



PARLIAMENT OF NEW SOUTH WALES

# Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission

REPORT 1/56 – JUNE 2016

2016 REVIEW OF THE ANNUAL REPORTS OF OVERSIGHTED BODIES





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COMMITTEE ON THE OMBUDSMAN, THE POLICE  
INTEGRITY COMMISSION AND THE CRIME  
COMMISSION

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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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# Membership

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## Committee's functions

The Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission was originally established on 4 December 1990.

The Committee's key functions relate to the NSW Ombudsman, Police Integrity Commission, NSW Crime Commission (including the Commission's Management Committee), Information Commissioner, Privacy Commissioner, Child Death Review Team, Inspector of the Police Integrity Commission, Inspector of the Crime Commission and Inspector of Custodial Services.

The Committee's main functions involve:

- monitoring and reviewing the exercise of each office's functions
- examining each office's annual and other reports
- reporting to NSW Parliament on matters relating to each office's functions and annual and other reports
- inquiring into matters referred to the Committee by NSW Parliament.

However, the Committee is not permitted to do any of the following in relation to the offices it oversees:

- investigate matters relating to particular conduct
- reconsider decisions to investigate, not to investigate, or to discontinue investigation of a particular complaint
- reconsider findings, recommendations, determinations or other decisions in relation to a particular investigation or complaint.

The Committee's functions can be found in various pieces of NSW legislation, for example, the *Ombudsman Act 1974*, the *Police Integrity Commission Act 1996* and the *Crime Commission Act 2012*.

## Chair's foreword

In February and March 2016, the Committee held General Meetings with the Police Integrity Commission (the PIC), the Inspector of the PIC, the NSW Crime Commission, the Inspector of the Crime Commission, the Information and Privacy Commission, the NSW Ombudsman and the Child Death Review Team. The Committee also met for the first time with the most recently appointed Inspector of Custodial Services.

In this report, the Committee has continued its practice of focussing on key themes which relate to several of the agencies which it oversees. The Committee has reported on the following themes: reforms to oversight of police and the Crime Commission; complaint trends and systems; operational changes at the Crime Commission; measuring the Crime Commission's performance; governance issues; and staffing and resources.

A major theme for the Committee in these general meetings was the forthcoming establishment of the Law Enforcement Conduct Commission (LECC). The LECC will be a single civilian oversight body for the NSW Police Force and the Crime Commission following a review of police oversight by Mr Andrew Tink AM. This will have a significant impact on the work of the agencies overseen by the Committee; not least because the LECC will adopt the work of the PIC and the police division of the Ombudsman, while these two bodies cease to operate, along with the Inspector of the Crime Commission.

There are benefits to be gained from the establishment of a single oversight body and the Committee welcomes the new LECC. The introduction of the enabling legislation for the LECC will be an important step as a number of issues were raised during the Committee's deliberations that need to be properly addressed. The Committee eagerly awaits the introduction of this legislation.

The Committee was pleased to meet with the recently appointed Inspector of Custodial Services as part of its General Meetings. This office had been vacant for a period of time following the resignation of the previous Inspector, which contributed to the office underspending its budget and limited the Inspectorate's abilities to meet its legislative requirements. To help remedy this, the Inspector has requested to roll over some of the office's underspent budget. The Committee supports this request.

The Committee has also highlighted certain projects being undertaken by the overseen bodies which demonstrate the significant work that they do. These include the NSW Ombudsman's continuing work on Operation Prospect, the Child Death Review Team commissioning a report on childhood injury and disease prevention infrastructure as part of a focus on injury prevention, and the Information and Privacy Commission releasing a report on the operation of the *Government Information (Public Access) Act 2009*.

I would like to thank the members of the Committee for their participation in the General Meetings and their contribution to the reporting process.

**Lee Evans MP**  
Chair

# Chapter One – Reforms to oversight of police and the Crime Commission

## Introduction

- 1.1 The Committee held public hearings with the Police Integrity Commission (PIC), the Inspector of the PIC, the NSW Crime Commission, the Inspector of the Crime Commission, the Inspector of Custodial Services, the Information and Privacy Commission (IPC), the Ombudsman and the Child Death Review Team on 29 February, 3 March and 12 May 2016.
- 1.2 In this report the Committee examines the following issues that were discussed at the hearings:
- Reforms to police oversight
  - Complaint trends and systems
  - Operational changes and performance measures for the Crime Commission
  - Governance issues
  - Staffing and resourcing.
- 1.3 The Committee also discusses agency projects that were examined during the hearings.

## The Tink review of police oversight

- 1.4 In May 2015, the Government commissioned Mr Andrew Tink to conduct a review of the police oversight system. The review was tasked with examining ways to streamline and strengthen oversight of the NSW Police Force and the Crime Commission, recommend a model that would reduce duplication, overlap and complexity, and increase the transparency and effectiveness of police oversight.
- 1.5 In his August 2015 report, Mr Tink stated the case for a single agency oversight model. The Government has indicated that it will accept Mr Tink's recommendations, with legislation to establish the Law Enforcement Conduct Commission (LECC) to be introduced into Parliament in 2016, and the LECC to be operational by early 2017. An interdepartmental working group is assisting with the implementation of the new oversight arrangements, and the transition to the LECC.<sup>1</sup>

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<sup>1</sup> Department of Justice, The Tink review into police oversight and the NSW Government's response, undated, accessed 18 March 2016: <http://www.justice.nsw.gov.au/justicepolicy/Documents/review-police-oversight/review-police-oversight-q+a.pdf>; Troy Grant, Deputy Premier of NSW, Minister for Justice and Police, Media Release: New law enforcement watchdog for NSW, 26 November 2015, accessed 18 March 2016: [http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/MR15\\_New\\_law\\_enforcement\\_watchdog\\_for\\_NSW.pdf](http://www.justice.nsw.gov.au/Documents/Media%20Releases/2015/MR15_New_law_enforcement_watchdog_for_NSW.pdf)

- 1.6 The section below examines the changes recommended by Mr Tink and their impact on the Police Integrity Commission (PIC) and the Police Division of the Ombudsman (PDOO).

### New system for police oversight

- 1.7 Mr Tink's report recommended that the current oversight system be unified into a single body incorporating the roles performed by the PIC and the PDOO. In assessing options for reform to the current system, Mr Tink noted that he agreed with the Wood Royal Commission's basic principles for oversight of police. This includes: an independent body with royal commission powers to detect, investigate and prevent police corruption and serious misconduct; the Police Force continuing to manage the assessment and investigation of complaints, and the Police Commissioner being responsible for disciplinary decisions and performance management; and an independent body overseeing the way that police manage the assessment and investigation of complaints.
- 1.8 Mr Tink reassessed the Royal Commission's reasons for and against a single oversight body, and considered oversight models existing in other jurisdictions. He then concluded that a single external oversight body was achievable and desirable, in that it would simplify the complexity of the current oversight system and address some of its gaps and overlaps.<sup>2</sup>
- 1.9 The key changes recommended by Mr Tink are as follows:
- The PIC and the PDOO be brought into a single new police oversight body, the LECC.
  - The LECC have a dual structure, with the Integrity Division (formerly PIC) and the Oversight Division (formerly PDOO) operating separately.
  - The LECC be headed by a Commissioner, governed by a Commissioner's Council (consisting of the Commissioner and two Deputy Commissioners), and subject to monitoring by an Inspector and a Parliamentary Oversight Committee.
  - The LECC assume responsibility for monitoring critical incident investigations.
  - The Inspectorate of the Crime Commission be abolished, with the Crime Commission to be monitored solely by the LECC.
- 1.10 Mr Tink recommended that the LECC have the following functions:
- The Ombudsman's functions and powers, set out in Part 8A of the *Police Act 1990*, including receiving complaints, keeping the NSW Police Force complaints system under review, monitoring certain police investigations and undertaking direct investigations into complaints.
  - The PIC's functions and powers, including preventing, detecting and investigating serious police misconduct.

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<sup>2</sup> Andrew Tink AM, *Review of Police Oversight: A report to the New South Wales Government on options for a single civilian oversight model for police*, August 2015, pp1-2

- The functions and powers of the Inspector of the Crime Commission, to the extent they differ from those of the PIC.<sup>3</sup>

1.11 Mr Tink recommended that most of the Ombudsman's other police-related functions be transferred to the LECC. These functions include: determining appeals about witness protection decisions, reviewing new police powers, monitoring and reporting on emergency police powers, and auditing the use of covert powers. The Ombudsman will retain the ability to investigate alleged maladministration by the NSW Police Force, as part of the office's wider role to deal with public sector maladministration.<sup>4</sup>

### Transition to the Law Enforcement Conduct Commission (LECC)

1.12 The Government has stated that the transition to the new system will take place in a way that minimises disruption to current investigations and oversight activities. The legislative provisions that establish the LECC and repeal existing legislation will commence in stages, so that the new body is operational before existing oversight arrangements cease. The legislation will enable the Commissioner and Deputy Commissioners to be appointed before the LECC begins operations, to allow these officers to work on finalising the logistics of setting up the new agency. Existing legislation will not be repealed until the LECC is established and ready to perform its functions.<sup>5</sup>

1.13 In terms of the timing of the legislation, the Committee heard that a draft bill was to be circulated to stakeholders in March 2016.

1.14 The Committee heard evidence on the transition process, including the work of the implementation working party. The working party is made up of representatives from the Department of Premier and Cabinet, the Department of Justice, NSW Police, and Treasury. The Committee heard that the working party has met with senior staff of the Ombudsman's office and the PIC to discuss practical details related to the LECC's establishment, including IT systems and other operational matters.<sup>6</sup>

1.15 With regard to ongoing investigations, the Tink report recommended that the Ombudsman retain responsibility for Operation Prospect due to its complexity and the age of the matters being investigated. The Committee discusses Operation Prospect in detail at paragraph 7.2.

1.16 There are a number of ongoing projects being undertaken by the PIC which will need to be transitioned to the LECC if they are not finalised. One of these projects is Project Harlequin, which the PIC intends to complete within this calendar year. Further details on the project can be found at paragraph 1.33.

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<sup>3</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p5

<sup>4</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, pp135-142

<sup>5</sup> Department of Justice, *The Tink review into police oversight and the NSW Government's response*, undated, p3

<sup>6</sup> Mr Michael Gleeson, Acting Deputy Ombudsman (Police Division), Transcript of evidence, 3 March 2016, pp21-22

## Staffing, resourcing and office location

- 1.17 Mr Tink recommended that current staffing ratios between the PIC and the PDOO be maintained within the LECC, with staff to be employed under the *Government Sector Employment Act 2013*. The Committee heard that up to 35 staff in the Ombudsman's Police Division could be affected. Committee members raised the question of whether affected staff would remain with the Ombudsman's office, or be transferred to the LECC. The Ombudsman, Professor John McMillan, advised the Committee that bills establishing new bodies often contain transitional provisions for transfer of work and possibly transfer of staff and that the issue was 'uppermost in our discussions with the working party within government that we need clarity for'.<sup>7</sup>
- 1.18 The PIC currently has a staff of 90.46, which is a reduction from 96.77 in 2014.<sup>8</sup> The PIC Commissioner, Mr Bruce James, explained that in introductory discussions with the LECC interdepartmental working group, an indication was given that 'rather than a complete spill and fill, it at least might be the case that many present employees at PIC would be taken over by the new Commission'.<sup>9</sup> As with a number of issues, however, the PIC Commissioner noted that it was too early to say for certain what the arrangements for staffing the LECC would be and they would wait to see the details in the respective legislation.
- 1.19 Some concerns were raised that the effectiveness of the recommendations made in the Tink Review may be limited if the LECC contains staff who currently work for the PIC and the Ombudsman and are transferred to the new body. These concerns were put to the Inspector of the PIC, Mr David Levine, who told the Committee that while it is highly desirable for oversight bodies to have fresh personnel periodically, this has to be matched with the need to retain experienced officers, particularly during the LECC's establishment phase:
- So the one desirable component is that there be a turnover. ... that has to be matched with the desirability of not losing the experience of people who have been working with the PIC .... I can see no reason in relation to such members of the upper echelons of the PIC with whom I am acquainted that they should not for some time carry over to the new position. I think it would be invaluable. ... New blood and experience have to be combined.<sup>10</sup>
- 1.20 The Inspector also argued that although there may be a transfer of staff from existing bodies to the LECC, it would not be a rebadging due to the fact that the Commissioners and Deputy Commissioners would be new appointments. These officers would bring their own values and standards to the organisation. He expressed the view that 'the culture of an institution ... is established at the top and any change of that culture at that level will filter down to the benefit of the institution by affecting the people at lower levels.'<sup>11</sup>

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<sup>7</sup> Professor John McMillan, Acting Ombudsman, Transcript of evidence, 3 March 2016, p23

<sup>8</sup> Police Integrity Commission, *Annual Report 2014-2015*, p58

<sup>9</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 29 February 2016, p1

<sup>10</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 29 February 2016, p12

<sup>11</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 29 February 2016, p12

