



PARLIAMENT OF NEW SOUTH WALES

Committee on the Independent Commission Against Corruption

REPORT 5/56 – MARCH 2018

REVIEW OF THE 2014-2015 AND 2015-2016 ANNUAL REPORTS OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION



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

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Chair's Foreword

The Committee on the Independent Commission Against Corruption (the ICAC) has reviewed the Annual Reports of the ICAC for the years 2014-2015 and 2015-2016.

The ICAC furnished these reports against a background of significant controversy relating both to its jurisdiction and processes. This eventually gave rise to the *Independent Commission Against Corruption (Amendment) Act 2016*, which came into force in August 2017.

The Amendment Act restructures the ICAC, replacing its sole Commissioner model with a three member panel of Commissioners. On 7 August 2017, the Hon Peter Hall QC was appointed to the position of Chief Commissioner, while Ms Patricia McDonald SC and Mr Stephen Rushton SC were appointed to the positions of Commissioner. They replaced the then Acting Commissioner, the Hon Reginald Blanch AM QC, who had been acting in this office following the Hon Megan Latham's resignation as Commissioner on 30 November 2016.

The ICAC now moves into a new period under its new panel of Commissioners.

The Amendment Act has provided for significant change to the ICAC's processes including tightened decision-making requirements to progress to a public inquiry, and a requirement for the ICAC to issue procedural fairness guidelines for the conduct of its public inquiries. It also provides for the appointment of a Chief Executive Officer to take care of the ICAC's day-to-day functioning.

As part of its review, the Committee heard from the new Commissioners about implementation of these changes. This is covered in the Committee's report alongside stock standard issues for an annual report review including an examination of processes to maintain confidentiality during ICAC investigations, a review of complaint statistics, and an examination around decisions to investigate.

The Committee's report also covers two new major capacity building projects launched by the new Commissioners – a comprehensive review of processes by KPMG and a project to increase the ICAC's proactive investigation capacity. The Committee will continue to monitor progress on these projects with interest.

It is a pivotal time for the ICAC and I would like thank the new Commissioners, and their Executive Team, for their contribution at public hearings for the review. I would also like to thank my fellow Committee members for their valuable input to the inquiry, and the Committee staff for their continued professionalism and support.

I commend the report.



Damien Tudehope MP
Chair

Findings and Recommendations

Finding 1 _____ 5

The ICAC would benefit from the appointment of a Chief Executive Officer, as provided for in the *Independent Commission Against Corruption (Amendment) Act 2016*.

Recommendation 1 _____ 13

That in its future annual reports, the ICAC include details about the number of inquiries it has commenced on its own initiative during the reporting year, versus the number activated on the basis of complaints and notifications of alleged corrupt conduct.

Recommendation 2 _____ 20

That in its future annual reports, the ICAC publish the number of unauthorised disclosures of confidential information that have been made in the course of ICAC investigations during the reporting year (of which it has become aware), and the details of any action the ICAC has taken in response.

Commentary

Introduction

- 1.1 This report fulfils one of the Committee's obligations under its establishing legislation, the *Independent Commission Against Corruption Act 1988* (the ICAC Act). The Committee's functions include examining each annual and other report of the ICAC and reporting to Parliament on any matter appearing in or arising out of these reports.
- 1.2 Under section 76(1) of the ICAC Act, The ICAC is required to prepare, within the period of 4 months after each 30 June, a report of its operations during the year ended on that 30 June and to furnish the report to the Presiding Officer of each House of Parliament.
- 1.3 The ICAC investigates, exposes and prevents public sector corruption and educates the community and the public sector about corruption. Its principal functions include investigating complaints of corrupt conduct; examining laws, practices and procedures to detect corrupt conduct and to secure changes in work methods or procedures that may be conducive to corrupt conduct; advising and instructing public authorities and officials about changes in practices and procedures to reduce the likelihood of corrupt conduct; and educating the public and providing information about the detrimental effects of corrupt conduct and the importance of maintaining integrity in public administration.¹
- 1.4 As part of its review of the 2014-2015 and 2015-2016 annual reports of the ICAC, the Committee conducted a public hearing on 20 November 2017. The Hon Megan Latham had been the Commissioner of the ICAC during the 2014-15 and 2015-16 reporting periods. However, by the time of the hearings the ICAC had been restructured and the sole Commissioner model replaced with a three member panel of Commissioners.
- 1.5 Therefore, two of the three new Commissioners, the Hon Peter Hall QC and Ms Patricia McDonald SC gave evidence at the public hearing along with members of the ICAC's executive team. The transcript from the public hearing is reproduced at Appendix Two to the report.
- 1.6 The Committee's report has focused on the following areas:
- Recent amendments to the ICAC Act and recent appointments
 - The ICAC's structure and functioning
 - Major capacity-building projects
 - Liaison between the ICAC and the Inspector of the ICAC
 - Assessment and investigation processes

¹ *Independent Commission Against Corruption Act 1988*, s13.

