parliament the necessary appropriations for funding of the ICAC. Thirdly, the eminent person's functions would include, so far as assessment is concerned, receiving the Commission's budget case and support material for the forthcoming financial year. It would receive material and submissions from relevant stakeholders including DPC and Treasury and, as

⁴³ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 5.

⁴⁴ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

⁴⁵ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 6.

⁴⁶ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 3.

⁴⁷ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 5.

necessary, the eminent person would seek further information from the Commission and/or stakeholders.⁴⁸

1.56 In addition to their assessment role, the Chief Commissioner described the eminent person's role in recommending funding for the ICAC:

The eminent person appointed would have an advisory function and would recommend to Parliament, firstly, the amount of the appropriations by Parliament, and secondly, the amount of a provisional fund available to be drawn down by the Commission in the forthcoming financial year on Commission application which sets forth the basis for a drawdown of any amount from the provisional fund for financing compulsory examination expenses, public inquiry expenses and any other expenses certified by the Chief Commissioner as essential or necessary to support the operation of the Commission.⁴⁹

1.57 The Chief Commissioner explained that the funding model proposed has been developed by the ICAC with regard to consultant's advice and consideration of other models including:

- the recently established model of the Victorian Independent Broad-based Anti-corruption Commission, where the relevant parliamentary committee approves its funding, and
- the salaried officers concept, where the remuneration of senior statutory officers is determined independently by a tribunal.⁵⁰

1.58 The Inspector supported a non-politicised funding model for the ICAC:

...to ensure the ultimate statutory independence of the Commission, funding for it should be determined via a non-politicised process and one that is not subject to bureaucratic management or oversight. A reconsideration of the current funding model to one which takes in to account the entirety of the Commission's ever-increasing workload, particularly following the introduction of the three Commissioner model would ensure that the Commission can continue to expose and investigate serious corrupt conduct.⁵¹

1.59 The Chief Commissioner highlighted some of the ways in which the ICAC is different to other agencies:

It is in fact very different to a government agency in every material respect, including the following: First, the ICAC was created by Parliament as a unique anti-corruption agency; secondly, the ICAC is not responsible to or subject to in any way the executive government; and thirdly, it is of course answerable to the ICAC Inspector, as it is ultimately to Parliament, including through this Parliamentary Joint Committee.

As I mentioned earlier, ICAC staff members are not public servants under the Government Sector Employment Act 2003 being one feature that distinguishes it from any other independent agencies in this State. Next, the ICAC is legislated to be

⁴⁸ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 5.

⁴⁹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 5.

⁵⁰ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 14.

⁵¹ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2019](#), pp 3-4.

funded by parliamentary appropriation. The Commission is completely independent as an entity, as it must given its statutory charter. Finally, the Commission's jurisdiction is extensive and can be triggered and applied to government agencies, government authorities, and government officials from the most senior down. The Commission's jurisdiction requires it to investigate serious or systemic conduct, and that is what it does.⁵²

- 1.60 The Inspector also questioned the current funding model for the ICAC as an independent statutory body:

This funding model may have worked in the past but I query whether it is desirable for an independent statutory body whose primary role is ensuring the integrity of public administration in NSW. I hope the Government will give consideration to an alternative model which maintains the independence of the Commission by ensuring adequate funding.⁵³

- 1.61 The Chief Commissioner and the Inspector also raised concerns about the ability of the ICAC to continue its work at the same level based on its budget allocation.

- 1.62 The Chief Commissioner highlighted that the appropriation and grant funding of \$27.399 million that the ICAC will receive for 2019-20 is 'barely sufficient to fund the Commission's work for the year.'⁵⁴ Similarly, the Chief Commissioner estimated that the minimum core funding the ICAC needs to maintain the same level of its operations in 2020-21 is \$3.943 million more than the projected funding for that year.⁵⁵

- 1.63 The Chief Commissioner suggested that the ICAC should not be subject to cost-saving measures:

To overcome this problem, the Commission proposes that its appropriation for 2020-21 and subsequent years, be set at a core funding level that reflects its operational requirements and is not subject to government-imposed efficiency dividends or other cost-saving measures imposed from time to time.⁵⁶

- 1.64 The Chief Commissioner said that reductions would need to be made to frontline staff such as lawyers and investigators.⁵⁷ He described the effect of such changes:

Such reductions would, of course, have an immediate and serious effect on the Commission's frontline services and, therefore, its ability to fight corruption.⁵⁸

- 1.65 The Chief Commissioner also spoke about how the ICAC has had to reduce other areas of its work:

We have reduced the use of Commissioners running overlapping or concurrent investigations simply because we do not have the resources to be able to continue

⁵² The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, pp 5-6.

⁵³ Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2019](#), p 3.

⁵⁴ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 4.

⁵⁵ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 4.

⁵⁶ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 4.

⁵⁷ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 4.

⁵⁸ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 4.

to do it without running the staff into the ground, which we will not do. That has been made clear, I think, in our reports to Government, that we cannot maintain and sustain that level of activity with the current resources.⁵⁹

1.66 The Chief Commissioner told the Committee that funding arrangements for the ICAC have not been updated in light of the new three Commissioner model and the power of the Electoral Commission to refer matters to the ICAC for investigation.⁶⁰

1.67 The Inspector also raised concerns about the ICAC's funding following the introduction of the three Commissioner model:

I have been regularly briefed by the Commission about the financial difficulties they have faced since the three Commissioner and CEO model was introduced. The model, while beneficial for the overall good governance of the Commission and its productivity, does not appear to have been funded to provide for the increase in investigative work that the Commission is now able to do.⁶¹

The Office of the Inspector is adequately resourced

Finding 4

The Inspector is adequately resourced to carry out his functions.

1.68 The Committee noted that in 2016-2017, the Inspector was paid a daily rate of \$1,870 and an annual retainer of \$10,000.⁶² In 2017-2018, the Inspector was paid a daily rate of \$4,600 and was no longer paid an annual retainer.⁶³

1.69 At the public hearing on 18 October 2019, the Inspector was asked which remuneration was appropriate to adequately resource his role. The Inspector stated that the 2017-2018 remuneration was appropriate and adequate.⁶⁴

1.70 In the 2017-2018 Annual Report, the Inspector stated that his Inspectorate shared premises with the Law Enforcement Conduct Commission (LECC) Inspectorate. The Inspector also stated that he shared a Principal Legal Advisor and a Business Coordinator with the Inspector of the LECC.⁶⁵

1.71 At the public hearing, the Inspector said that he was adequately staffed and satisfied with the shared resources with the Inspector of the LECC.⁶⁶

⁵⁹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 9.