- 1.21 In terms of funding, Mr Tink emphasised that while there may be long-term efficiencies flowing from the establishment of a single body, it should not be seen as an opportunity to cut costs. He also noted that transitional costs and the added cost of oversighting critical incident investigations and the Crime Commission would require additional funding. The budget for the LECC's first four years of operation should therefore be no less than the combined budgets of the PIC and the PDOO, taking into account inflation and transitional costs.
- 1.22 Mr Tink observed that the creation of a unified body will mean greater transparency around the costs associated with police accountability. The LECC and LECC Inspector will be required to report annually on their overall staffing and expenditure, which will make it easier to gauge the total cost of independent oversight of law enforcement.
- 1.23 The Tink report recommended that the LECC be located in the PIC's current premises, to contain costs and make use of the PIC's purpose built facilities. Given the need for high security and secrecy in relation to integrity work, Mr Tink recommended that the Oversight Division be located on a different floor to the Integrity Division. The Oversight Division should have a 'public facing' foyer on a separate floor.
- 1.24 In relation to the logistics of the LECC operating in the current offices of the PIC, the PIC Commissioner told the Committee that 'the PIC is cooperating fully in the implementation of the recommendations in that report'.<sup>12</sup> The PIC Commissioner noted that at the time of the meeting with the Committee, no significant work involving the PIC and the establishment of the LECC had been undertaken. There had been two meetings between PIC staff and the interdepartmental working group. The first, including the PIC Commissioner, had discussed introductory topics including staffing, and the second had focussed primarily on IT systems.<sup>13</sup>
- 1.25 The PIC reported that it had upgraded some of its information technology and that there were plans to make further improvements. These improvements should also be beneficial to the LECC when it comes into operation. The PIC Commissioner told the Committee that:

The long lead time has allowed the Commission to plan for transitioning to the LECC. All non-critical changes to ICT systems and infrastructure have been implemented with this transition and viability within a new organisation in mind.<sup>14</sup>

### LECC's organisational structure

- 1.26 The LECC will be headed by a Commissioner and will consist of two divisions – an Integrity Division to detect, prevent and investigate serious police and Crime Commission misconduct; and an Oversight Division to receive, investigate and monitor complaints about police and Crime Commission conduct, and to perform other police-related functions. The divisions will both be led by a Deputy Commissioner who will have particular functions and powers. The Deputy Commissioners will receive funding allocations that reflect their division's

<sup>12</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 29 February 2016, p1

<sup>13</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 29 February 2016, pp1-2

<sup>14</sup> Police Integrity Commission, Answers to questions on notice, 16 March 2016, p1

separate roles. The divisions will have separate reporting requirements in addition to annual reporting obligations. Mr Tink recommended that the Commissioner and Deputy Commissioners be appointed for terms not exceeding five years.

1.27 The LECC will have a Commissioner's Council, consisting of the Commissioner and Deputy Commissioners, which will make decisions on the management of the Commission's work, including public hearings, complaint handling systems and the conduct of investigations. The Commissioner will have the final say on matters that are deliberated on by the Council.

1.28 In evidence to the Committee, the Inspector of the PIC agreed with the recommendation that the Commissioner and Deputy Commissioners of the LECC should have five-year terms. However, he considered that the Commissioner and Deputy Commissioners should begin their terms at different times so there are experienced officers in the other positions when a new officer arrives. In his view, this would avoid stagnation in the organisation's culture while ensuring that there was an ongoing level of experience in the management of the LECC.<sup>15</sup>

### LECC's powers

1.29 Mr Tink recommended that the LECC have the same functions and powers as the PIC, the PDOO (under Part 8A of the Police Act) and the Inspector of the Crime Commission. The LECC will have royal commission type powers to detect and investigate allegations of serious police misconduct, including through public and private hearings.

1.30 The LECC's two divisions will have powers that are relevant to their particular functions, and it will be possible for matters to be transferred from one division to the other, depending on the nature of the matter and the powers required to deal with it. The LECC will have the power to commence investigations on its own initiative without a complaint having been made. Only the Integrity Division will have the power to use covert investigative techniques and hold public hearings. The LECC will also have the power to monitor the NSW Police Force's critical incident investigations in real time.

### Prevention, education and other functions

1.31 One of the PIC's principal functions is to prevent serious officer misconduct and the PIC performs this role by providing advice and recommendations on improvements to systems and practices of the NSW Police, and on improvements to the quality of complaint investigations. In his report Mr Tink supported this work, stating that it was important. He recommended that the LECC 'have a recommendatory power in relation to police corruption education programs and similar within the Police Force, as well as a right to make recommendations for improvements to complaints management systems.'<sup>16</sup>

1.32 The PIC's annual report of 2014-2015 outlines a number of projects which it progressed in this area. These included:

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<sup>15</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 29 February 2016, p12

<sup>16</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p125

- Finalising Project Mobula which examines corruption resistance planning in the NSW Police Force;
- Commencing Project Alecta, which examines the effectiveness of current vetting and recruitment processes and systems used by the NSW Police to identify potential misconduct risks associated with prospective recruits;
- Progressing Project Juda, which examines how the NSW Police Force identifies and manages officers who show early signs of behaviour that could lead to more serious forms of misconduct;
- Progressing Project Harlequin, which is discussed below;
- Progressing Project Onyx, which aims to evaluate how effectively the NSW Police Force is managing misconduct risks associated with the use of human sources; and
- Delivering lectures and other presentations to the NSW Police as part of training courses.<sup>17</sup>

1.33 As noted previously, a focus for the PIC in 2014-2015 was Project Harlequin. This project is concerned with identifying misconduct risks associated with critical incidents and critical incident investigations, and how well these risks are being managed by the NSW Police Force. As part of the project, the PIC reviewed and analysed 84 critical incidents that occurred between 2009 and mid-2012.<sup>18</sup>

1.34 The project began in June 2012 and according to the PIC's Annual Report, the Commission was preparing a draft report as at 30 June 2015.<sup>19</sup> When asked, the PIC Commissioner recognised the delays in completing Project Harlequin and explained that additional resources were being allocated to the project to expedite its completion. The PIC intends to complete the project by the end of the calendar year.<sup>20</sup>

1.35 In addition to the PIC's prevention role and ongoing projects, many of the Ombudsman's police-related functions will be transferred to the LECC. This means that, as well as dealing with complaints and investigating and preventing misconduct, the LECC will be responsible for monitoring, reviewing and reporting on police powers.

### Oversight of critical incidents

1.36 Mr Tink recommended that the Police Force retain responsibility for investigating critical incidents, and that the LECC be given the power to monitor these investigations in real time, without being able to control, supervise or interfere with the investigation. The Police Force will be required to notify the LECC about critical incidents and give the LECC sufficient information for it to determine whether to monitor the investigation. Mr Tink recommended that statutory

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<sup>17</sup> Police Integrity Commission, *Annual Report 2014-2015*, pp35-40

<sup>18</sup> Police Integrity Commission, *Annual Report 2014-2015*, p37

<sup>19</sup> Police Integrity Commission, *Annual Report 2014-2015*, p37

<sup>20</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 29 February 2016, p3

definitions of 'critical incident' and 'police operation' be developed to ensure a consistent approach.

1.37 The Committee heard that the PIC has had some discussions with the Professional Standards Command relating to the role of the LECC in the critical incident regime. The PIC's Director of Operations, Mr Gary Kirkpatrick, noted that it would be important to see how the matter was dealt with in the legislation establishing the body.<sup>21</sup>

1.38 Mr Kirkpatrick also observed that Mr Tink had envisaged an active role for the LECC in overseeing critical incidents:

... It seems to me that Mr Tink foresees what he refers to as an active role in oversight by LECC at critical incidents, or at least some. He talks about officers of LECC not managing and interfering with the engagement of the police at the time of a critical incident, but to take records, to have the capability of giving coronial evidence.<sup>22</sup>

1.39 In his submission to the Tink review, the Inspector of the PIC outlined several concerns about the oversight of critical incidents. These related to a duplication of functions by separate investigatory bodies and the potential for unreasonable delays between the investigation of an incident and any potential prosecutions that may arise.<sup>23</sup> When asked if the new model would address these concerns, the Inspector responded that it would, if the Tink report's recommendations are fully and properly implemented.<sup>24</sup>

1.40 One point of discussion surrounding critical incidents was devising an appropriate definition. The PIC Commissioner expressed the view that there would be an advantage in having a better definition of critical incident, to provide greater clarity as to what should be investigated:

I think there would be an advantage in having a better definition of "critical incident". At the moment it is a miscellaneous collection of things, together with anything else that ought to be regarded as a critical incident. It will not be an easy task arriving at a satisfactory definition, but I do believe that there should be a more rigorous attempt to define "critical incident".<sup>25</sup>

1.41 It was noted, however, that a possible drawback to a more rigorous definition is that some cases that may warrant detailed investigation as a critical incident may fall outside the definition. To counteract this, it was proposed that the Commissioner of the LECC could have the power to nominate certain matters as requiring the additional investigation and associated oversight of a critical incident. The PIC Commissioner agreed that this proposal may have merit:

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<sup>21</sup> Mr Gary Kirkpatrick, Director Operations, Police Integrity Commission, Transcript of evidence, 29 February 2016, p5

<sup>22</sup> Mr Gary Kirkpatrick, Director Operations, Police Integrity Commission, Transcript of evidence, 29 February 2016, p5

<sup>23</sup> Inspector of the Police Integrity Commission, Submission to the Review of Police Oversight in NSW, pp2-4

<sup>24</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 29 February 2016, p13

<sup>25</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 29 February 2016, p5

**The Hon. TREVOR KHAN:** What interests me is that, in a sense, there are some notorious events that occur that clearly do not fall within what one would normally assume to be a critical incident. As the Commissioner might say, "That is a matter that requires appropriate oversight and proper investigation from outside the area command." Is it appropriate that the Commissioner of LECC have some capacity to declare an incident as being critical and, therefore, setting in train a course of events?

**Mr JAMES:** At first blush that would have an attraction for me. I have not thought through any ramifications of that.<sup>26</sup>

## Oversight of the Crime Commission

- 1.42 The Tink report recommended changes to the current oversight arrangements for the Crime Commission. Mr Tink considered that the creation of the LECC would provide an opportunity to simplify existing arrangements, and reduce duplication. The LECC is to take over the roles currently performed by both the Inspector of the Crime Commission and the PIC, including dealing with complaints about misconduct by the Crime Commission and its staff, auditing the Commission's operations to monitor its compliance with the law, assessing the effectiveness and appropriateness of the Commission's procedures in relation to the legality of its activities, and detecting, investigating and preventing serious misconduct by Commission staff. As these roles will come under the LECC's jurisdiction, the office of Inspector of the Crime Commission will be abolished.
- 1.43 The Committee heard evidence from the Crime Commissioner supporting the retention of an Inspector to oversight the Crime Commission. Mr Hastings told the Committee that he doubted that oversight by the LECC would achieve the same level of effectiveness as it has under the current Inspector. He stated that 'having an Inspector directly involved in the Commission's activities is of benefit to the community and ensuring that there is proper oversight of the Commission.'<sup>27</sup>
- 1.44 In his assessment of the options for oversight of the Crime Commission, Mr Tink had concluded that the small number of complaints about the Crime Commission did not justify the creation of a separate oversight body (an Inspectorate): 'the creation of such a body would be an inefficient use of public resources, especially if it had to establish the sort of sophisticated investigative and covert surveillance capability required to target corrupt law enforcement officials.'<sup>28</sup>
- 1.45 A body overseeing the Crime Commission would need immediate access to telecommunications interception, electronic and physical surveillance, controlled operations and assumed identities capabilities. Mr Tink noted that the LECC would have these capabilities in-house and 'could therefore be deployed without delay against a rogue Crime Commission officer.'<sup>29</sup>

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<sup>26</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 29 February 2016, pp5-6

<sup>27</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p23

<sup>28</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p186

<sup>29</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p186

## Oversight of the LECC

- 1.46 The Tink report recommended that the LECC be subject to external scrutiny by an Inspector. In considering the options for external oversight, Mr Tink noted that oversight of the PIC by an Inspector had been a recommendation of the Wood Royal Commission. Justice Wood had recommended that the Inspector's functions include dealing with complaints of abuse of power and other forms of misconduct, assessing complaints and incidents of misconduct, and recommending internal disciplinary action or criminal prosecution.
- 1.47 The PIC Inspector has royal commission powers to hold inquiries and deal with misconduct through reports and recommendations. Mr Tink did not recommend any changes to these functions and powers. However, he did recommend that the Inspector be a standalone position, with the positions of LECC Inspector and ICAC Inspector to be filled by different people.
- 1.48 The LECC will be required to respond to reports by the Inspector, by stating whether it intends to accept recommendations or take action in response to a recommendation, and give reasons if not.
- 1.49 The creation of a LECC Inspector will provide an avenue for oversight of the handling of complaints about police, and the LECC's use of its powers. Complainants will be able to raise issues about the LECC's handling of their complaint with the Inspector. Under the current system, while the PIC is oversighted by the PIC Inspector, there is no provision for oversight of the Ombudsman's handling of complaints about police.
- 1.50 With regard to staffing, the Inspector of the PIC currently has a staff of three, including the Inspector. During the most recent two reporting periods, the number of days worked has been between three and five depending on the workload of the office. The office's total expenditure for 1 July 2014 to 30 June 2015 was \$235,919. This was a significant decrease from the previous year's total expenditure of \$438,554.<sup>30</sup>
- 1.51 The Inspector explained that the decrease was caused by a reduction in the office's workload. He expected that the budget for the office would remain similar for the period during which the PIC continues to operate.<sup>31</sup>
- 1.52 In respect to the new position of Inspector of the LECC, the Inspector of the PIC could not estimate how much additional resourcing would be required. He did, however, suggest that the legislation make provision for an Inspector and an assistant Inspector, to avoid the need for additional officeholders in later years:
- ... be prepared for the appointment of an Inspector and an assistant Inspector and make provision for both in whatever legislation is enacted. I would rather be in a position to start at a high level than have to go through the business of building up to a level over a number of years.<sup>32</sup>

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<sup>30</sup> Inspector of the Police Integrity Commission, *Annual Report 2014-2015*, p5

<sup>31</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 29 February 2016, p14

<sup>32</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 29 February 2016, p13

- 1.53 Mr Tink did not recommend any changes to the current system of oversight by the Committee, apart from consequential changes to reflect the change to the statutory bodies that the Committee oversees (to include the LECC and its Inspectorate). He did note, however, that the Committee's functions mirror those of the ICAC Committee, and that there had been recent media reports regarding the scope of that Committee's powers.