- Corruption prevention and education functions.

Recent Amendments to the ICAC Act and Recent Appointments

Independent Commission Against Corruption (Amendment) Act 2016

- 1.7 The Committee's review of the ICAC's 2014-2015 and 2015-2016 annual reports was conducted following a time of significant change for the ICAC. In November 2016, the NSW Parliament passed the *Independent Commission Against Corruption (Amendment) Act 2016*, which came into force on 7 August 2017. The 2016 Amendment Act implements many of the recommendations of the Committee's 2016 report to Parliament: *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports* ('the Committee's 2016 report').
- 1.8 The 2016 Amendment Act restructures the ICAC. It abolishes the sole Commissioner model and introduces a three-member panel of Commissioners ('the three member Commission') to head the ICAC, and makes provision for a Chief Executive Officer (CEO) to manage its day-to-day affairs.² The three-member Commission consists of a full-time Chief Commissioner and two Commissioners employed part-time.³
- 1.9 On 7 August 2017, the Hon Peter Hall QC was appointed to the position of Chief Commissioner for a period of five years; while Ms Patricia McDonald SC and Mr Stephen Rushton SC were appointed, on a part-time basis, to the positions of Commissioner, also for a period of five years. The three member Commission replaced the then Acting ICAC Commissioner, the Hon Reginald Blanch AM QC, who had been acting in this office following the Hon Megan Latham's resignation as ICAC Commissioner on 30 November 2016.
- 1.10 All three Commissioners are able to exercise the ICAC's functions and powers, for example, conducting public inquiries and holding compulsory examinations. If there are inconsistencies in the decisions of the Commissioners, the Chief Commissioner's decision will prevail. The exception is decisions about the conduct of the ICAC's public inquiries. To authorise the conduct of such an inquiry, agreement between the Chief Commissioner and at least one other Commissioner is necessary.⁴
- 1.11 The 2016 Amendment Act also makes the following further changes:
- The Commissioners are required to issue procedural guidelines for the conduct of public inquiries, which are to be tabled in both Houses of Parliament and published on the ICAC's website. The guidelines are to cover:
 - the investigation of evidence that might exculpate 'affected persons' (that is persons against whom substantial allegations have been made in the course of, or in connection with the public inquiry concerned);

² *Independent Commission Against Corruption Act 1988*, ss5 & 104.

³ *Independent Commission Against Corruption Act 1988*, schedule 1, clause 4.

⁴ *Independent Commissioner Against Corruption Act 1988*, s6.

- the disclosure of exculpatory and other relevant evidence to ‘affected persons’;
 - cross-examination of witnesses regarding their credibility;
 - provision of access to relevant documents for ‘affected persons’ and witnesses, and reasonable time to prepare before giving evidence;
 - any other matter the ICAC considers necessary to ensure procedural fairness.⁵
- The ICAC is not authorised to include an adverse finding against a person in a report unless:
 - the ICAC has given the person a reasonable opportunity to respond to the proposed adverse finding; and
 - the ICAC includes in the report a summary of the substance of the person’s response that disputes the adverse finding if the person requests the ICAC to do so within the time specified by the ICAC.⁶
 - The ICAC is authorised to continue to exercise certain investigative powers after the completion of its investigations for the purposes of gathering and assembling admissible evidence for a criminal prosecution, where requested to do so by the NSW Director of Public Prosecutions (the DPP) or the NSW Electoral Commission.⁷

Independent Commission Against Corruption (Amendment) Act 2015

- 1.12 The changes wrought by the 2016 Amendment Act followed changes that had already been made to the ICAC Act in the 2014-2015 and 2015-2016 reporting years.
- 1.13 Following a challenge to the ICAC’s investigation of Ms Margaret Cunneen SC (Operation Hale), the High Court found, in April 2015, that the ICAC did not have the jurisdiction to investigate a private individual suspected of misleading a public official, where the probity of the exercise of an official function by the public official was not adversely affected.⁸ The High Court decision meant that the jurisdiction of the ICAC was more narrow than the ICAC had previously interpreted.
- 1.14 In response to the High Court decision, the Parliament enacted retrospective legislation to ensure that no past findings of corrupt conduct made by the ICAC were invalid.⁹ The Government also established an Independent Panel comprising the Hon Murray Gleeson AC QC and Mr Bruce McClintock SC, to review the ICAC’s jurisdiction.