⁶⁰ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 5.

⁶¹ Office of the Inspector of the ICAC, [Annual Report for the period ending 30 June 2019](#), p 3.

⁶² Office of the Inspector of the ICAC, [Annual Report for the period ending 30 June 2017](#), p 7.

⁶³ Office of the Inspector of the ICAC, [Annual Report for the period ending 30 June 2018](#), p 12.

⁶⁴ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 12.

⁶⁵ Office of the Inspector of the ICAC, [Annual Report for the period ending 30 June 2018](#), p 12.

⁶⁶ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 12.

The Inspector's ongoing audits

The Committee will examine the Inspector's ongoing audits in its next review

Finding 5

The Inspector's audits of counsel assisting the ICAC and the welfare of ICAC witnesses are significant, and the Committee will examine them in its next review.

- 1.72 The Inspector is currently auditing how the ICAC deals with, instructs and controls counsel assisting; and the welfare of ICAC witnesses.
- 1.73 The Committee considers that these are important issues and looks forward to examining the Inspector's audit reports when they are completed.
- 1.74 The Committee notes the Inspector's view that he does not have jurisdiction to directly deal with a complaint about counsel assisting as they are not an officer of the ICAC. However, the Inspector would have jurisdiction if there was an improper failure by a Commissioner to supervise counsel assisting.⁶⁷ In the Committee's view, the jurisdiction of the Inspector in these circumstances is a matter for consideration in a future review.
- 1.75 The Inspector said in the course of his audit he has interviewed some of the people who have recently been counsel assisting the ICAC to learn more about how the ICAC oversights them.⁶⁸
- 1.76 At the public hearing with the Committee, the Inspector spoke about the likely outcome of his audit:
- I can foreshadow my conclusion by saying that I am satisfied now that whatever the position was prior to the current regime, the Commission is dealing with counsel assisting appropriately.⁶⁹
- 1.77 The Inspector has also begun preliminary inquiries in relation to an audit into the welfare of ICAC witnesses.⁷⁰ The Inspector's concern about this issue stems from the recent suicide of a potential ICAC witness.⁷¹
- 1.78 The Inspector's annual report for 2018-2019 notes that his audit would consider 'the means by which ICAC protects the welfare of its witnesses, particularly the mental welfare of persons that are the subject of a Commission investigation'.⁷²
- 1.79 The Inspector explained to the Committee the complexities in this area:
- People can overreact when they find out that their evidence is being sought. Some people can overreact and feel that they themselves are the subject of blame, which is not necessarily the case. Sometimes that is very hard to avoid because an agency

⁶⁷ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

⁶⁸ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 8.

⁶⁹ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

⁷⁰ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 13.

⁷¹ Office of the Inspector of the ICAC, [Annual Report for the period ending 30 June 2019](#), p 26.

⁷² Office of the Inspector of the ICAC, [Annual Report for the period ending 30 June 2019](#), p 26.

like the Commission cannot disclose precisely what it is looking for because, of course, that would defeat the purpose. But I want to inform myself as to whether there are things that can be done to improve the way they approach that. Deaths like that are far too high a price to pay.⁷³

⁷³ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, pp 13-14.

Chapter Two – Reputational impact and remedies

The reputational impact of being named in investigations of the ICAC

Being named in investigations of the ICAC can have serious impacts on the reputations of individuals

Finding 6

The reputational impact experienced by people named in investigations of the ICAC can be serious, and is not addressed fully by the available remedies.

- 2.1 In making this finding the Committee acknowledges that the question of reputational impact and how it should be addressed arises from questioning by the Committee at its two public hearings in addition to its examination of the 2017-18 annual reports of the ICAC and the Inspector of the ICAC.
- 2.2 The Committee continues to receive representations from people describing the impact to their reputations from having been named in the ICAC's investigations in a variety of ways, and the lack of suitable remedies to alleviate this impact.
- 2.3 It is important to note that the Committee is not empowered under the *Independent Commission Against Corruption Act 1988* to investigate or reconsider the ICAC's decisions or recommendations about specific complaints or investigations.⁷⁴ This report is not an investigation of any particular complaint or a reconsideration of the ICAC's decisions. The Committee has been scrupulous in compiling this report to ensure that no individuals named in the proceedings of the ICAC, or who have made representations to the Committee, or whose cases have been discussed at a public hearing for the purposes of illustration, are named in this report.

The Committee has recommended an independent review of the ICAC Act

- 2.4 In Chapter One, the Committee recommended that an independent review of the ICAC Act be undertaken in 2021. The Committee has in mind a review like the 2005 and 2015 reviews, namely an all-encompassing review with the scope to examine every aspect of the ICAC's operations and the efficacy of the ICAC Act.
- 2.5 The Committee's recommendation in Chapter One is not intended to supplant any current or ongoing reviews into any aspects of the ICAC, including this annual report review, and the Committee's review of the ICAC's and the Inspector's 2018-2019 annual reports which will follow this report in 2020.

⁷⁴ [Independent Commission Against Corruption Act 1988, s64](#)

An exoneration protocol is one possible remedy available to address reputational impact

Finding 7

An exoneration protocol is one possible remedy available to address the reputational impact of being named in the investigations of the ICAC.

- 2.6 In previous reviews the term ‘exoneration protocol’ has been applied to the recommended remedy for the damage suffered to the reputations of people against whom a finding of corrupt conduct has been made by the ICAC, and who are later acquitted by a court after a criminal prosecution on the same or similar facts.⁷⁵
- 2.7 The two notable reports in which an exoneration protocol was examined are the 2016 *Report to the Premier: The Inspector’s Review of the ICAC* by the then Inspector of the ICAC, the Hon David Levine AO RFD QC, and the 2017 *Report Pursuant to Sections 57B and 77A – Operation Vesta* by the then Acting Inspector of the ICAC, Mr John Nicholson SC. These reports and the Committee’s responses to them, are discussed in more detail below.