### **Committee comment**

- 1.54 The Committee acknowledges the work and achievements of the staff of the PIC and the Ombudsman's Police Division. The Ombudsman has oversighted many thousands of police-related complaints, as well as conducting reviews of police powers, such as the use of tasers and terrorism powers. The office has worked with the NSW Police Force to improve complaint handling practices and service delivery standards, as well as practices and processes applying to critical incidents.
- 1.55 The Committee thanks the PIC, the Commissioner and the staff past and present for the significant work they have done over the years in investigating and preventing serious police misconduct. The Committee also thanks the current and previous Inspectors of the PIC for their work in oversighting this important body.
- 1.56 The Committee supports the concept of a single agency oversight model and is eager to see the legislation establishing the body. The Committee hopes that the bill will resolve some of the issues raised during its hearings with the Ombudsman, the PIC and the Inspector of the PIC. The Committee appreciates the work being done by the PIC and Ombudsman to assist with the establishment of the new body. The transition of staff and existing projects will need to be properly handled to ensure that the important work currently being undertaken by these agencies enhances the efficacy of the LECC.
- 1.57 The Committee was pleased to hear that Project Harlequin will be finalised soon and hopes that this remains on track. The treatment of critical incidents and their investigation will be a key role of the LECC and any findings and recommendations that arise from Project Harlequin should be heeded in establishing the new regime.
- 1.58 Identifying trends in complaints and carrying out projects to prevent misconduct before it occurs is a key aspect of the work of the PIC. The Committee is pleased to see that Mr Tink recommended that the LECC be given powers to make recommendations to improve complaints management systems and corruption education programs. There are several projects underway at the PIC which may need to be passed on to the LECC for completion. This would be preferable to the projects being abandoned when the PIC ceases to operate. Prevention is the key to long-term improvement of complaint management and culture.
- 1.59 The Committee supports the transfer of specialised staff from the Ombudsman and PIC to the LECC, as this will allow the new body to begin functioning effectively more quickly. Staff who have transferred will also be in a position to assist with any uncompleted projects which are passed on to the LECC. The Committee agrees with the Inspector of the PIC that new management will bring

a change of culture and style and ensure that the LECC is a fresh start in the oversight of police and the Crime Commission.

- 1.60 The Committee will continue to monitor the development of the LECC. In particular, the Committee is interested to see the introduction of the establishing legislation. A number of issues raised in the Committee's discussions with the affected bodies will need to be covered properly in this legislation to ensure that the LECC operates as intended by the recommendations of Mr Tink. In addition to provisions surrounding the oversight of critical incidents and the makeup of the LECC's management, there are also questions about the transfer of powers from the existing organisations to the new body.

## Chapter Two – Complaint trends and systems

- 2.1 In this chapter, the Committee discusses proposed reforms to the handling of complaints about police conduct, and trends in public sector complaint handling by the NSW Ombudsman.

### Changes in handling complaints about police

- 2.2 The proposed changes to oversight of police will affect the way that complaints about police are dealt with. In considering reforms to the current system Mr Tink noted that the Ombudsman conducted very few direct investigations into complaints about individual police conduct. He concluded that under the current oversight model there is a potential gap in terms of direct oversight and investigation of complaints about everyday policing issues that could raise misconduct risks, as well as middle range misconduct matters.<sup>33</sup>
- 2.3 Mr Tink considered that some complaints about middle range conduct may be missed, or may be escalated to investigation by the PIC because they are unlikely to be investigated by the Ombudsman:
- ... over the last five years, the PDOO has conducted an average of just 2.4 direct investigations per year. What this means is that some complaints that the public might reasonably expect to be externally investigated seem likely to be falling between the cracks; that is, middle range cases involving significant misconduct but falling short of attracting the PIC's attention. Conversely, although the PIC notes that it carefully assesses whether matters are serious before it commences an investigation, there is a risk that middle range matters may be escalated to a more serious level of investigation because there is little chance under the current structure that they will be investigated by the Ombudsman.<sup>34</sup>
- 2.4 Mr Tink observed that while the creation of the PIC improved the system in terms of dealing with serious misconduct, it wasn't clear whether the PIC/Ombudsman model was able to respond appropriately to middle range misconduct matters. He concluded that a body with combined responsibilities to deal with both misconduct/corruption and complaints would be more capable of identifying and addressing these matters.<sup>35</sup>
- 2.5 In addition, a single body may be better placed to deal with complaints about everyday policing issues that raise misconduct risks, as the body would have 'the benefit of more comprehensive shared intelligence, and greater flexibility to conduct direct investigations.'<sup>36</sup>

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<sup>33</sup> Andrew Tink AM, *Review of Police Oversight: A report to the New South Wales Government on options for a single civilian oversight model for police*, August 2015, pp74-79

<sup>34</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p91

<sup>35</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p92

<sup>36</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, pp78-79

COMPLAINT TRENDS AND SYSTEMS

2.6 Mr Tink also noted the complexity of the current oversight system, stating that ‘it is difficult to ascertain the roles and responsibilities of the NSW Police Force, the Ombudsman and the PIC in the complaints process by trying to navigate their websites.’ He expressed the view that a single oversight body would provide a unified and simplified complaints and oversight system for members of the public and police officers.<sup>37</sup>

2.7 The Wood Royal Commission had considered the benefits and disadvantages of a single body overseeing complaints and investigating serious misconduct. Among the disadvantages was the potential that the high number of complaints could overwhelm the body and divert it from dealing with serious misconduct, and that the body might experience internal tensions due to conflict between differing approaches to complaint handling and corruption fighting.

2.8 Mr Tink concluded that given the changes in police culture and the improved capacity of the NSW Police Force to handle complaints, it should now be possible for a single body with an appropriate structure to perform the two roles:

... The changes in culture and capacity over time, however, mean it should now be possible for an oversight body to undertake effective anti-corruption work without that being undermined by the burden of high volume complaints work. Conversely, those same changes should mean it is now possible for a single oversight body to ensure that important complaints oversight work is not undervalued within the organisation. A single model that meets these goals is achievable now in a way that may not have been the case in 1996, providing any new model is structured in a way that recognises and protects the importance of both functions.<sup>38</sup>

2.9 As noted in paragraph 1.26, Mr Tink’s recommended structure for the LECC is two separate divisions (dealing with oversight and integrity), with present staffing ratios and budgets to be maintained.

2.10 While Mr Tink concluded that a single body should oversee complaints, he did not agree that all complaints about police should initially be directed to the new body. He recommended that complainants should continue to have the option of complaining directly to the NSW Police Force. This is so that police retain responsibility for resolving complaints about their own conduct. It would also prevent an increase in the administrative costs of processing complaints. Complaints could be made to the NSW Police Force or the new oversight body, after which they would be centrally recorded:

... Some people will prefer to go direct to the source and lodge their complaint with the Police Force, whereas others will prefer to complain to an independent body. I envisage that there may be an IT solution, whereby the complaints page of both the NSW Police Force website and any new oversight body could be linked to provide complainants with the option to complain directly to either body.

... making one agency responsible for the receipt of all complaints would place a large administrative burden upon that agency. Therefore it is recommended that, in the new system, it should continue to be possible for complaints to be received

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<sup>37</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, pp92-94

<sup>38</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, pp96-98

either by the Police Force or an oversight body, but thereafter they should be recorded centrally.<sup>39</sup>

## Trends in public sector complaint handling

- 2.11 The Committee heard evidence from the Ombudsman about strategies to manage increases in complaints, and to focus resources on building agencies' capabilities in handling complaints.
- 2.12 The Ombudsman told the Committee that during 2014-15 there had been a 20.8% increase in complaints in the public administration jurisdiction, and a 30% increase in community service complaints. Professor McMillan observed that increasing workloads put pressure on staff, and that the office has sought to develop strategies to manage the increase: 'chief among those is to work with bodies within our jurisdiction, to ensure that they have better systems and better trained staff to deal with complaints and problems so as to avoid the need for external complaint intervention.'<sup>40</sup>
- 2.13 The Committee heard that increasing complaints have meant that a lower proportion of complaints are accepted by the Ombudsman, and the office instead focuses its resources on improving agencies' complaint handling practices. The Deputy Ombudsman (Public Administration), Mr Chris Wheeler, told the Committee that in terms of local government complaints, the office declines more complaints and has directed its resources at auditing councils' complaint handling and advising on ways to improve complaint handling systems:
- Over the years we have had limited resources available that we could direct into local government complaints. As the numbers have grown we have had to increase the number that we have had to decline. So we have put a lot of emphasis on trying to improve complaint handling within local government. We try to undertake audits every number of years; we have had, I think, four or five over the past, say, 20 years, looking at government as a whole, and that includes local government. Arising out of the most recent audit we have developed a fact sheet that we have sent around to all councils and to the Office of Local Government, calling on the councils to improve their complaint handling.<sup>41</sup>
- 2.14 Mr Wheeler also observed that over time the Ombudsman's work has changed as agencies have become more responsive to less formal means of dealing with complaints. Initially the office conducted more investigations, but the office now handles far more matters through informal means, for example by phoning and emailing agencies to resolve issues:

... We deal with a lot of matters through informal means—it might be phone calls, it might be emails; it would be a range of things where we try to identify whether there is a problem and can we get it fixed. We do this across the work of the Public Administration Division. I have been in the office for a number of years and have noted that there has been a significant change in the impact of the work of the office over that time. Originally we would need to do a lot of formal investigations across

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<sup>39</sup> Andrew Tink AM, *Review of Police Oversight*, August 2015, p81

<sup>40</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, pp15-16

<sup>41</sup> Mr Chris Wheeler, Deputy Ombudsman (Public Administration), Transcript of evidence, 3 March 2016, pp25-26; Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p16

the public sector to achieve the outcomes that we thought were necessary. That, by and large, is no longer necessary.<sup>42</sup>

- 2.15 This change in the way agencies respond to intervention by the Ombudsman has meant that the office can address issues more quickly and in a less resource intensive way:

... We are getting far better cooperation, far more positive responses and matters get addressed without the need for formal investigation. When you have limited resources it is far better to focus on getting things fixed than necessarily going through a whole formal process which takes a lot of time and effort. So we have seen a change over that time to a very responsive public sector and local government sector ...<sup>43</sup>

## Committee comment

### *Trends in public sector complaint handling*

- 2.16 The Committee notes the Ombudsman's evidence that the office's complaint handling methods have changed over time. The office investigates fewer complaints, instead referring more complaints back to agencies, and using methods such as audits to identify problems with agency systems and complaint handling practices. The Committee heard that agencies are more responsive to an informal approach, meaning there is less need for the office to embark on formal, resource intensive investigations.
- 2.17 The change in approach is also due to the need to manage a higher volume of complaints with limited resources. The number of complaints to the Ombudsman has increased significantly with time, requiring strategies to manage resources in a more effective way. Informal approaches to resolving complaints, combined with audits and targeted advice on complaint systems are less resource intensive ways to improve agencies' complaint handling and service provision.

### *Changes in handling complaints about police*

- 2.18 While there may be less need for active oversight of complaints about the wider public sector, this is not the case for police and law enforcement related matters. The establishment of the LECC will result in significant changes to the system for complaints about police. Complaints will be oversighted by a body that is solely dedicated to oversighting police officers and Crime Commission officers. This change is intended to simplify the current system and make it easier for complainants to navigate the process for making a complaint. Under the new system, complainants will have the option of making their complaint to the LECC or to the Police Force. Mr Tink's recommendations sought to design a complaints system that is flexible and simple, while also maintaining the Police Force's ownership and responsibility for complaints about officer conduct.
- 2.19 The creation of the unified body is also intended to resolve gaps and overlaps in the current system. The Tink review concluded that there are not enough direct

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<sup>42</sup> Mr Chris Wheeler, Deputy Ombudsman (Public Administration), Transcript of evidence, 3 March 2016, pp25-26; Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p16

<sup>43</sup> Mr Chris Wheeler, Deputy Ombudsman (Public Administration), Transcript of evidence, 3 March 2016, pp25-26; Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p16

investigations into less serious complaints about individual police conduct. Dual oversight by the Ombudsman and PIC may have resulted in some complaints about everyday policing and mid-level matters falling between the cracks, or being inappropriately escalated to investigation by the PIC. Mr Tink concluded that a single body would have greater flexibility to conduct investigations into these types of complaints.