⁵ *Independent Commission Against Corruption Act 1988*, s31B.

⁶ *Independent Commission Against Corruption Act 1988*, s79A.

⁷ *Independent Commission Against Corruption Act 1988*, s52A.

⁸ *ICAC v Cunneen* [2015] HCA 14.

⁹ *Independent Commission Against Corruption Amendment (Validation) Act 2015*.

- 1.15 The Panel reported on 31 July 2015. It did not recommend amendments to reinstate the broad interpretation of the ICAC's jurisdiction as exercised by the ICAC before the High Court decision. The Panel made four recommendations to amend other aspects of the ICAC's jurisdiction to:
- 1 allow the ICAC to investigate conduct that impairs, or could impair, confidence in public administration, including certain kinds of fraudulent practice;
 - 2 emphasise that the definition of corrupt conduct under the ICAC Act does not apply to constrain the ICAC's delivery of its advisory, educational and prevention functions (in the way that it applies to constrain the ICAC's conduct of its investigative functions);
 - 3 give the ICAC jurisdiction to investigate breaches of certain NSW electoral and lobbying laws;
 - 4 limit the ICAC's jurisdiction to allow it to make findings of corruption only in instances of serious corrupt conduct.¹⁰
- 1.16 The Government accepted all recommendations, which were given legislative effect in the *Independent Commission Against Corruption Amendment Bill 2015* that passed Parliament and came into effect in September 2015.

The ICAC's Structure and Functioning

The Committee will continue to monitor the ICAC's functioning in light of recent amendments to the ICAC Act

- 1.17 As above, many of the recommendations of the Committee's 2016 report were implemented by the 2016 Amendment Act, which came into force in August 2017. These included recommendations for changes to decision-making requirements for the ICAC to proceed to a public inquiry; for the three member Commission to develop procedural fairness guidelines for the conduct of public inquiries; and for people to be given a reasonable opportunity to publicly respond to adverse ICAC findings made against them.¹¹
- 1.18 The Committee made these recommendations in response to concerns raised by a number of stakeholders, including the former Inspector of the ICAC, the Hon David Levine AO RFD QC, that reputational damage and other serious consequences can flow from the ICAC's public inquiries and findings, in circumstances where affected individuals have limited opportunity for judicial review of those findings.¹² At a Committee hearing to review the ICAC Inspector's

¹⁰ Gleeson, M and McClintock, B, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*, July 2015, pp ix-x, Department of Premier and Cabinet website, https://www.dpc.nsw.gov.au/_data/assets/pdf_file/0003/173235/Independent_Panel_Review_of_the_Jurisdiction_of_the_Independent_Commission_Against_Corruption_Report.pdf, viewed 19 December 2017.

¹¹ Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, Report 2/56, October 2016, recommendations 2 & 14-20.

¹² See Hon David Levine AO RFD QC, Inspector of the ICAC, *Report to the Premier: The Inspector's Review of the ICAC*, 12 May 2016, in particular para 51, p20 & para 78, p28, Office of the Inspector of the ICAC's website:

2014-2015 and 2015-2016 annual reports in March 2017, the then Acting Inspector, Mr John Nicholson SC, raised similar concerns.¹³ The Committee considers that it is essential that the ICAC's procedures in reaching its findings, and in conducting its public inquiries, are optimal.

- 1.19 Now that the 2016 Amendment Act has come into force, the Committee is of the view that the ICAC should be given the opportunity to implement the changes contained in it. This will allow the Committee to monitor whether the changes it recommended have adequately resolved the concerns that have been raised. The Committee will also be in a position more generally to monitor whether the legislative changes made in both 2015 and 2016 are operating well. In this vein, as part of its current inquiry, the Committee sought and received the following updates on the implementation of the changes.