An exoneration protocol does not cover all the circumstances in which the ICAC’s investigations may have reputational impact

- 2.8 The application of an exoneration protocol is limited to circumstances where the ICAC makes a finding of corrupt conduct and a criminal prosecution occurs, or is contemplated but does not proceed. The Committee is aware of other cases which do not involve findings of corrupt conduct by the ICAC or subsequent criminal prosecution, but makes findings of fact, or where the mention of a person by name in the proceedings of the ICAC has been sufficient to invoke reputational damage. In such cases an exoneration protocol as envisaged by the previous Inspectors of the ICAC in their reports does not provide a remedy if one is required.
- 2.9 The evidence heard by the Committee identified a number of existing and potential remedies to address reputational impact. The Chief Commissioner and the Inspector agreed that the potential for reputational impact is serious, and expressed their willingness to consider current and potential remedies as part of their reporting.

The application of remedies can be compulsory or discretionary

- 2.10 The evidence also identified a dilemma when applying remedies. On the one hand the ICAC and the Inspector could be compelled by changes to the legislation to apply particular remedies. On the other hand the application of the available remedies could be entirely at the discretion of the ICAC and the Inspector with no legislative compulsion.
- 2.11 On the question of discretion, Mr Bruce McClintock SC, Inspector of the ICAC, argued strongly that the exercise of discretion by ‘the right people’ appointed to the Commission is a firm foundation for the fair and reasonable exercise of the

⁷⁵ Hon David Levine AO RFD QC, [Report to the Premier: The Inspector’s Review of the ICAC](#) (May 2016) pp 4-5.

ICAC's powers. Any decision to replace discretion with compulsion is not to be made lightly.⁷⁶

- 2.12 Further, encouraging a more interventionist role for the Commissioners in, for example, the supervision of counsel assisting the ICAC in his or her conduct of proceedings, as discussed by the Inspector, may also provide a remedy.⁷⁷ This matter, and how the Inspector judges what constitutes a breach of the ICAC's statutory obligations, will be addressed by the Inspector's audit report expected to be completed in 2020.
- 2.13 The ICAC uses a range of safeguards in its investigations to address reputational impact, such as procedural fairness guidelines and its policy on exculpatory evidence. The application of any additional remedies must be mindful of the impact on the effectiveness of these existing safeguards.
- 2.14 In this report, the Committee restricts the term 'exoneration protocol' to the remedy described by Inspectors Levine and Nicholson in their 2016 and 2017 reports.⁷⁸

There are a number of existing remedies and others for further consideration

- 2.15 Currently available remedies include:
- the ICAC's advice to witnesses
 - the ICAC's procedural fairness guidelines
 - the ICAC's exculpatory evidence policy
 - the ICAC's discretionary use of procedural tools such as non-publication orders
 - the ICAC's policies for ensuring Commission staff act honestly and fairly
 - the Inspector's audit and complaints handling functions under section 57B of the ICAC Act.
- 2.16 Remedies mooted for further consideration include:
- an exoneration protocol
 - the practice of supervising counsel assisting the ICAC, including the potential for legislative changes to make counsel assisting an officer of the ICAC

⁷⁶ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 10

⁷⁷ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 8

⁷⁸ Hon David Levine AO RFD QC, [Report to the Premier: The Inspector's Review of the ICAC](#) (May 2016); John Nicholson SC, [Report Pursuant to Sections 57B and 77A Independent Commission Against Corruption Act 1988 Operation "Vesta"](#) (June 2017).

- the use of explicit statements in reports regarding non-findings of fact or corrupt conduct.

2.17 These two lists are not intended to be comprehensive, and the reviews underway or recommended below may identify other remedies.

The Parliament intended the ICAC to make definite conclusions about people involved in the ICAC's investigations

2.18 In this section, the Committee provides some examples of how reputational impact and remedies have been considered since the establishment of the ICAC.

The Parliament's intentions when establishing the ICAC

2.19 A bill to establish the Independent Commission Against Corruption (ICAC) was introduced to the NSW Parliament in 1988.

2.20 The object of the *Independent Commission Against Corruption Bill 1988* (the Bill) was to:

constitute an Independent Commission Against Corruption, and to confer on it wide powers, with special emphasis on—

- Investigating corruption or possible corruption where public officials are involved, either on a complaint or reference made to it or on its own initiative; and
- Educating public authorities and the community generally on the detrimental effects of public corruption and strategies to combat it.⁷⁹

2.21 On 26 May 1988, then Premier, the Hon Nick Greiner MP, stated in his second reading speech on the Bill:

...the commission will be required to make definite findings about persons directly and substantially involved. The commission will not be able to simply allow such persons' reputations to be impugned publicly by allegations without coming to some definite conclusion.⁸⁰

2.22 The Bill commenced on 9 August 1988 as the *Independent Commission Against Corruption Act 1988* (the Act).⁸¹

The Inspector's view of Parliament's intentions

2.23 The Inspector of the ICAC expressed a view of the Parliament's intentions when establishing the ICAC.

⁷⁹ Bill (and Explanatory note), [Independent Commission Against Corruption Bill 1988](#), p 1.

⁸⁰ The Hon. Nick Greiner, Premier, [Second Reading, Independent Commission Against Corruption Bill 1988](#), HANSARD, 26 May 1988, p 675.

⁸¹ NSW Legislation: [Independent Commission Against Corruption Act 1988 No 35, Historical notes](#) (accessed 6 November 2019).

In 1989, Parliament made a decision that it would sacrifice certain significant rights of ordinary citizens in favour of enhancing public administration and reducing corruption in this State.⁸²

- 2.24 In the Committee's mind, its seeking of a remedy or remedies for reputational impact sits equally well with both views.