- 2.20 The Committee acknowledges the view that there is a need for more active and co-ordinated oversight of complaints about police. While there have been significant improvements in police service standards, culture and complaint handling practices since the Wood Royal Commission, a refinement of the current oversight system will ensure that the Police Force continues to improve.
- 2.21 The new oversight model will involve significant structural change that should facilitate a more unified approach to police complaints, and a simpler process for complainants. The success of the model depends on the legislation providing for LECC's functions and powers, and on the resources dedicated to the body. It will also depend on the structure of the LECC, and the allocation of resources between the Commission's two divisions. Liaison and co-operation between the LECC and the NSW Police Force's Professional Standards Command will also be critical, particularly given that complaints will be received and handled by both bodies.
- 2.22 The Committee notes that the recommended reforms will mean that there is more scrutiny and transparency around the handling of police complaints. The LECC Inspector will have the power to receive and investigate complaints about the LECC's exercise of its functions. The creation of a single oversight body will also improve transparency around the cost of overseeing law enforcement officers.

## Chapter Three – Operational changes – the Crime Commission

- 3.1 This chapter outlines operational changes occurring since the enactment of the *Crime Commission Act 2012*.

### Change in focus resulting from the *Crime Commission Act 2012*

- 3.2 Since the 2012 changes to its governing legislation, the Crime Commission has been in the process of internal restructuring. The restructure has involved setting up the Corporate Services Division as a separate department, the strengthening of the Governance unit and the appointment of a Director Legal Services.
- 3.3 While the administrative arrangements have been completed, the change is to continue with a focus on operational issues.<sup>44</sup> The Committee heard that this involves refocussing the Crime Commission's work away from drugs to other areas where the Commission's extraordinary powers can be used to full effect.
- 3.4 The *Crime Commission Act 2012* replaced the *NSW Crime Commission Act 1985* on 5 October 2012. Prior to that, the reduction of the incidence of illegal drug trafficking was the primary object of the Act, and thereby the Crime Commission. The reduction of the incidence of organised and other crime was listed as secondary objective.<sup>45</sup> With the introduction of the 2012 Act, the objective of the Crime Commission has changed to reducing the incidence of organised and other serious crime.<sup>46</sup> The specific reference to drug trafficking has been omitted.
- 3.5 Then Attorney-General Greg Smith elaborated on the rationale for this change in his second reading speech on the bill. He stated that changes in the nature of organised crime made it necessary for the Crime Commission to be flexible in its approach and for the Act to reflect that. Drug trafficking would remain one of the main targets of the Crime Commission, as it is a major part of organised and other serious crime:

This bill also removes drug trafficking from the objects of the New South Wales Crime Commission Act 1985. However, drug trafficking will remain part of the objectives of the Crime Commission because it is part of organised and other serious crime, which will remain in the objects of the Crime Commission Act. ...

It has always been envisaged that the Crime Commission's focus should be on serious and organised crime. Drug trafficking was the principal activity of organised crime; however organised crime is now becoming increasingly diverse. The 2011 Organised Crime Threat Assessment [OCTA] undertaken by the European Police Office [Europol] noted that, "Organised crime is changing and becoming increasingly diverse in its methods, group structures, and impact on society." The Organised Crime Threat Assessment highlights:

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<sup>44</sup> NSW Crime Commission, *Annual Report 2014-2015*, p1

<sup>45</sup> *New South Wales Crime Commission Act 1985*, s 3A

<sup>46</sup> *Crime Commission Act 2012*, s 3

That criminal groups are increasingly multi-commodity and poly-criminal in their activities, gathering diverse portfolios of criminal business interests, improving their resilience at a time of economic austerity and strengthening their capability to identify and exploit new illicit markets.

The Australian criminal environment reflects these international experiences and the objects of the Act should allow for a flexible and responsive Crime Commission.<sup>47</sup>

- 3.6 The Crime Commission has responded to these changes by developing an Organised Crime Disruption Strategy.<sup>48</sup> The Committee heard about this strategy at its last hearing with the Crime Commissioner.<sup>49</sup> It is consistent with approaches taken by bodies focussing on disrupting organised crime in other jurisdictions, such as the Australian Crime Commission and the National Crime Agency in the UK.
- 3.7 The strategy outlines how the Crime Commission proposes to disrupt organised crime to the maximum extent possible. At the centre of the strategy lies the collation of information and intelligence on the leaders, members and facilitators of organised crime groups in New South Wales in a map. This map is then used to plan and prioritise operations in order to achieve the greatest possible disruption to these groups. To this end, the Crime Commission aims to collect evidence to arrest and charge senior criminals and employs a range of strategies to frustrate the activities of criminal groups and their leaders. Partnerships with state and federal law enforcement agencies are an essential part of the strategy.
- 3.8 An important disruption strategy used by the Commission is asset confiscation, as money is the prime motivator of organised crime and is also used to fund further criminal activities. Accordingly, Commissioner Hastings was confident that the Commission's Financial Investigations Division would continue to play a substantial role in disrupting criminal activity, especially drug-related crime.
- 3.9 The Commissioner explained that drug enterprises depend on 'huge transfers of money offshore'<sup>50</sup>, which was why the Commission was now focussing on the financial side of drug trafficking and on disrupting the drug trade through confiscations. The estimated realisable value of confiscation orders obtained by the Commission's Financial Investigations Division was just over \$27 million in 2013-2014 and \$26.5 million in 2014-2015.<sup>51</sup>
- 3.10 Since the introduction of the new Crime Commission Act, the Management Committee can only refer matters for investigation to the Crime Commission if the use of the Commission's powers appears to be necessary to fully investigate the matter; the investigation of the matter by the Commission is in the public interest; and the matter is sufficiently serious to warrant investigation by the

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<sup>47</sup> The Hon Greg Smith, Attorney General and Minister for Justice, Crime Commission Bill 2012 Second Reading Speech, Legislative Assembly Hansard, 18 September 2012, pp15323-15324

<sup>48</sup> New South Wales Crime Commission, *Organised Crime Disruption Strategy 2014*, accessed 29 April 2016: [http://www.crimecommission.nsw.gov.au/files/Organised\\_Crime\\_Disruption\\_Strategy\\_2014.pdf](http://www.crimecommission.nsw.gov.au/files/Organised_Crime_Disruption_Strategy_2014.pdf)

<sup>49</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 17 February 2014, p8

<sup>50</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p22

<sup>51</sup> NSW Crime Commission, *Annual Report 2014-2015*, p27

Commission.<sup>52</sup> Previously, the Management Committee had to be satisfied that ordinary police methods of investigation would be ineffective.<sup>53</sup>

3.11 This change places emphasis on the Commission's use of its special powers in its investigations. Accordingly, Commissioner Hastings foreshadowed that the number of hearings conducted by the Commission would increase.<sup>54</sup>

3.12 The Crime Commission has also increased the use of its powers to combat domestic terrorism. The Commission is a longstanding member of the Joint Counter Terrorism Team, an inter-agency collaboration investigating domestic terrorism, and has provided analytical support in this framework. Commissioner Hastings told the Committee that he thought the Commission could contribute further by employing its special powers in this field. He also explained the division of labour between the NSW Crime Commission and the Australian Crime Commission, which focusses on foreign fighters:

The Commission, for a long time, has been a member of the Joint Counter Terrorism Team, the multi-agency organisation which is principally involved in looking at domestic terrorism in particular. But we were providing analytical support and I did not think that was a particularly significant contribution, so I suggested that the Commission ought to take advantage of its powers and use them in relation to domestic terrorism. I say that deliberately because the Australian Crime Commission is also part of the same arrangements and they have publicly said they are investigating and conducting hearings for foreign fighters. So there is a neat division between the ACC's focus of interest in overseas activities and the threat provided by domestic terrorism. As the papers have, unfortunately, revealed, we have had several hearings—more than several—in relation to domestic terrorism activity.<sup>55</sup>

### Declining usefulness of telephone intercepts

3.13 The Committee heard that telephone intercepts have become less valuable to the Crime Commission. According to the Commission's 2014-2015 annual report, criminals increasingly employ technology to avoid detection. The use of encrypted Blackberry devices makes it virtually impossible to intercept communication. Some outlaw motorcycle-gangs even practise active counter-surveillance and have specialised advisers on the issue.<sup>56</sup> This change is reflected in the sharp drop of telecommunication intercept and surveillance device warrants used by the Crime Commission over the last three years.<sup>57</sup>

3.14 Commissioner Hastings acknowledged that the NSW Police have not experienced the same issue. He explained this was due to the fact that Police focus their investigations on the street level, where criminals have to use phones to organise

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<sup>52</sup> *Crime Commission Act 2012*, s 51(2)-(3)

<sup>53</sup> *New South Wales Crime Commission Act 1985*, s 25(2)

<sup>54</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p17

<sup>55</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, pp22-23

<sup>56</sup> NSW Crime Commission, *Annual Report 2014-2015*, p20

<sup>57</sup> The numbers of warrants applied for and issued to the Crime Commission under the *Telecommunications (Interception and Access) Act 1979 (Cth)* were: 517 in 2012-2013, 357 in 2013-2014, and 188 in 2014-2015. Similarly, the number of warrants granted under the *Surveillance Devices Act 2007* declined from 172 (2012-2013) to 142 (2013-2014) and further to 76 (2014-2015). See NSW Crime Commission, *Annual Report 2012-2013*, p33; *Annual Report 2013-2014*, pp11-12; *Annual Report 2014-2015*, pp12-13

their trade. The Crime Commission, on the other hand, aims to target organisers and senior level criminals, who now rarely talk about their involvement in criminal activities on unsecured lines.<sup>58</sup>

- 3.15 Commissioner Hastings stated that internationally, investigations by bodies similar to the NSW Crime Commission are hampered by this development. He cited public statements by the Australian Federal Police and the French police after the Paris terror attacks in 2015.<sup>59</sup>
- 3.16 This development poses a challenge for the Crime Commission. Intercepting criminals' phones was a cheap and effective way to obtain information and evidence, so much so that 'the Commission has basically been in the past a telephone intercept agency.'<sup>60</sup>
- 3.17 To meet this challenge and ensure the effective use of its powers, the Commission had commenced discussions with the Commissioner and Deputy Commissioners of the NSW Police about new cooperative arrangements, which the Commissioner stated are 'progressing positively'.<sup>61</sup>
- 3.18 Commissioner Hastings pointed to the Queensland Crime and Corruption Commission as a potential model for future cooperation with the NSW Police Force:

I might have mentioned previously that I have been to see [the Queensland Crime and Corruption Commission] and was impressed by the way their organisation is structured in terms of having a standing reference in relation to organised crime and then cooperating with the Queensland Police Service in identifying specific crimes that the Commission there can assist the investigation of by using its coercive powers. I do not think we do that particularly well. What I am aiming to do is to revisit our relationship with the New South Wales police to broaden the scope of the matters in which the Commission can assist by getting out of drugs and getting into other crimes in which hearings are a more likely contribution.<sup>62</sup>

### Committee comment

- 3.19 The Committee recognises the change in the Crime Commission's focus from drug-related crime towards the disruption of serious and organised crime more generally. While the introduction of the *Crime Commission Act 2012* has in part necessitated operational changes for the Commission, the causes lie in the overall changes to the nature of organised crime.
- 3.20 As the nature of organised crime is changing and becoming more fluid, law enforcement agencies have to be more flexible and cooperative to combat crime. This is especially true of the Crime Commission, whose targets are the upper echelons of organised crime. These top-level criminals are the most likely to

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<sup>58</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p21

<sup>59</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p21

<sup>60</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p20

<sup>61</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p21

<sup>62</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p17

invest in strategies to avoid detection and prosecution, which means that the Commission needs to invest in innovative strategies to keep pace.

- 3.21 By way of example, the Committee notes the declining usefulness to the Crime Commission of telephone intercepts. Traditional investigative methods have become less useful for gathering evidence and disrupting organised crime. Criminals are increasingly using technology such as apps and encryption to frustrate law-enforcement surveillance efforts.
- 3.22 In this context, the Commission's Organised Crime Disruption Strategy is an important tool in guiding the priorities of the Commission's operations. The adoption of the strategy is consistent with the approach of bodies in other jurisdictions, such as the United Kingdom, and in Australia federally.
- 3.23 The Committee heard that the Commission is focusing on the increased use of its statutory powers, including in the area of domestic counter-terrorism, and on better cooperation with other law-enforcement agencies.
- 3.24 Based on the evidence before the Committee, the Commission is working to meet the obstacles posed by changes in technology and criminal enterprise structures. The Committee will follow the future changes to the Commission's operational procedures with interest.

## Chapter Four – Measuring the Crime Commission's performance

- 4.1 This chapter discusses performance measures for the NSW Crime Commission.
- 4.2 The Crime Commission's objective is the reduction of the incidence of organised and other serious crime. In his evidence before the Committee, Commissioner Hastings discussed the difficulty of measuring the Commission's performance in relation to this objective.<sup>63</sup> He stated that there was no single factor that could be used to measure the Commission's performance. This issue is also discussed in the Commission's annual reports.<sup>64</sup>
- 4.3 Currently, the Crime Commission's reporting is quantitative: the number of arrests and charges, of warrants applied for and issued, the estimated realisable value of confiscation orders and other figures. As Commissioner Hastings reiterated before the Committee, these values are subject to factors beyond the Commission's control or can be misleading.