Previous reports and recommendations on remedies, and the Committee's responses

Examinations of procedural fairness

- 2.25 In 2016, the Committee inquired into the ICAC Inspector's *Report to the Premier: The Inspector's Review of the ICAC*, dated May 2016. The inquiry examined the ICAC's powers and procedures including the rationale for and conduct of investigations and public hearings.
- 2.26 The Committee made eight recommendations for the ICAC to comply with procedural fairness during public inquiries and before publishing adverse findings. Among them, the Committee recommended that:
- the ICAC must follow the rules of procedural fairness during a public inquiry and before publishing an adverse finding against a person
 - the Commission be required to issue guidelines to the ICAC's staff and counsel assisting for the conduct of public inquiries. These guidelines should be tabled in Parliament and published on the ICAC's website
 - the guidelines include requirements that the ICAC's staff and counsel assisting must follow in relation to procedural fairness.⁸³
- 2.27 The Committee stated that public findings can have ramifications for individuals, including reputational damage. The Committee emphasised that conducting public inquiries in accordance with procedural fairness and ethical conventions is vital.
- 2.28 The Committee made a recommendation for the Act to be amended to allow a person or body to respond to adverse findings and their responses published before being mentioned in reports.⁸⁴
- 2.29 A recommendation was also made for the Act to protect the identity of third parties involved in an inquiry but not subject to adverse findings unless:
- the ICAC is satisfied it is in the public interest

⁸² Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 8.

⁸³ Committee on the ICAC, [Report 2/56 Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports](#) (October 2016) p 14.

⁸⁴ Committee on the ICAC, [Report 2/56 Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports](#) (October 2016) p.19.

- the ICAC is satisfied it will not cause unreasonable damage to the person's reputation, safety or wellbeing
- the ICAC states that the person is not the subject of any adverse comment or opinion.⁸⁵

2.30 The outcomes of the Committee's previous reports and recommendations are available on the Committee's website.⁸⁶

Examinations of an exoneration protocol

2.31 In his 2016 report to the Premier, Inspector Levine recommended an exoneration protocol. This recommendation concerned persons who have had a corrupt conduct finding made against them by the ICAC, and who are later prosecuted for a criminal offence based on the same or a similar set of facts. Where such persons are acquitted of that offence, the Inspector recommended that they should also be able to apply to the Supreme Court to have the ICAC finding set aside.⁸⁷

2.32 In its 2016 *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Special Reports*, the Committee recommended against the Inspector's proposal for an exoneration protocol because:

- the ICAC makes its findings based on a different standard of proof from the criminal courts ie on the balance of probabilities instead of beyond reasonable doubt
- the ICAC can base its findings on evidence that is not admissible in court. For example, the ICAC can compel a person to give evidence that may incriminate him or her, while the courts cannot
- the elements of 'corrupt conduct' as defined in the ICAC Act do not correspond with a particular crime
- findings of corrupt conduct do not necessarily lead to prosecutions because there may not be enough admissible evidence, or the offence may be out of time.

2.33 In the circumstances, the Committee found the fact that a person has been acquitted of a criminal offence does not mean he or she has been exonerated in respect of a corrupt conduct finding. Therefore, it decided that an exoneration protocol should not be introduced.⁸⁸

2.34 Subsequently, in June 2017, the then Acting Inspector, Mr John Nicholson SC, tabled his *Report Pursuant to Sections 57B and 77A – Operation Vesta*, dealing

⁸⁵ Committee on the ICAC, [Report 2/56 Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports](#) (October 2016) pp 19-20.

⁸⁶ NSW Parliament, [Committee on the Independent Commission Against Corruption](#), Inquiries.

⁸⁷ The Hon. David Levine AO RFD QC, Inspector of the ICAC, [Report to the Premier: The Inspector's Review of the ICAC](#), (May 2016) pp 4-5.

⁸⁸ Committee on the ICAC, [Report 2/56 Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports](#) (October 2016) pp 11-13.

with complaints received by his Inspectorate. In his report, the Acting Inspector recommended the Committee inquire into whether an exoneration protocol should be introduced.⁸⁹

- 2.35 In 2017, in unpublished correspondence to one of these complainants, the Committee reiterated its position to not recommend an exoneration protocol for the reasons it gave in 2016.
- 2.36 An exoneration protocol has not been reconsidered by the Committee since its 2016 report and 2017 correspondence. However, on 7 May 2019, the Hon Jonathan O'Dea MP, Speaker of the Legislative Assembly, told Parliament that '...there is...scope to revisit the issue of how to better reflect the exoneration of parliamentarians and others following a referral to ICAC'.⁹⁰

Examinations of the role of counsel assisting

- 2.37 In his June 2015, *Report Pursuant to the Premier's Reference: Section 77A Independent Commission Against Corruption Act 1988*, then Inspector, the Hon David Levine AO RFD QC, suggested that while public hearings are damaging by nature, counsel assisting sets the tone.⁹¹
- 2.38 Inspector Levine stated that complaints received in his Inspectorate on the subject of counsel assisting tended not to focus on particular individuals assisting specific inquiries, but on the general conduct of the position of counsel assisting.⁹²
- 2.39 As mentioned in Chapter One, the Inspector is currently auditing how ICAC manages counsel assisting. Once the Inspector reports on his audit in 2020, the issue of remedies arising around the role of counsel assisting may be examined again, including whether the ICAC itself and the Bar Rules sufficiently deal with the management and conduct of counsel assisting the ICAC.
- 2.40 The Bar Rules aim to ensure that barristers act in accordance with general principles of professional conduct, act independently, recognise their obligations to the administration of justice, and provide services unaffected by personal interest.⁹³ Sections 96 to 100 of the Bar Rules specifically relate to the conduct of counsel assisting an investigative or inquisitorial tribunal.⁹⁴
- 2.41 Prior to his appointment as the Inspector of the ICAC, Mr Bruce McClintock SC was a member of the independent panel chaired by the Hon Murray Gleeson AC, which reviewed the jurisdiction of the ICAC in 2015.

⁸⁹ John Nicholson SC, Acting Inspector of the ICAC, [Report Pursuant to Sections 57B and 77A Independent Commission Against Corruption Act 1988 Operation "Vesta"](#) (June 2017) p 89.

⁹⁰ The Hon. Jonathan O'Dea MP, Speaker, NSW Legislative Assembly, [Parliamentary Debates](#), 7 May 2019, p 3.

⁹¹ The Hon. David Levine AO RFD QC, Inspector of the ICAC, [Report Pursuant to the Premier's Reference: Section 77A Independent Commission Against Corruption Act 1988](#) (June 2015, p 9.

⁹² The Hon. David Levine AO RFD QC, Inspector of the ICAC, [Report Pursuant to the Premier's Reference: Section 77A Independent Commission Against Corruption Act 1988](#) (June 2015, p 9.

⁹³ [Legal Professional Uniform Conduct \(Barristers\) Rules 2015, s3.](#)

⁹⁴ [Legal Profession Uniform Conduct \(Barristers\) Rules 2015, ss 97-99.](#)

- 2.42 In the panel's report *Review of the Jurisdiction of the Independent Commission Against Corruption*, suggestions were made for the Act to be amended to include counsel assisting as an officer of the Commission. Such an amendment to the Act would give the Inspector of the ICAC the power under section 57B(1)(b) to review the conduct of counsel assisting.⁹⁵
- 2.43 The panel ultimately rejected the proposal for the amendment, stating that the ICAC and the Commissioner are responsible for overseeing the conduct of counsel assisting. The panel also stated that the Inspector's role extended to considering complaints about the ICAC's management of all aspects of investigations, and that counsel are subject to professional rules and oversight.⁹⁶
- 2.44 In his capacity as Inspector at the public hearing on 18 October 2019, Mr McClintock reiterated the panel's views. He said the principal reason for the panel rejecting an amendment to include counsel assisting as an officer of the ICAC:
- ...was because if there was a wrongful failure on the part of the Commission to supervise counsel assisting or to keep counsel assisting under control and that the counsel assisting did things that were improper, that would be misconduct on the part of the Commission and therefore the Inspector did have jurisdiction to deal with it.⁹⁷
- 2.45 However, when questioned about a particular example of the ICAC's oversight of counsel assisting, Mr McClintock stated:
- ... whatever I thought about conduct of counsel assisting that I could not find on the requisite standard that the Commission itself had wrongfully failed to supervise him. Had there been a repetition, for example, of something like that the next day and the next day, it might have been a different matter.⁹⁸
- 2.46 The Inspector told the Committee what action he would consider taking if he learnt of issues about counsel assisting the ICAC in the future:
- If it were to happen again and it came to my attention as Inspector, I would consider intervening directly with the Commission and expressing my views about it.⁹⁹

The ICAC's and the Inspector's evidence concerning remedies

- 2.47 The Committee questioned both the Inspector and the ICAC on the issue of reputational impact for individuals named in evidence given to the ICAC, in order to hear their views on current and potential remedies.
- 2.48 Many of the Committee's questions to the ICAC Commissioners and the Inspector of the ICAC asked them to address the question of reputational damage by

⁹⁵ The Hon. Murray Gleeson AC and Bruce McClintock SC, [Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption](#) (30 July 2015) p 62.

⁹⁶ The Hon. Murray Gleeson AC and Bruce McClintock SC, [Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption](#) (30 July 2015) p 62.

⁹⁷ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 6.

⁹⁸ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 6.

⁹⁹ Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 8.

referring to a particular case. These questions and answers are contained in the transcripts of the Committee's two public hearings which are published on its website.

There are various existing and possible remedies for reputational impact

Formal review of the ICAC

- 2.49 As stated in Chapter One, Mr McClintock was of the view that a formal review of the current legislative scheme after three to four years in operation was the most appropriate response to this particular issue and to other concerns.¹⁰⁰
- 2.50 Mr McClintock described to the Committee the value of the two previous general reviews of the ICAC (in 2005 and 2015), the first of which he finalised, and the second of which he managed in partnership.
- 2.51 He saw the particular value of such a review in the light of his current view that the three Commissioner structure of the ICAC is working well.¹⁰¹ Further, he compared the circumstances leading up to the 2005 and 2015 reviews. The first, Mr McClintock said, took place in a climate where it was not prompted by any specific problems, but only by a desire by the NSW Government to examine the performance of the legislation and identify what might be improved. This contrasted with the second review which was prompted by a specific problem.¹⁰²
- 2.52 Mr McClintock did not see any 'pressing need' for immediate change, but said the ICAC 'should always be kept under review'.¹⁰³

Recruitment of Commissioners

- 2.53 In addition to giving his support to a future formal review of the ICAC, the Inspector of the ICAC also commented specifically on whether there should be a remedy available to the situation where a person was named in investigations of the ICAC and had suffered an impact to their reputation.
- 2.54 In the first instance, the Inspector proposed that the best way to ensure the ICAC was acting appropriately was to appoint the right people as Commissioners.¹⁰⁴ In acknowledging that there had been problems with the ICAC in the past, Mr McClintock told the Committee that these problems were no longer occurring, and that in addition to the value of the three Commissioner model, this improvement was also the result of appointing the right people to the Commission.

Role of counsel assisting and the jurisdiction of the Inspector to deal with complaints

- 2.55 Commissioner McDonald spoke about some of the safeguards around counsel assisting the ICAC. In particular, she explained that initial discussions with counsel

¹⁰⁰ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

¹⁰¹ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

¹⁰² Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

¹⁰³ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 4.

¹⁰⁴ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 10.

assisting the ICAC focus on procedural fairness guidelines and counsel's responsibilities under the Bar Rules.¹⁰⁵

- 2.56 More broadly, the Inspector spoke about his views on his jurisdiction to deal with complaints about counsel assisting the ICAC. In particular, the Committee noted earlier in this report the Inspector's view that he does not have jurisdiction to deal with a complaint about counsel assisting as they are not an officer of the ICAC. However, the Inspector would have jurisdiction if there was an improper failure by a Commissioner to supervise counsel assisting.
- 2.57 While the Inspector agreed with the Committee's suggestion that the reputational damage for individuals named in the ICAC's investigations was great, the Inspector also told the Committee that such incidents were rare. It was the Inspector's view that a single incident may not disclose any wrongful failure by the ICAC to supervise counsel assisting, in the way that it might if an incident was repeated.¹⁰⁶ This provided an example of how the Inspector might interpret a failure by a Commissioner to supervise counsel assisting, and hence suggest a remedy available to the Inspector.