### Outcomes of investigations – arrests and charges

- 4.4 The main indicators of the Criminal Investigations Division's performance are currently based on the outcomes of investigations, i.e. the number of arrests and charges. These figures can be misleading, as investigations may be protracted and span several years before any arrests are made. In addition, the Crime Commission does not make arrests, as this is a police function, and the Commission only reports arrests and charges that come to its attention. Also, parts of an investigation may occur after an arrest is made, or further arrests in the same investigation may be made in future years and thus appear in those future annual reports.<sup>65</sup>
- 4.5 The pure number of arrests and charges also does not reflect how much the arrest disrupts criminal activities. The more senior the arrested person is in the criminal hierarchy, the more significant the potential disruption. As Commissioner Hastings explained to the Committee, a small annual number of arrests of senior criminals would be preferable to a large number of arrests of street-level criminals:

In my view, if the Commission were to have four arrests of tier one criminals in a year that would be a major event; whereas, as you know from my annual reports in the past, the figure is something like 400 or 500 arrests and charges and that means nothing because they are tier three, tier four low-level runners and street dealers. The thing that really counts from the Commission's point of view is the extent to which we really hit the top line of organised crime, because the police don't.<sup>66</sup>

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<sup>63</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, pp19-20

<sup>64</sup> NSW Crime Commission, *Annual Report 2012-2013*, pp7-8; *Annual Report 2013-2014*, pp14-15, 35-36; *Annual Report 2014-2015*, pp15-16, 25, 27-28

<sup>65</sup> NSW Crime Commission, *Annual Report 2014-2015*, pp15-16

<sup>66</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p20

- 4.6 The Commission's 2015-16 budget papers forecast a further decrease in arrest numbers for the following year.<sup>67</sup> This is explained by the Commission's focus on serious crime and high-level criminals, as discussed from para 3.2.

### Estimated realisable value of confiscation orders

- 4.7 An important measure of the Financial Investigations Division's work is the estimated realisable value of confiscation orders. Under the *Criminal Assets Recovery Act 1990*, the Crime Commission can recover the proceeds of illegal activity and of unlawfully obtained wealth through confiscation orders.
- 4.8 The estimated realisable value depends in essence on the kind of asset captured under the confiscation order. In case of money, the value is usually equal to the amount captured. If it is an asset that needs to be sold to realise its value, the estimate is less accurate and usually below the actual value of the property. It is also affected by the time elapsed between confiscation and sale due to market variation.<sup>68</sup>
- 4.9 In addition, the total estimated realisable value of confiscation orders may be inflated through a large amount confiscated under a single order. In this instance, the value ceases to be indicative of the division's work. Without such inflation, however, the value can be a meaningful indicator of the division's productivity. In 2014-2015, there was no single large seizure, so the confiscation value of \$26.5 million can be taken as a measure of the division's productivity.<sup>69</sup>

### Use of statutory powers as a more reliable measurement?

- 4.10 The Committee inquired of Commissioner Hastings which key values could be taken to be indicative of the Commission's performance. The Commissioner was of the opinion that the number of times the Commission uses its coercive powers could be taken as a measurement of its productivity. In particular, he singled out hearings as the key function of the Commission:

If you want the most tangible key performance indicator under the Act it would be the number of hearings we have. That is the key function of the Commission and tied directly into that is the granting of references. One of the factors that I have been pushing very hard within the Commission is to increase the number of hearings because that is basically why the Commission exists. The utility is another question I suppose, but in statistical terms the fact that we have now increased the number of hearings that we have I think is one indicator that we have increased our output.<sup>70</sup>

- 4.11 However, when asked which key factors could be taken together to measure the Commission's effectiveness, he noted that it is very difficult to measure the Commission's success in reducing the incidence of organised crime, which is the ultimate function of the Crime Commission:

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<sup>67</sup> The Hon. Gladys Berejiklian MP, Treasurer and Minister for Industrial Relations, *Budget Estimates 2015-16*, Chapter 7 – Justice Cluster, p53

<sup>68</sup> NSW Crime Commission, *Annual Report 2014-2015*, pp27-28

<sup>69</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p22

<sup>70</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p19

... it is a very pertinent question; my difficulty in answering is that it is almost impossible to come up with an answer. I mean our function is to reduce the incidence of organised crime—we have been given certain powers to do that and we use those powers. Thereafter it becomes a matter of almost luck sometimes as to whether you actually secure arrests or you don't.<sup>71</sup>

### Committee comment

- 4.12 The Committee recognises that measuring success in the reduction of the incidence of serious and organised crime poses difficulties. The number of arrests and charges may depend on too many external factors beyond the Commission's control to be a measure of effectiveness. In addition, the bulk of the Crime Commission's work is conducted in joint taskforces with other agencies and often involves cross-jurisdictional collaboration. While this is a necessary approach for crime-fighting agencies, it is not easy or even possible to separate out individual contributions and to attribute success to single factors.
- 4.13 It is also important to acknowledge that a certain proportion of the Crime Commission's work has to be conducted in secret and cannot be reported on so as to not alert the targets of investigations. This further complicates the effort to adequately measure and report on the Commission's success.
- 4.14 It may be useful to refer to the performance reporting of comparable agencies. The Australian Crime Commission (ACC), for example, produces an overview table in its annual reports called a 'performance scorecard'. In it, the ACC identifies its objectives and reports quantitative and qualitative achievements against each one of these objectives in a table format.
- 4.15 For the NSW Crime Commission, the number of hearings held by the Commission may be a useful indicator of productivity, as the Commissioner proposed. In addition, the estimated realisable value of confiscation orders can be a good performance measure, if the reporting is detailed enough to show whether there was a single large confiscation distorting the result.
- 4.16 The development of the Organised Crime Disruption Strategy shows that the Crime Commission is focussed on achieving its objective of reducing the incidence of organised and other serious crime, even if it is difficult to identify concrete measures of success in this area.

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<sup>71</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p20

## Chapter Five – Governance issues

- 5.1 In this chapter, the Committee examines issues raised by the application of the *Government Sector Employment Act 2013* to staff of the Crime Commission, and the location of the Inspector of Custodial Services within the Justice portfolio.

### Employment arrangements of NSW Crime Commission staff

- 5.2 The Committee heard that the commencement of the *Government Sector Employment Act 2013* (GSE Act) may have a significant impact on staff of the Crime Commission.
- 5.3 As at 30 June 2015, the Crime Commission employed 146 staff through the NSW Crime Commission Staff Agency. While some of its employees perform mainly administrative or managerial roles, most staff are engaged mainly or exclusively in operational roles, including intelligence analysis, forensic accounting and financial analysis, telecommunications interception and electronic surveillance.
- 5.4 With the commencement of the GSE Act on 13 September 2013, all staff of the Crime Commission became part of the Public Service. In his evidence, Commissioner Hastings stated that the Commission was required to comply with the Act by February 2017 and that the Commission had opened discussions with the Public Service Commission about actions to be taken and how they would affect staff.<sup>72</sup>
- 5.5 There is, however, some doubt about whether the GSE Act applies to the Crime Commission and Crown Solicitor's advice has been sought.<sup>73</sup> This uncertainty, in turn, has stalled discussions with the Public Service Commission and has affected preparations for a transition. It has also impacted on communication with the Commission's staff:
- At the moment there is very little we can do because we are in a state of indecision because we have opened discussions with the Public Service Commission and at the moment they have stalled because of some apparent uncertainty as to whether the Act applies to the Commission or not. We have not been able to inform the staff much more than that. We have in the executive sort of contingency plans which we have in mind but we are not in a position to say anything about them until we know precisely what we have to do.<sup>74</sup>
- 5.6 The insecurity around the GSE Act may have had an impact on staff morale, as captured in the 2014 Public Service Commission *People Matter Employee Survey*. Questions around change management, preparation for the future, personal development and fair remuneration are among the lowest scoring questions and

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<sup>72</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p18

<sup>73</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p18

<sup>74</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p18

also among questions where the Crime Commission scored below the sector average.<sup>75</sup>

5.7 When prompted about practical impacts on staff if the Crime Commission was to comply with the GSE Act, Commissioner Hastings detailed that the remuneration of senior level employees would be reduced. By his estimate, the affected positions would be '(d)irectors and assistant directors and another layer or two below them.' He put the number of adversely impacted positions at 23.<sup>76</sup>

5.8 While Commissioner Hastings acknowledged that there would be disruption to the organisation if employees adversely affected by the GSE Act were to leave, he stated that the changes would take some time to take effect:

It will not happen in a block. This will take place over time. It may well be that even some of those who are directly affected may be offset by new arrangements to allow them to more or less continue as they are. There will be some who will be dissatisfied.<sup>77</sup>

5.9 In addition, Commissioner Hastings observed that the bulk of staff would not be affected. He further stated that the problem of people earning disparate incomes while having the same position title would be rectified through compliance with the GSE Act:

The difficulty in generalising is that what I inherited was a strange structure where people have the same title but earn entirely disparate incomes. One of the things I have been trying to do in any event, leaving aside the GSE issues, is to provide some regularity and certainty into wage levels. I think the GSE Act will overtake all of that. It is very hard to generalise because one intelligence officer might be on one salary and one might be on a significantly lower salary.<sup>78</sup>

### Location of Inspector of Custodial Services in Justice cluster

5.10 Governance arrangements for the Inspector of Custodial Services were raised during the Committee's review. The Inspectorate was established in 2013, following the passage of the Inspector of Custodial Services Act in 2012. At that time the Inspectorate was located within the Department of Attorney General and Justice for administrative and budget purposes. After the creation of larger, cluster portfolios the office was incorporated into the Department of Justice. As the Inspector's 2014-2015 annual report notes, this department also includes Corrective Services and Juvenile Justice, the agencies that are covered by the Inspector's inspection mandate.<sup>79</sup>

5.11 The annual report noted that other NSW inspection and oversight bodies are located within the Department of Premier and Cabinet for administrative purposes, to ensure their independence from the agencies they inspect or oversight. According to the Inspector's 2014-2015 annual report, the real and

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<sup>75</sup> Public Service Commission, *People Matter Employee Survey 2014: Agency report for New South Wales Crime Commission*, pp5-7

<sup>76</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p24

<sup>77</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p24

<sup>78</sup> Mr Peter Hastings QC, Commissioner, NSW Crime Commission, Transcript of evidence, 29 February 2016, p24

<sup>79</sup> Inspector of Custodial Services, *Annual Report 2014-2015*, p14

perceived independence of the Inspector's office, and its credibility, could be compromised by the office's current governance arrangements.<sup>80</sup>

- 5.12 Following the release of the annual report, the then Inspector, Dr John Paget, concluded his term. The Committee sought the view of the current Inspector, Ms Fiona Rafter, on the issue of governance. Ms Rafter told the Committee that she had no concerns about the office's independence in practice, and would monitor stakeholders' perceptions of the office's independence:

I understand the former Inspector's view—his strong views—on this, but in my time in the office thus far I have no concerns about real independence. My intention is to continue to monitor the perceived independence with my regular meetings with stakeholders.<sup>81</sup>

### Committee comment

#### *Employment arrangements of Crime Commission staff*

- 5.13 The Committee heard that changes to the governance of employment arrangements for senior staff of the Crime Commission are underway. Some details are yet to be clarified. The Committee acknowledges that periods of restructure are generally difficult for organisations and their staff and notes that further turbulence may lie ahead.
- 5.14 The Committee notes, however, that comparable organisations have implemented the GSE Act. PIC staff have been transitioned to the new legislation, and the staff of the LECC will also be employed under that legislation. Consistency of employment arrangements across the sector is desirable and will ensure that all staff are employed under the same conditions. The Committee further expects that the adoption of the GSE Act will provide budgetary certainty for the Crime Commission in respect to salary expenses.
- 5.15 The Committee will seek an update at the next review on how the changes are progressing and on their impact on the Crime Commission.

#### *Location of Inspector of Custodial Services*

- 5.16 The Committee wishes to thank Dr John Paget for his service as Inspector of Custodial Services, and for his work in establishing the office and producing a number of high quality reports during his term as Inspector. The Committee held its first hearing with Dr Paget's successor, Ms Fiona Rafter, shortly after she commenced in the role.
- 5.17 The Committee notes Dr Paget's concern about possible perceptions among stakeholders that the office's independence is compromised by its location within the Justice Department - the same Department that manages the facilities the office inspects and reports on. However the Committee notes that the current Inspector, Ms Rafter, indicated that she did not have any concerns regarding the office's independence. Ms Rafter stated that she would assess perceptions of the office's independence through her regular meetings with stakeholders.

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<sup>80</sup> Inspector of Custodial Services, *Annual Report 2014-2015*, p14

<sup>81</sup> Ms Fiona Rafter, Inspector of Custodial Services, Transcript of evidence, 12 May 2016, p3

- 5.18 The Committee will continue to monitor existing governance arrangements to ensure they facilitate the real and perceived independence of the Inspector of Custodial Services.

## Chapter Six – Staffing and resources

- 6.1 The Committee discusses evidence it received regarding the adequacy of staffing and resources for the Inspector of Custodial Services and the Privacy Commissioner in this chapter.