Exculpatory evidence and procedural fairness policies

- 2.58 Mr McClintock agreed 'with some certainty' that both the ICAC's new policy regarding exculpatory evidence and the rules of procedural fairness also operate under the supervision of the current Commissioners to ensure due process.¹⁰⁷
- 2.59 Exculpatory evidence is part of disclosure material sent to the Director of Public Prosecutions, and is identified and provided to people where it relates to their evidence.¹⁰⁸
- 2.60 The Committee also sought the views of the ICAC Commissioners on questions relating to the historical treatment of the reputational impact on individuals of the ICAC's proceedings and what remedies are available. Commissioner McDonald confirmed that the procedural fairness guidelines are published and that in any investigation the existence of exculpatory evidence 'is at the forefront of everybody's mind'.¹⁰⁹

Non-publication orders

- 2.61 The Committee explored other remedies which might have been available to the ICAC to address reputational impact concerns. These included the use of non-publication orders by the ICAC to ensure that any adverse mention of an individual was not published, or examination of the evidence prior to it being published.

¹⁰⁵ Patricia McDonald SC, Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 8.

¹⁰⁶ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 7.

¹⁰⁷ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 8.

¹⁰⁸ Patricia McDonald SC, Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 7.

¹⁰⁹ Patricia McDonald SC, Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 7.

- 2.62 The Inspector advised that these remedies are available and can be applied at the discretion of the people exercising the powers of the ICAC, namely both the Commissioners and counsel assisting.¹¹⁰

Compulsion versus discretion

- 2.63 The Committee's concerns around addressing reputational impact also prompted the Inspector to address the question of legislative remedies, and whether the ICAC should be compelled to take a particular approach.

- 2.64 The Inspector cautioned against what he described as 'ad hoc solutions to ad hoc problems'.¹¹¹ He agreed that the ICAC is not currently compelled to make any statements regarding the existence or absence of evidence in relation to any individual named in the ICAC's proceedings. However, the Inspector also suggested that the Chief Commissioner of the ICAC would not resist the proposition that such statements should be made where appropriate, compelled or otherwise:

They are not compelled. These are matters that...I frankly would not have thought you would get much resistance from the Chief Commissioner to a proposition or a proposal that said if someone is adversely referred to at some point in the inquiry the Commission should make clear in its ultimate report whether the adverse reference was warranted or not.¹¹²

- 2.65 When drawn on the question of compulsion, however, the Inspector again urged the Committee to consider the quality of the current appointments to the ICAC, and against measures to compel the ICAC to make findings, as opposed to using their discretion. For the Inspector, the fundamental issue in ensuring the fair and reasonable exercise of the ICAC's powers is 'the choice of the people who you make Commissioners'.¹¹³

Opportunity to make a submission about why a corrupt conduct finding should not be made

- 2.66 Commissioner Rushton added that where a person requests it, the ICAC reports details of that person's submission as to why a finding of corrupt conduct should not be made. He described this requirement as providing transparency so that readers of reports can examine evidence for and against findings of corrupt conduct.¹¹⁴

Discretion not to make a corrupt conduct finding

- 2.67 The Chief Commissioner also described the statutory discretion available to the ICAC not to make a finding of corrupt conduct even where there was evidence to the contrary. He gave the example of a case where fairness suggested that a person who had acted corruptly was a victim of circumstance.¹¹⁵

¹¹⁰ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 8.

¹¹¹ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 10.

¹¹² Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 10.

¹¹³ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 10.

¹¹⁴ Stephen Rushton SC, Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 10.

¹¹⁵ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 11.

Explaining why the ICAC has not made a corrupt finding against a person

- 2.68 Regarding evidence against people who are the target of the ICAC's investigations, the Chief Commissioner said that where the evidence did not meet the standard of proof required, the ICAC would always explain why no finding of corrupt conduct against an individual was made.¹¹⁶
- 2.69 In the case of witnesses called to give evidence who may be subject to allegations made in the course of a public hearing, but who are not targets of the ICAC's investigations, the Chief Commissioner agreed that there are cases of reputational impact:
- There are always casualties, unfortunately, in legal proceedings of witnesses' reputations being wrongly besmirched by something a witness says...
- ...sometimes a witness who is the one who is the subject of the inquiries seeks to spread the blame or cast the blame away from him onto someone else, so that allegations are made against that person. Usually the fact-finding makes it fairly clear as to whether or not there was any substance to an outrageous allegation one witness made against another.¹¹⁷

Naming persons on the ICAC website against whom no corrupt findings were made

- 2.70 The Committee asked the ICAC whether it published statements to the effect that no findings of corrupt conduct were made against individuals named in investigations, and if not, would the ICAC consider such a practice.
- 2.71 In response the Chief Commissioner reminded the Committee that the ICAC does not exercise judicial powers, but undertakes investigations via public inquiries. Mr Hall explained:
- ...a public inquiry is an investigation process—plainly we would not take it to an inquiry unless we had cogent evidence that would warrant a public inquiry. We are, in fact, under the provisions of the Act, not to have a public inquiry unless there is evidence that meets the tests.¹¹⁸
- 2.72 Regarding the publication on the ICAC's website of an explicit statement regarding such a case to the effect that the ICAC found no evidence of corrupt conduct against a particular person, Mr Hall advised the Committee that the ICAC does not do this although it had been mooted by other Australian Commissions. The Chief Commissioner expressed concern that some witnesses may not want further mentions of their names on the ICAC's website, but if they did, he would be open to considering it as a remedy for addressing reputational impact:
- At the end of the day, there must be substantive and procedural fairness to everyone who comes before ICAC because the findings we make, and even some of the evidence that comes out in a public inquiry, can be very damaging indeed.¹¹⁹

¹¹⁶ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 10.

¹¹⁷ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 10.

¹¹⁸ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 10.

¹¹⁹ The Hon. Peter Hall QC, Chief Commissioner of the ICAC, [Transcript of evidence](#), 21 October 2019, p 10.

Ensuring the ICAC staff follow procedures and policies

- 2.73 The Committee queried how the ICAC safeguards against its own staff acting dishonestly and upholds the principles of procedural fairness. In response the Commission witnesses described the various protocols in which staff are instructed. These include policies and procedures which explain what is appropriate conduct and encourage compliance.¹²⁰

The Inspector's role in providing remedies

- 2.74 The Committee also examined the Inspector's role in ensuring protection for individuals against damage to their reputations from the investigations of the ICAC. Mr McClintock agreed that the Inspector did play this role, albeit limited by section 57B of the ICAC Act.¹²¹
- 2.75 The capacity of the Inspector of the ICAC to identify and apply remedies through the Inspectorate's statutory powers will be subject to any formal review of the ICAC Act if it takes place as the Committee recommends.