### Inspector of Custodial Services

- 6.2 In June 2015, the previous Inspector of Custodial Services, Dr John Paget, requested a new research assistant position to be included in his office's structure. At the time, a total of 4 staff were employed to assist the Inspector; two inspection/research officers, an official visitor co-ordinator and an executive assistant. The 2014-2015 annual report noted that the office's operating budget could accommodate the additional position.<sup>82</sup>
- 6.3 The current Inspector advised the Committee that the request for an additional permanent position had been approved and she had commenced recruitment for the position. Ms Rafter also advised the Committee that she had sought expressions of interest from inspectorates in other jurisdictions to assist the NSW Inspectorate with its future inspections.<sup>83</sup>
- 6.4 The 2014-2015 annual report also noted that staffing and budget limited the Inspectorate's ability to meet its legislative obligations to inspect centres and monitor the uptake of its recommendations.<sup>84</sup>
- 6.5 With regard to the office's budget, Ms Rafter informed the Committee that the office has underspent its budget for the previous two financial years. The office's budget is \$1.9 million per annum. During the current financial year, the underspend was largely due to the vacancy in the office of Inspector. The office was unoccupied between Dr Paget's resignation in October 2015 and Ms Rafter's commencement in the role in April 2016. Ms Rafter has made a submission seeking approval to roll over some unexpended funding from the current financial year into 2016-2017, to enable an increase in the number of inspections undertaken by her office.<sup>85</sup>
- 6.6 The Committee heard that the vacancy in the office and competing priorities have meant that the Inspector may not meet the statutory requirement for all juvenile centres to be inspected by October 2016. The *Inspector of Custodial Services Act 2012* requires the Inspector to inspect all adult correctional facilities in NSW every 5 years, and all juvenile facilities every 3 years, as well as managing the state's official visitor program. Ms Rafter advised the Committee that the office has developed a program that will enable the inspection of the remaining juvenile centres, and that she is seeking to comply with the time frame outlined

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<sup>82</sup> Inspector of Custodial Services, *Annual Report 2014-2015*, p6

<sup>83</sup> Ms Fiona Rafter, Inspector of Custodial Services, Transcript of evidence, 12 May 2016, pp1, 3

<sup>84</sup> Inspector of Custodial Services, *Annual Report 2014-2015*, p14

<sup>85</sup> Ms Fiona Rafter, Inspector of Custodial Services, Transcript of evidence, 12 May 2016, p3

in the Act. A roll-over of unexpended funding would assist with meeting the statutory requirements.<sup>86</sup>

### Privacy Commissioner

6.7 The Committee heard that the Privacy Commissioner has additional staff to assist with performing her statutory functions. The Privacy Commissioner, Dr Elizabeth Coombs, addressed the issue of staffing and resourcing in the IPC's 2014-2015 annual report, stating that resourcing levels were inadequate and did not 'facilitate the Privacy Commissioner addressing emerging issues associated with championing the privacy of individuals through the statutory functions of education, research and reporting on technology developments concerning the need for legislative, administrative or other action.'<sup>87</sup>

6.8 Dr Coombs told the Committee that her office has since been allocated seven staff on a temporary basis, as part of a separate office for the Privacy Commissioner. Dr Coombs said that the new arrangements will enable privacy matters to be dealt with more effectively:

I am pleased with, and I thank, the attorney and secretary of the Department of Justice for the recent establishment of a separate office of the privacy commissioner within the IPC. This effectively returns responsibility and resourcing to what it was in 2012. This new arrangement is on a trial basis until June 2016. Though it is just two months and we are not yet up to our full complement of seven staff, and transitions are always interesting, this is a positive development which is working well. It is enabling us and will continue to enable us to progress matters far more efficiently and effectively.<sup>88</sup>

### Committee comment

6.9 The Committee considers that it is important to ensure statutory officers are provided with adequate funding to perform their functions. The Privacy Commissioner and the Inspector of Custodial Services operate small offices on limited budgets. These offices are performing a wide range of important functions with very few staff and have sought to perform their roles efficiently and cost-effectively. For example, the Inspector conducts inspections by theme to maximise resources.

### *Inspector of Custodial Services*

6.10 Adequate staffing and resources will assist with ensuring that the Inspector's program of inspections is completed on time. In this regard, the Committee highlights the Inspector's evidence regarding the possibility that the office will not meet the statutory requirement to inspect all juvenile facilities by October 2016.

6.11 The Committee notes that due to a number of factors, it is difficult to determine the adequacy of the Inspectorate's budget and whether it is sufficient to enable

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<sup>86</sup> Ms Fiona Rafter, Inspector of Custodial Services, Transcript of evidence, 12 May 2016, pp4-7

<sup>87</sup> Information and Privacy Commission, *Annual Report 2014-2015*, p8

<sup>88</sup> Dr Elizabeth Coombs, Privacy Commissioner, Information and Privacy Commission, Transcript of evidence, 3 March 2016, p10

STAFFING AND RESOURCES

the Inspector to perform her statutory functions. The office was established in early 2014 and has not been in operation for long enough to inspect all adult and juvenile facilities in NSW, and to assess the implementation of its recommendations. The Committee also heard that the office has underspent its budget for the last two financial years, in part due to a vacancy in the office of Inspector. These factors make it difficult to judge the resources required by the office.

6.12 Once the Office has conducted more inspections and undertaken the work required to monitor the implementation of its recommendations, it will be easier to determine the level of resources required by the Inspectorate. The Committee will continue to monitor whether there is a need for additional funding and staff to enable the Inspectorate to meet its legislative obligations.

6.13 The Office of Inspector was vacant for 6 months and this has had an impact on the Office's work and budget. While the Committee recognises that the role requires a person with specialised experience and skills, the 6 month delay in filling the position is unfortunate. The vacancy hampered the Office's ability to undertake planned inspections, which may mean that the current Inspector is not able to meet the requirement to inspect all juvenile facilities by October this year. The Committee supports Ms Rafter's request to roll over some of the Office's underspent budget to assist with her inspection program.

*Privacy Commissioner*

6.14 The Privacy Commissioner has also raised the need for additional staff and funding to enable her to perform all aspects of her role. Dr Coombs has expressed concern that she is unable to undertake research and provide advice to agencies and the public on privacy related issues, due to budgetary and staffing constraints. The Committee is sympathetic to the Privacy Commissioner's concerns.

6.15 The government has approved additional staff for the Privacy Commissioner on a temporary basis. If the Commissioner's role is widened, as recommended by the Legislative Council's recent inquiry into serious invasions of privacy, the office will need further increases to funding and staff on a permanent basis. The Committee will continue to monitor the staffing of the agencies it oversees to ensure they are adequately resourced.

## Chapter Seven – Agency projects

- 7.1 Projects that were discussed at the Committee’s hearings with agencies are examined below.

### Operation Prospect

- 7.2 Operation Prospect is a long-running investigation into alleged misconduct by officers of the NSW Police Force, the Crime Commission and the PIC during investigations that took place from the late 1990s to 2002. The Ombudsman began the operation in early 2013 after a referral from the PIC Inspector in late 2012. Having obtained additional funding to conduct the investigation, the Ombudsman recruited staff, set up a secure office area, and obtained necessary equipment and software. The operation was advertised and summonses were issued requiring the Police Force, Crime Commission and PIC to produce relevant documents and information. A large volume of material was amassed during the operation.
- 7.3 The Ombudsman and his staff analysed the documents and information, and determined that further investigation was required. Interviews and private hearings with witnesses were conducted. The procedural fairness process began. In 2015 thirty three affected parties were notified of provisional findings and given the opportunity to inspect relevant documents, and make submissions in response to the findings.
- 7.4 Since the Committee’s last hearing with the Ombudsman, two Legislative Council Committee inquiries have examined the conduct and progress of the operation. Professor John McMillan was appointed Acting Ombudsman and took over the operation in August 2015 following the end of Mr Bruce Barbour’s term.
- 7.5 Professor McMillan updated the Committee on the progress of Operation Prospect. He advised that the procedural fairness process was close to completion, with only one party yet to make their submission in response to provisional adverse findings. The Ombudsman has received in excess of 1,000 pages of submissions from affected parties.
- 7.6 At the time of the general meeting, the final report on the Operation was expected to be completed within the first half of 2016. Professor McMillan told the Committee that he was considering how to report the Operation’s findings, and intended to table a special report to Parliament, which he expected to be made public. He noted that the office had received submissions requesting anonymity, and would attempt to ensure that the report was a comprehensive public document while also considering whether to anonymise unnecessary details that could prejudice affected individuals:

We have received many submissions from people requesting anonymity in any reference made to them in the report. We are giving serious consideration to that but clearly there is quite a deal about Operation Prospect that is on the public record. Given the history of the matter, it is vital that it is a comprehensive public report that will satisfy people’s request for a thorough investigation. But there is

scope, from one sentence to the next in a report, to anonymise details that are inessential to the public record and which, if exposed in personal form, could cause unwarranted prejudice to someone. So we will wrestle with that issue.<sup>89</sup>

7.7 On 15 June, the Acting Ombudsman provided the Committee with a progress report on Operation Prospect. This report outlined work undertaken by his office to date. This included: continuing consultation with affected parties in the procedural fairness process; conducting additional hearings and interviews; and preparing the final report to Parliament.

7.8 The Acting Ombudsman also advised the Committee that he had updated his estimated completion date for the investigation which will now be in the second half of 2016, potentially as late as November. He explained that this was due to the length and detail of certain submissions he has received, and follow-up actions required from the additional hearings.

7.9 Some of the matters being investigated by Operation Prospect were referred by the PIC Inspector while others were raised in complaints to the Ombudsman, and in public interest disclosures. The varying origins of the matters under investigation mean that different reporting provisions within the *Ombudsman Act 1974* and the *Police Act 1990* apply. Professor McMillan emphasised that he would attempt to satisfy all of the relevant reporting requirements in a consolidated report:

... Some of the matters on which we report have been referred by, for example, the Inspector of the Police Integrity Commission. Some of the matters have arisen from complaints and public interest disclosures. Some have arisen from own motion decisions within the office. There can be fine differences in the reporting criteria and procedures according to the basis for the matter that was investigated. To the extent possible, my intention is to consolidate a report that will satisfy each of the different reporting requirements. As indicated, my expectation is that that report would be a public report, although it is at Parliament's discretion to decide to make the report public.<sup>90</sup>

7.10 The Ombudsman spoke of his objectives for Operation Prospect – that the conduct and finalisation of the investigation must be thorough, efficient and fair. He acknowledged perceptions that the investigation had not been efficient, and responded by stating that ‘if people fully understand the scale and contentious nature of the investigation it has been as efficient as possible.’<sup>91</sup>

7.11 In terms of fairness, the Ombudsman noted that the outcome of the operation will affect perceptions of whether it had been fair. Nonetheless he told the Committee that the procedural fairness process had been ‘impeccable and exhaustive’:

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<sup>89</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p17

<sup>90</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p17

<sup>91</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p19

In my years in the law I have rarely seen a procedural fairness process that has been conducted over such a long period with every attempt made, within the circumstances of a private inquiry, to be fair.<sup>92</sup>

- 7.12 Professor McMillan expressed confidence in the thoroughness of the investigation. He observed that the matter has been the subject of a number of investigations and the issues being investigated were disputed and contentious. Despite these difficulties, Professor McMillan stated that 'our investigation will be exhaustive and thorough to the point where there will not be a need for further investigation'.<sup>93</sup>
- 7.13 The appropriateness of the Ombudsman's jurisdiction to conduct such an investigation was raised during the Committee's hearing. The Ombudsman referred to the government's response to the Legislative Council committee inquiry into Operation Prospect, which indicated that the planned removal of the Ombudsman's police jurisdiction would make it necessary to address the provisions under which the office had conducted the Operation.<sup>94</sup>
- 7.14 Professor McMillan observed that notwithstanding the flexibility of the Ombudsman model and the office's investigative capacity, there were limitations on what the office could do. He stated that he was supportive of a division of responsibility between complaint handling and corruption investigation: 'I am of the view that the skills and procedures required for corruption investigation are different to those required for complaints investigation.'<sup>95</sup>
- 7.15 The Ombudsman also reflected on the impact on the office of undertaking such a lengthy and controversial investigation. He said that while the office's staff were capable of conducting the investigation, he would question the suitability of the office to conduct the investigation due to its potential impact:
- ... I think it is generally undesirable for an Ombudsman's office to be enmeshed in an investigation that can take up to four years and be highly controversial. If I were sitting in an Ombudsman position and I was asked to undertake such an investigation I would be having a long, hard discussion and analysis with staff and with government about what was likely to happen, and whether this was the suitable office to undertake the investigation. All of that said, I have unqualified confidence in the demonstrated ability of the staff of the office to undertake this investigation. In taking over the investigation I was struck by the dedication and excellence of the staff in the investigation. In regard to capacity I do not have queries; in regard to impact I would.<sup>96</sup>
- 7.16 In terms of the cost of the Operation, the Ombudsman advised that the office had funding approval for \$8.7 million until 30 June 2016, and had sought

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<sup>92</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p19

<sup>93</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p19

<sup>94</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, pp20-21

<sup>95</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p21

<sup>96</sup> Professor John McMillan, NSW Ombudsman, Transcript of evidence, 3 March 2016, p21

approval for a further \$1.3 million funding in the 2016-17 financial year, to cover brief preparation, archiving and other activities to conclude the investigation.<sup>97</sup>

## Childhood injury and disease prevention

7.17 The Committee heard that one of the areas of focus for the Child Death Review Team [the Team] was injury prevention, and the links between serious injury and child deaths. Dr Jonathan Gillis, the Team's Deputy Convenor, pointed out that for every child death there may be many children that are seriously injured:

One should remember that child death is rare, but each death may represent a lot of severe injuries. A child may drown and die, but that might represent—and I am just making up the number now—another 10 that almost drowned. The committee is often obsessed with the fact that although the death may be rare it may indicate a lot of serious injuries that are impacting on the whole health system.

It is like car accidents. We try to bring down the road fatalities but there are a huge number of severely injured people from car accidents. One of the things the committee is very conscious of is that—like the canary in the coalmine—we have to think about a death and what that indicates about all the children who might be being injured in some way.<sup>98</sup>

7.18 During 2015, the Team commissioned a report on childhood injury and disease prevention infrastructure in New South Wales. The aim of the report was to provide an initial overview of initiatives and structures in place to prevent childhood injury and disease,<sup>99</sup> to inform the Team's work in developing prevention strategies. Professor John McMillan, Convenor of the Child Death Review Team, told the Committee that the report revealed a lack of co-ordination in existing prevention initiatives:

This is an initial report that will assist the team in further work in identifying gaps in prevention efforts and response strategies. Overall, the report demonstrates that while there are many highly effective stakeholders working to reduce the impact of childhood injury and disease and the range of datasets, there is still, unfortunately, no formal coordination mechanism in New South Wales to bring the prevention strategies together.<sup>100</sup>

7.19 The report gave an overview of national and state policies and frameworks, data collections and reports, government and non-government stakeholders, and co-ordinating mechanisms that support childhood injury and disease prevention. It concluded that the Child Death Review Team would be 'well placed to investigate whether a more coordinated approach to childhood injury and disease

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<sup>97</sup> NSW Ombudsman, Answers to questions taken on notice at 3 March 2016 public hearing, p1

<sup>98</sup> Dr Jonathan Gillis, Deputy Convenor, Child Death Review Team, Transcript of evidence, 3 March 2016, p30

<sup>99</sup> From 1998 to 2012 the leading causes of childhood injury were falls, other injury/poisoning, unintentional strikes, exposure to unspecified factors and motor vehicle transport. Disease profiles change as children move through childhood: NSW Ombudsman (prepared by the Centre for Health Service Development, Australian Health Services Research Institute, University of Wollongong), *A scan of childhood injury and disease prevention infrastructure in NSW*, October 2015, p3

<sup>100</sup> Professor John McMillan, Convenor, Child Death Review Team, Transcript of evidence, 3 March 2016, p28

prevention in NSW is required'.<sup>101</sup> The Team will use the results of the research to plan and prioritise its future work.

## Operation of the GIPA Act

- 7.20 In February 2016, the Information and Privacy Commission (IPC) released its third report on the operation of the *Government Information (Public Access) Act 2009* (the GIPA Act). The report analysed trends in information release, both in terms of mandatory, proactive release by agencies and agencies' responses to requests for information. The IPC found that agencies had improved the timeliness of their responses to requests for information, and were giving assistance to citizens who sought to access information. Despite this, information release rates are dropping, applications for external review are increasing and applications to the Information Commissioner have increased significantly. In terms of mandatory release of information, the IPC found that the level of proactive release by agencies remains below 85%. This is largely due to a lower rate of compliance with contract reporting and disclosure logs.<sup>102</sup>
- 7.21 In response to questioning by the Committee, the Information Commissioner stated that the IPC would analyse the data gathered and focus its work program on areas where agencies' performance was lacking: 'all of the data we are now acquiring is very rich and we need to apply our best endeavours to properly understand, target and identify areas where we can elevate performance for agencies overall and apply our resources to do so.' An example of an area targeted by the IPC is contract reporting.<sup>103</sup>
- 7.22 The Committee heard that the IPC's work program will focus on understanding the data on agencies' proactive release rates. In terms of declining information release rates, Ms Tydd told the Committee that the IPC would analyse the factors that contributed to the decline, such as the types of information sought, and the reasons for partial release of information:

... Those figures certainly are apparent and they have caused us to inform a work program to gain a greater understanding of the application and to gain a greater understanding of factors such as partial release. Partial release is invoked, if you like, if just a small section of a report is taken out. For example, a phone number might be taken out; that is counted as partial release, not full release. We are seeing a greater understanding of the Act, and we are seeing a greater understanding of the Act by the sectors regulated by the Act.<sup>104</sup>

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<sup>101</sup> NSW Ombudsman (prepared by the Centre for Health Service Development, Australian Health Services Research Institute, University of Wollongong), *A scan of childhood injury and disease prevention infrastructure in NSW*, October 2015, p4

<sup>102</sup> Information and Privacy Commission, *Report on the Operation of the Government Information (Public Access) Act 2009: 2014 – 2015*, February 2016, p2

<sup>103</sup> Ms Elizabeth Tydd, Information Commissioner and CEO, Information and Privacy Commission, Transcript of evidence, 3 March 2016, p5

<sup>104</sup> Ms Elizabeth Tydd, Information Commissioner and CEO, Information and Privacy Commission, Transcript of evidence, 3 March 2016, p5

## Committee comment

### *Operation Prospect*

- 7.23 The Committee heard that Operation Prospect is ongoing. While the Committee had expected that a report would be produced in June 2016, it notes that the investigation is now likely to be completed at the end of the year. The Acting Ombudsman told the Committee that he intends to report publicly on the operation's findings, in a special report to Parliament.
- 7.24 Concerns have been raised about whether the Ombudsman was the appropriate office to undertake the investigation. The Acting Ombudsman told the Committee of the investigation's impact on his office and expressed the view that it was undesirable for the office to conduct such lengthy and controversial investigations. The Committee notes that the government's response to a Legislative Council committee inquiry indicated that the transfer of the Ombudsman's police jurisdiction to the LECC will necessitate changes to the provisions under which the operation was conducted.
- 7.25 The Committee recognises the substantial task that was inherited by the current Acting Ombudsman. The Committee looks forward to the Operation's conclusion and hopes that the Ombudsman's final report will bring clarity and closure for those who were affected by the events under investigation.

### *Childhood injury and disease prevention*

- 7.26 The Child Death Review Team is examining the ways in which existing systems to prevent childhood injury and disease can be improved. The Team's scan of the infrastructure in place to prevent childhood injury is a preliminary step in determining how best to reduce injuries, for example through better co-ordination of prevention efforts. The Committee notes evidence from the Team on the links between child injuries and deaths, and the potential impact of severe childhood injuries. This project will complement and inform the Team's work in preventing child deaths.
- 7.27 The Committee notes that the recent change to enable biennial reporting on child deaths will enable the Team to focus its resources on important prevention work, such as its current work on injury prevention.

### *Review of the operation of the GIPA Act*

- 7.28 In early 2016 the Information Commissioner released a report on the operation of the GIPA Act. The report assessed rates of proactive and reactive release of information by agencies to determine how the GIPA regime is operating. The data gathered as part of the review will enable the IPC to focus its work on improving understanding of, and compliance with, the GIPA regime. It will also assist with longer-term comparisons of trends in information release to determine whether any changes are required to the current system. The IPC is analysing data from the report to plan and target the office's work. An example of this is work to improve contract reporting and disclosure by agencies.

- 7.29 The Committee notes that a review of the GIPA Act is underway, and the IPC has made a submission to the review. The Committee will be interested in the outcome of the review, and any resulting changes to the current GIPA scheme.

## Appendix One – List of Witnesses

Monday 29 February 2016

Macquarie Room, Parliament of New South Wales

<b>Witness</b>	<b>Organisation</b>
The Hon Bruce James QC Commissioner	Police Integrity Commission
Ms Michelle O'Brien Commission Solicitor	Police Integrity Commission
Mr Peter Barnett A/Director, Prevention and Information	Police Integrity Commission
Mr Gary Kirkpatrick Director, Operations	Police Integrity Commission
The Hon David Levine AO RFD QC Inspector	Office of the Inspector of the Police Integrity Commission
Ms Susan Raice Principal Legal Advisor	Office of the Inspector of the Police Integrity Commission
The Hon Graham Barr QC Inspector	Office of the Inspector of the NSW Crime Commission
Mr Peter Hastings QC Commissioner	NSW Crime Commission

Thursday 3 March 2016

Macquarie Room, Parliament of New South Wales

<b>Witness</b>	<b>Organisation</b>
Ms Elizabeth Tydd Information Commissioner	Information and Privacy Commission
Ms Samara Dobbins Director, Business Improvement	Information and Privacy Commission
Dr Elizabeth Coombs Privacy Commissioner	Information and Privacy Commission
Mr Sean McLaughlan Senior Privacy Advisor	Information and Privacy Commission
Professor John McMillan AO Acting Ombudsman	NSW Ombudsman
Mr Chris Wheeler Deputy Ombudsman (Public Administration)	NSW Ombudsman
Mr Steve Kinmond Deputy Ombudsman (Human Services) / Community and Disability Services Commissioner	NSW Ombudsman
Mr Daniel Lester Deputy Ombudsman (Aboriginal Programs)	NSW Ombudsman
Mr Michael Gleeson Acting Deputy Ombudsman (Police and Compliance)	NSW Ombudsman
Professor John McMillan AO Convenor	NSW Child Death Review Team
Dr Jonathan Gillis Deputy Convenor	NSW Child Death Review Team
Ms Monica Wolf Director, Review and Inquiries	NSW Child Death Review Team

Thursday 12 May 2016

Waratah Room, Parliament of New South Wales

<b>Witness</b>	<b>Organisation</b>
Ms Fiona Rafter Inspector	Office of the Inspector of Custodial Services

## Appendix Two – Extracts from Minutes

### MINUTES OF MEETING NO 4

1.31pm, Thursday 17 September 2015  
Room 1136

#### Members present

Mr Evans, Ms Petinos, Dr McDermott, Mr Lynch, Mr Searle

#### Apologies

Mr Farlow, Mr Khan

#### Officers in attendance

Jason Arditi, Dora Oravec, Leon Last

#### 1. Confirmation of minutes

Resolved, on the motion of Ms Petinos, seconded Dr McDermott: That the minutes of 12 August 2015 be confirmed.

#### 2. \*\*\*

#### 3. Review of agencies' 2013-14 and 2014-15 Annual reports

##### 3.1 \*\*\*

##### 3.2 Timeline for annual report reviews

The Committee agreed to write to the heads of oversight agencies, thanking them for meeting with committee members, and advising of the anticipated timeline for the 2013-14 and 2014-15 annual report reviews.

Discussion ensued.

Resolved, on the motion of Mr Lynch, seconded Mr Searle: That the Committee write to the Crime Commissioner seeking clarification on statistics contained in the budget papers, which forecast a reduction in the number of charges expected to be laid by the NSW Crime Commission.

#### 4. Next meeting

The Committee adjourned at 1.40pm until a time and date to be determined.

### MINUTES OF MEETING NO 9

1.31pm, Wednesday 24 February 2016  
Room 1136

#### Members present

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle, Ms Petinos

#### Apologies

Mr Lynch

**Officers in attendance**

Jason Ardit, Dora Oravec, Leon Last, Tanja Zech

**1. Confirmation of minutes**

Resolved, on the motion of Mr Khan, seconded Mr Farlow: That the minutes of 30 November 2015 be confirmed.

**2. \*\*\***

**3. Review of the Annual Reports of oversight bodies**

**Public hearings – 29 February and 3 March**

The Committee discussed the public hearings with oversight bodies to be held on Monday February 29 and Thursday March 3.

The Chair noted that the public hearing with the Inspector of Custodial Services would be held once the position has been filled.

Discussion ensued.

The Committee agreed to write to the Minister for Corrections, noting that the office of Inspector has been vacant since October 2015 and seeking his advice on the timeframe for filling the vacancy.

**4. General business**

The Committee discussed the procedure for hearing from witnesses in camera.

**5. Next meeting**

The Committee adjourned at 1.39pm until Monday 29 February at 9.45am.

**MINUTES OF MEETING NO 10**

9.45am, Monday 29 February 2016

Macquarie Room

**Members present**

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle, Ms Petinos, Mr Lynch

**Officers in attendance**

Jason Ardit, Dora Oravec, Leon Last, Tanja Zech

**1. Deliberative meeting**

**1.1 Confirmation of minutes**

Resolved, on the motion of Dr McDermott, seconded Mr Searle: That the minutes of 24 February 2016 be confirmed.

**1.2 Media orders**

Resolved on the motion of Mr Farlow, seconded Ms Petinos: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 29 February 2016, in accordance with the Legislative Assembly's guidelines for the

coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

### **1.3 Answers to questions taken on notice**

Resolved on the motion of Ms Petinos, seconded Mr Farlow: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which the questions are forwarded to the witnesses.

## **2. Public hearing - 2016 Review of the Annual Reports of Oversighted Bodies**

Witnesses and the public were admitted. The Chair opened the public hearing at 9.58am and after welcoming the witnesses made a short opening statement.

The Hon Bruce James QC, Commissioner of the Police Integrity Commission, Mr Peter Barnett, Acting Director, Prevention and Information, Police Integrity Commission, and Mr Gary Kirkpatrick, Director, Operations, Police Integrity Commission, were sworn and examined.

Ms Michelle O'Brien, Commission Solicitor, Police Integrity Commission, was affirmed and examined.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, was affirmed and examined.

Ms Susan Raice, Principal Legal Advisor, Office of the Inspector of the Police Integrity Commission, was sworn and examined.

The Inspector made a brief opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee took a short adjournment at 11.15am and resumed the public hearing at 11.33am.

The Hon Graham Barr QC, Inspector of the NSW Crime Commission, was affirmed and examined.