¹²⁰ Roy Waldon, Executive Director, Legal Division and Solicitor, ICAC, [Transcript of evidence](#), 21 October 2019, p 11.

¹²¹ Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 11.

Appendix One – Committee's functions

Under section 64 of the *Independent Commission Against Corruption Act 1988*, the functions of the Committee are to:

- Monitor and review the exercise by the ICAC and the Inspector of the ICAC of their functions
- Report to Parliament, with such comments as it thinks fit, on any matter appertaining to the ICAC or the Inspector or connected with the exercise of its functions to which, in the Committee's opinion, the attention of Parliament should be directed
- Examine each annual and other report of the ICAC and the Inspector and report to Parliament on any matter appearing in, or arising out of, any such report
- Examine trends and changes in corrupt conduct and practices and methods relating to corrupt conduct, and report to Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector
- Inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Nothing in the ICAC Act authorises the Committee to:

- Investigate a matter relating to particular conduct
- Reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint
- Reconsider the findings, recommendations, determinations or other decisions of the ICAC in relation to a particular investigation or complaint.

Appendix Two – Conduct of the review

This report fulfils one of the Committee's obligations under its establishing legislation, the *Independent Commission Against Corruption Act 1988* (the ICAC Act). The Committee's functions include examining each annual and other report of the ICAC, and of the Inspector of the ICAC, and reporting to Parliament on any matter appearing in or arising out of those reports. This report is the result of the Committee's review of the ICAC's and the Inspector's 2017-2018 annual reports.

Under section 76(1) of the ICAC Act, the ICAC is required to prepare, within the period of four months after each 30 June, a report of its operations during the year ended on that 30 June and to furnish the report to the Presiding Officer of each House of Parliament.

Under section 77B of the ICAC Act, the Inspector is required to prepare, within the period of four months after each 30 June, a report of the Inspector's operations during the year ended on that June 30 and to furnish the report to the Presiding Officer of each House of Parliament.

The ICAC investigates, exposes and prevents public sector corruption and educates the community and the public sector about corruption. Its principal functions include investigating complaints of corrupt conduct; examining laws, practices and procedures to detect corrupt conduct and to secure changes in work methods or procedures that may be conducive to corrupt conduct; advising and instructing public authorities and officials about changes in practices and procedures to reduce the likelihood of corrupt conduct; and educating the public and providing information about the detrimental effects of corrupt conduct and the importance of maintaining integrity in public administration.¹²²

The Inspector oversees the ICAC's work and his or her principal functions are:

- auditing the ICAC's operations to monitor compliance with the law of the State;
- dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct by the ICAC or its officers;
- dealing with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasion of privacy) by the ICAC or its officers; and
- assessing the effectiveness and appropriateness of the ICAC's procedures relating to the legality or propriety of its activities.¹²³

As part of its review of the ICAC's and the Inspector's 2017-2018 annual reports, the Committee conducted public hearings on 18 and 21 October 2019. The Inspector, Mr Bruce McClintock SC, gave evidence on 18 October. All three of the ICAC's Commissioners gave evidence on 21 October: the Chief Commissioner, the Hon Peter Hall QC, Mr Stephen Rushton SC, and Ms Patricia McDonald SC; along with members of the ICAC's executive team. The [transcripts](#) from the public hearings are available on the Committee's webpage.

¹²² [Independent Commission Against Corruption Act 1988, s13.](#)

¹²³ [Independent Commission Against Corruption Act 1988, s57B.](#)

Appendix Three – Witnesses

As part of its review of the ICAC's and the Inspector's 2017-2018 annual reports, the Committee conducted public hearings on 18 and 21 October 2019.

Friday, 18 October 2019, Macquarie Room

Mr Bruce McClintock SC	Inspector of the ICAC, Office of the Inspector of the ICAC
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Monday, 21 October 2019, Preston Stanley Room

The Hon. Peter Hall QC	Chief Commissioner, Independent Commission Against Corruption
Mr Stephen Rushton SC	Commissioner, Independent Commission Against Corruption
Ms Patricia McDonald SC	Commissioner, Independent Commission Against Corruption
Mr Roy Waldon	Executive Director, Legal Division and Solicitor to the Commission, Independent Commission Against Corruption
Mr John Hoytink	Executive Director, Investigations Division, Independent Commission Against Corruption
Mr Andrew Koureas	Executive Director, Corporate Services Division, Independent Commission Against Corruption

Appendix Four – Extracts from minutes

MINUTES OF MEETING 2

11.34am, Thursday 22 August 2019

Room 814-815

Members present

Mrs Tanya Davies MP (Chair), Mr Justin Clancy, Mr Ron Hoenig, Ms Tania Mihailuk, Mr Jamie Parker, The Hon Rod Roberts, Mr Dugald Saunders, The Hon Adam Searle

Officers in attendance

Ms Clara Hawker, Mr David Hale, Ms Abegail Turingan, Mr Ze Nan Ma

Apologies

Mr Mark Coure, The Hon Taylor Martin, Mrs Wendy Tuckerman

1. ***

2. ***

3. Review of the 2017-18 annual reports of the ICAC and Inspector of the ICAC

Resolved, on the motion of Mr Hoenig, seconded by Ms Mihailuk:

- That the Committee reviews the 2017-18 annual reports of the ICAC and the Inspector of the ICAC, and that the review be reported to Parliament and published on the Committee's web page.
- That the Committee holds a public hearing for the review at 9:30am on Friday 18 October 2019 and invites the Inspector of the ICAC and senior staff to appear.
- That the Committee holds a public hearing for the review on the afternoon of Monday 21 October 2019 and invites the ICAC Commissioner and senior staff to appear.
- That the Chair circulates draft questions and briefing information to members out-of-session.

4. ***

5. ***

6. ***

7. ***

8. Next meeting

The Chair closed the meeting at 11:44am. The next deliberative meeting will be the public hearing with the Inspector of the ICAC, to be held at 9:30am on Friday 18 October 2019 in the McKell Room.