The Committee commenced questioning the witness. Evidence concluded and the witness withdrew.

The Committee adjourned at 11.36am and the public hearing resumed at 1.30pm.

Mr Peter Hastings QC, Commissioner of the NSW Crime Commission, was affirmed and examined.

The Committee commenced questioning the witness. Evidence concluded and the witness withdrew.

The public hearing concluded at 2.05pm.

## **3. Post-hearing deliberative meeting**

### **Publication orders**

The Committee commenced a deliberative meeting at 2.06pm.

Resolved, on the motion of Mr Farlow, seconded Ms Petinos: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

The Committee discussed arrangements for the public hearing to be held on Thursday 3 March.

#### **4. Next meeting**

The Committee adjourned at 2.10pm until Thursday 3 March at 9.45am.

## **MINUTES OF MEETING NO 11**

9.50am, Thursday 3 March 2016  
Macquarie Room

#### **Members present**

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle, Ms Petinos, Mr Lynch

#### **Officers in attendance**

Jason Arditi, Dora Oravecz, Leon Last, Tanja Zech

### **1. Deliberative meeting**

#### **1.1 Confirmation of minutes**

Resolved, on the motion of Mr Khan, seconded Mr Farlow: That the minutes of 29 February 2016 be confirmed.

#### **1.2 Correspondence**

The Committee noted the following correspondence received:

- Minister for Corrections, dated 25 February 2016, in response to the Committee's letter regarding the vacancy in the office of Inspector of Custodial Services
- Commissioner of the PIC, dated 2 March 2016, clarifying evidence given at the public hearing on February 29.

Discussion ensued.

Resolved on the motion of Mr Lynch, seconded Mr Searle: That the Committee authorise publication of correspondence from the Commissioner of the Police Integrity Commission clarifying evidence given at the public hearing held on February 29, and that the correspondence be uploaded on the Committee's website.

#### **1.3 Media orders**

Resolved on the motion of Mr Farlow, seconded Mr Lynch: That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 3 March 2016, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

#### **1.4 Answers to questions taken on notice**

Resolved on the motion of Mr Khan, seconded Mr Lynch: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which the questions are forwarded to the witnesses.

## **2. Public hearing - 2016 Review of the Annual Reports of Oversighted Bodies**

Witnesses and the public were admitted. The Chair opened the public hearing at 10.00am and after welcoming the witnesses made a short opening statement.

Ms Elizabeth Tydd, Information Commissioner and CEO, Information and Privacy Commission, and Ms Samara Dobbins, Director, Business Improvement, Information and Privacy Commission, were sworn and examined.

The Information Commissioner made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

Dr Elizabeth Coombs, Privacy Commissioner, Information and Privacy Commission, was sworn and examined.

Mr Sean McLaughlan, Senior Privacy Advisor, Information and Privacy Commission, was affirmed and examined.

The Privacy Commissioner made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee took a short adjournment at 11.04am and resumed the public hearing at 11.16am.

Professor John McMillan AO, Acting Ombudsman, Mr Chris Wheeler, Deputy Ombudsman (Public Administration), Mr Steve Kinmond, Deputy Ombudsman (Human Services) /Community and Disability Services Commissioner, Mr Michael Gleeson, Acting Deputy Ombudsman (Police and Compliance), were affirmed and examined.

Mr Daniel Lester, Deputy Ombudsman (Aboriginal Programs), was sworn and examined.

The Acting Ombudsman made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee took a short adjournment at 12.18am and resumed the public hearing at 12.29am.

Professor John McMillan AO, Convenor, Child Death Review Team, was examined.

Dr Jonathan Gillis, Deputy Convenor, Child Death Review Team, was sworn and examined.

Ms Monica Wolf, Director, Review and Inquiries, was affirmed and examined.

The Convenor made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.51pm.

## **3. Post-hearing deliberative meeting**

The Committee commenced a deliberative meeting at 12.53pm.

Resolved, on the motion of Mr Farlow, seconded Ms Petinos: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

Discussion ensued.

Resolved, on the motion of Mr Searle, seconded Mr Lynch: That the Committee write to the Acting NSW Ombudsman to request a progress report on Operation Prospect, at a time when the Ombudsman feels is appropriate, before the final report on the Operation is tabled.

#### **4. Next meeting**

The Committee adjourned at 12.55pm until a date to be determined.

## **MINUTES OF MEETING NO 12**

11.33am, Monday 21 March 2016  
Room 814/815

#### **Members present**

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle, Ms Petinos

#### **Apologies**

Mr Lynch

#### **Officers in attendance**

Jason Arditi, Dora Oravec, Leon Last, Tanja Zech

#### **1. \*\*\***

#### **2. Deliberative meeting**

##### **2.1 Confirmation of minutes**

Resolved, on the motion of Ms Petinos, seconded Mr Farlow: That the minutes of 3 March 2016 be confirmed.

##### **2.2 Correspondence**

The Committee noted the correspondence sent to the Ombudsman, dated 8 March, requesting a progress report on Operation Prospect before the final report on the Operation is tabled.

The Committee noted the following correspondence received:

- The Ombudsman, dated 10 March, in response to the Committee's letter requesting a progress report on Operation Prospect
- The Commissioner of the Police Integrity Commission, dated 16 March, providing answers to questions taken on notice at the public hearing held on 29 February
- The Privacy Commissioner, received 17 March, providing answers to questions taken on notice at the public hearing held on 3 March
- The Ombudsman, dated 18 March, providing answers to questions taken on notice at the public hearing held on 3 March.

Discussion ensued.

Resolved on the motion of Ms Petinos, seconded Mr Khan: That the Committee authorise the publication of answers to questions taken on notice by the Police Integrity Commission, the Privacy Commissioner and the Ombudsman at the public hearings held on 29 February and 3 March 2016, and that the answers be uploaded on the Committee website.

**3. \*\*\***

**4. Next meeting**

The Committee adjourned at 11.48am until a date to be determined.

## MINUTES OF MEETING NO 13

1.20pm, Thursday 12 May 2016

Waratah Room

### Members present

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle, Ms Petinos

### Apologies

Mr Lynch

### Officers in attendance

Jason Arditi, Dora Oravec, Leon Last, Tanja Zech

## 1. Deliberative meeting

### 1.1 Media orders

Resolved on the motion of Mr Khan, seconded Mr Farlow: That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 12 May 2016, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

### 1.2 Answers to questions taken on notice

Resolved on the motion of Mr Searle, seconded Mr Khan: That the witness be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which the questions are forwarded to the witness.

## 2. Public hearing - 2016 Review of the Annual Reports of Oversighted Bodies

The witness and the public were admitted. The Chair opened the public hearing at 1.22pm and after welcoming the witness made a short opening statement.

Ms Fiona Rafter, Inspector of Custodial Services, was sworn and examined.

The Inspector made a brief opening statement.

The Committee commenced questioning the witness.

The Committee took a short adjournment at 1.30pm and resumed the public hearing at 1.35pm.

Evidence concluded and the witness withdrew.

The public hearing concluded at 2.12pm.

**3. Next meeting**

The Committee adjourned at 2.12pm until Tuesday, May 17 at 10.30am.

**MINUTES OF MEETING NO 14**

10.43am, Tuesday 17 May 2016  
Room 814/815

**Members present**

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle, Ms Petinos

**Apologies**

My Lynch

**Officers in attendance**

Jason Arditi, Dora Oravecz, Leon Last, Tanja Zech

**1. \*\*\***

**2. Deliberative meeting**

**2.1 Publication orders**

Resolved, on the motion of Mr Khan, seconded Mr Farlow: That the corrected transcript of public evidence given on 12 May 2016 be authorised for publication and uploaded on the Committee's website.

**2.2 Confirmation of minutes**

Resolved, on the motion of Mr Farlow, seconded Mr Khan: That the minutes of the meetings of 21 March 2016 and 12 May 2016 be confirmed.

**2.3 \*\*\***

**2.4 \*\*\***

**2.5 \*\*\***

**3. General business**

Mr Khan raised the Committee's request for a progress report from the Ombudsman on Operation Prospect.

Resolved on the motion of Mr Khan, seconded Mr Searle: That the Committee follow up with the Ombudsman on the timing of the progress report to the Committee on Operation Prospect.

The Committee discussed the public hearing with the Inspector of Custodial Services.

Resolved, on the motion of Mr Khan: That the Committee send the Inspector of Custodial Services further questions following on from the hearing held on 12 May 2016.

**4. Next meeting**

The Committee adjourned at 12.21pm until a date to be determined.

## MINUTES OF MEETING NO 15

10.04am, Monday 20 June 2016

Room 1043

### Members present

Mr Evans, Mr Farlow, Mr Khan, Mr Lynch, Mr Searle

### Apologies

Dr McDermott, Ms Petinos

### Officers in attendance

Jason Arditi, Leon Last, Tanja Zech

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Khan, seconded Mr Farlow: That the minutes of the meeting of 17 May 2016 be confirmed.

#### 2. Correspondence

\*\*\*

##### Received

- \*\*\*
- NSW Ombudsman, dated 15 June 2016, providing progress report on Operation Prospect.

Resolved on the motion of Mr Farlow, seconded by Mr Khan: That the Ombudsman's progress report on Operation Prospect be published on the Committee's website.

\*\*\*

#### 3. \*\*\*

#### 4. \*\*\*

#### 5. 2016 Review of the Annual Reports of oversight bodies

##### 5.1 Correspondence

- Inspector of Custodial Services, dated 27 May 2016, clarifying evidence given at the public hearing on 12 May

Resolved on the motion of Mr Khan, seconded by Mr Farlow: That the Committee authorise publication of correspondence from the Inspector of Custodial Services clarifying evidence given at the public hearing held on 12 May 2016 and that the correspondence be uploaded on the Committee's website.

##### 5.2 Publication of answers to questions taken on notice and further questions

Resolved on the motion of Mr Searle, seconded by Mr Farlow: That the Committee authorise publication of answers to questions taken on notice by the Inspector of Custodial Services and further questions arising from the public hearing held on 12 May 2016, and that the answers be uploaded on the Committee's website.

##### 5.3 Consideration of Chair's draft report

The Committee agreed to consider the Chair's draft report chapter by chapter.

Resolved, on the motion of Mr Farlow, seconded by Mr Khan: That chapter 1 be agreed to.

Resolved, on the motion of Mr Khan, seconded by Mr Farlow: that chapter 2 be agreed to.

Mr Farlow moved, seconded by Mr Khan: That chapter 3 be agreed to.

Question put.

The Committee divided.

Ayes: Mr Evans, Mr Farlow, Mr Khan. Noes: Mr Lynch, Mr Searle.

Question resolved in the affirmative.

Mr Farlow moved, seconded by Mr Khan: That chapter 4 be agreed to.

Question put

The Committee divided.

Ayes: Mr Evans, Mr Farlow, Mr Khan. Noes: Mr Lynch, Mr Searle.

Question resolved in the affirmative.

Mr Farlow moved, seconded by Mr Khan: That chapter 5 be agreed to.

Question put.

The Committee divided.

Ayes: Mr Evans, Mr Farlow, Mr Khan. Noes: Mr Lynch, Mr Searle.

Question resolved in the affirmative.

Mr Farlow, seconded by Mr Khan, moved: That chapter 6 be agreed to

Question put.

Mr Searle moved that the sentence 'The Committee shares the Privacy Commissioner's concerns.' be added to the end of paragraph 6.14.

Discussion ensued.

Mr Khan moved that Mr Searle's amendment be amended to read: 'The Committee is sympathetic to the Privacy Commissioner's concerns.'

Discussion ensued.

Mr Khan's amendment agreed to.

Resolved, on the motion of Mr Farlow, seconded by Mr Khan: That chapter 6 as amended be agreed to.

Mr Farlow moved, seconded by Mr Khan: That chapter 7 be agreed to.

Discussion ensued.

Resolved on the motion of Mr Searle, seconded by Mr Farlow: That chapter 7 be amended to include information from the Ombudsman received after the circulation of the Chair's draft report, and that adoption of this chapter be deferred pending incorporation of the new content.

## **6. Next meeting**

The Committee adjourned at 10.39am until a date and time to be determined.

## **MINUTES OF MEETING NO 16**

9.01am, Thursday 23 June 2016

Room 1043

### **Members present**

Mr Evans, Mr Farlow, Mr Khan, Dr McDermott, Mr Searle

### **Apologies**

Mr Lynch, Ms Petinos

### **Officers in attendance**

Jason Ardit, Leon Last, Tanja Zech

## **1. Confirmation of minutes**

Resolved, on the motion of Mr Searle, seconded Mr Khan: That the minutes of the meeting of 20 June 2016 be confirmed.

## **2. 2016 Review of the Annual Reports of oversight bodies**

### **2.1 Consideration of Chair's draft report**

The Committee continued to consider the Chair's draft report chapter by chapter.

Resolved, on the motion of Mr Farlow, seconded by Dr McDermott: That the revised chapter 7 be agreed to.

Resolved on the motion of Mr Farlow, seconded by Dr McDermott: That the draft report as amended be the report of the Committee, and that it be signed by the Chair and presented to the House.

Resolved on the motion of Mr Farlow, seconded by Dr McDermott: That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

Resolved on the motion of Mr Farlow, seconded by Dr McDermott: That, once tabled, the report be posted on the Committee's website.

## **3. Next meeting**

The Committee adjourned at 9.05am until a date and time to be determined.