MINUTES OF MEETING 3

9.15am Friday 18 October 2019
Macquarie Room, Parliament House

Members present

Mrs Tanya Davies (Chair), The Hon Taylor Martin (Deputy Chair), Mr Justin Clancy (by telephone), Mr Ron Hoenig, Ms Tania Mihailuk, Mr Jamie Parker, The Hon Rod Roberts, Mr Dugald Saunders, The Hon Adam Searle, Mrs Wendy Tuckerman

Officers present

Ms Helen Minnican, Ms Clara Hawker, Mr David Hale, Ms Jessica Falvey, Ms Abigail Turingan, Mr Ze Nan Ma

The Chair opened the meeting at 9.15am.

Apologies

Mr Mark Coure

1. Confirmation of minutes

Resolved, on the motion of Mr Parker, seconded Mr Roberts:
That the minutes of Meeting 2 held on Thursday 22 August 2019 be confirmed.

2. ***

3. Review of the 2017-18 annual report of the Inspector of the ICAC

Resolved, on the motion of Mr Martin, seconded by Mr Saunders:

- That the Committee take evidence from the Inspector of the Independent Commission Against Corruption;
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing;
- That the Chair send questions on notice to the Inspector following the public hearing if required;
- That the Committee publish the transcript of evidence taken at the public hearing, after correction, and the answers to questions on notice, on the Committee's webpage.

4. Public hearing

The Chair declared the public hearing open at 9.30am, and the witness and public were admitted.

Mr Bruce McClintock SC, Inspector of the Independent Commission Against Corruption was affirmed and examined.

Evidence concluded, and the witness and public withdrew.

The Chair closed the public hearing at 10.45am.

5. Next Meeting

The Committee adjourned at 10.46am until 2.15pm on Monday 21 October 2019 in the Preston Stanley Room, Parliament House, to be followed at 2.30pm by the public hearing to review the 2017-18 annual report of the ICAC.

MINUTES OF MEETING 4

Monday 21 October 2019

Preston Stanley Room, Parliament House

Members present

Mrs Tanya Davies (Chair), The Hon Taylor Martin (Deputy Chair), Mr Justin Clancy, Mr Mark Coure, Mr Jamie Parker, Mr Dugald Saunders, The Hon Adam Searle, Mrs Wendy Tuckerman

Officers present

Ms Helen Minnican, Ms Clara Hawker, Mr David Hale, Ms Abigail Turingan, Mr Ze Nan Ma

The Chair opened the meeting at 2.16pm.

1. Apologies

Mr Ron Hoenig, Ms Tania Mihailuk, The Hon Rod Roberts

2. Confirmation of minutes

Resolved, on the motion of Mr Parker, seconded Mr Saunders:

That the minutes of Meeting 3 held on Friday 18 October 2019 be confirmed.

3. ***

4. ***

5. Review of the 2017-18 annual report of the ICAC

Resolved, on the motion of Mr Searle, seconded by Mr Coure:

- That the Committee take evidence from the Chief Commissioner and officers of the Independent Commission Against Corruption;
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing;
- That the Chair send questions on notice to the witnesses following the public hearing if required;
- That the Committee publish the transcript of evidence taken at the public hearing, after correction, and the answers to questions on notice, on the Committee's webpage.

6. Public hearing

The Chair declared the public hearing open at 2.30pm, and the witnesses and public were admitted.

The Hon Peter Hall QC, Chief Commissioner of the Independent Commission Against Corruption was sworn and examined.

Mr Stephen Rushton SC, Commissioner of the Independent Commission Against Corruption was sworn and examined.

Ms Patricia McDonald SC, Commissioner of the Independent Commission Against Corruption was sworn and examined.

Mr Roy Waldon, Executive Director, Legal Division and Solicitor to the Independent Commission Against Corruption was sworn and examined.

Mr John Hoytink, Executive Director, Corporate Services Division of the Independent Commission Against Corruption was sworn and examined.

Mr Andrew Koureas, Executive Director, Corporate Services Division of the Independent Commission Against Corruption was sworn and examined.

Evidence concluded, and the witnesses and public withdrew.

The Chair closed the public hearing at 4.29pm.

7. ***

8. Next meeting

The Committee adjourned at 4.30pm until a date to be determined.

UNCONFIRMED MINUTES OF MEETING 5

Tuesday 19 November 2019

Room 1254

Members present

Mrs Tanya Davies (Chair), The Hon Taylor Martin (Deputy Chair), Mr Justin Clancy, Mr Ron Hoenig, Ms Tania Mihailuk, Mr Jamie Parker, Mr Rod Roberts, Mr Dugald Saunders, Mrs Wendy Tuckerman

Officers present

Ms Clara Hawker, Mr David Hale, Ms Abigail Turingan, Mr Ze Nan Ma, Ms Mohini Mehta

The Chair opened the meeting at 1.32pm.

1. Apologies

Mr Mark Coure, The Hon Adam Searle

2. Confirmation of minutes

Resolved, on the motion of Mr Martin, seconded by Mrs Tuckerman:

That the minutes of meeting 4 held on Monday, 21 October 2019 be confirmed.

3. Matters arising

3.1 ***

3.2 Supplementary question to the Inspector of the ICAC

Resolved, on the motion of Mr Parker, seconded by Mr Saunders:

That the Inspector's answer to the supplementary question be published on the Committee's website.

3.3 ***

3.4 ***

4. Correspondence

Resolved, on the motion of Ms Mihailuk, seconded by Mr Roberts:

That the Chief Commissioner's letter dated 25 October 2019 regarding findings made by the Commission in its August 2016 report be published on the Committee's website.

5. Review of the 2017-2018 annual report of the ICAC

Resolved, on the motion of Mrs Tuckerman, seconded by Mr Hoenig:

- That the Committee adopts the draft report, and that it be signed by the Chair and presented to the House.
- That the Committee authorises the Secretariat to make appropriate final editing and stylistic changes, as required.
- That once tabled, the report be published on the Committee's website.

6. ***

7. Next meeting

The Committee adjourned at 2:13pm until a date to be determined.