Three Member Commission

- 1.20 In response to a question about how the new ICAC structure is operating following the appointment of the three member Commission in August 2017, the ICAC told the Committee that the three Commissioner model is working well. Further, steps have been taken to ensure regular consultation and communication between all three Commissioners. The ICAC stated:

A consultative approach between the three Commissioners has been developed to minimise any inconsistency in decision-making. Regular meetings are held for this purpose. In addition, subject to their availability, the two part-time Commissioners attend meetings of the Commission's Executive Management Group, Investigation Management Group and Prevention Management Group. The roles, participation and consultation between the three Commissioners, both in relation to management and discrete activities of the Commission are ongoing and directed to sharing both the responsibility and workload of the Commission and all that that entails.¹⁴

Chief Executive Officer Position

Finding 1

The ICAC would benefit from the appointment of a Chief Executive Officer, as provided for in the *Independent Commission Against Corruption (Amendment) Act 2016*.

- 1.21 As part of the ICAC's restructure, the 2016 Amendment Act also provides that the Chief Commissioner may appoint a Chief Executive Officer (CEO).¹⁵ This change followed findings contained in the Committee's 2016 report, that the creation of a CEO position would benefit the ICAC's governance and decision-making capacity. Day-to-day decision making could be taken care of by a person with

<https://www.oicac.nsw.gov.au/assets/oicac/reports/other-reports/Report-to-Premier-Inspectors-Review-of-the-ICAC.pdf>, viewed 19 December 2017.

¹³ Mr John Nicholson SC, *Transcript of Evidence*, pp4-6.

¹⁴ ICAC, *Response to Additional Questions*, 4 December 2017, p1.

¹⁵ *Independent Commission Against Corruption Act 1988*, s104.

specialist management and administrative skills, freeing the Commissioners to focus on higher level decision-making.¹⁶

1.22 The Committee's 2016 report also noted that it is becoming increasingly common for integrity agencies in Australia to have a separate organisational manager, distinct from the Commissioner/s. It pointed to the examples of the Queensland Crime and Corruption Commission, the Victorian Independent Broad-based Anti-Corruption Commission, and the South Australian Independent Commissioner Against Corruption.¹⁷

1.23 The Committee continues to support the appointment of a CEO for the reasons outlined above, and will monitor developments in this area with interest. A suitably qualified CEO with responsibility across the ICAC's various divisions would enable the Commissioners to focus on their statutory duties, freeing them from the unnecessary burden of day-to-day administrative matters about which they do not necessarily have specialist experience. It would also have benefits for the roll out and operation of major projects that span more than one of the ICAC's divisions. This is particularly relevant given the ICAC has such major projects on foot, including a new program to develop the ICAC's proactive investigation capacity, discussed in more detail later in this report.

1.24 The Chief Commissioner, the Hon Peter Hall QC, has advised that he has deferred the appointment of a CEO noting that as the 2016 Amendment Act provides that he "may" appoint a CEO, he has discretion about whether to do so.¹⁸ The Chief Commissioner told the Committee that the matter is under active consideration but he has made no decision about it:

I have deferred the appointment of the CEO. I did that following discussions with relevant officers of the Commission in order to determine what a CEO would do and how the CEO would fit into the structure and running of the organisation. Many of the functions that the CEO would perform are already being capably handled...by Mr Koureas [Executive Director, Corporate Services Division]...The responsibilities in addition to the duties and functions performed in that role would be handled by a CEO but would not by themselves warrant a full-time CEO.¹⁹

1.25 The Chief Commissioner went on to explain that given the high quality of Mr Koureas' work, he would not be prepared to terminate him so that functions he performs could be handed to a CEO, thereby creating a full-time CEO position. The Chief Commissioner continued:

The question then is how would a CEO fit into the structure, given those matters to which I have referred? A CEO position normally is suitable for a larger organisation than the Commission. At the moment we have just over 100 personnel. The CEO would simply not have enough to do on a full-time basis. It seems that one possible

¹⁶ Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, Report 2/56, October 2016, p8.

¹⁷ Committee on the ICAC, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, p8.

¹⁸ See Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p4. See also the Chief Commissioner's evidence to the Committee's inquiry into protections for people who make voluntary disclosures to the ICAC, Hon Peter Hall QC, *Transcript of Evidence*, 15 September 2017, pp3-4.

¹⁹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p4.

option which has been under consideration is perhaps for the appointment of somebody who may be a recently retired person who is highly experienced in corporate governance matters and familiar in government and the way it operates to take up that position on perhaps a part-time basis.²⁰

- 1.26 The Chief Commissioner further indicated that the part-time CEO could be in charge of implementing and conducting the sorts of major projects discussed later in this report, including a new program to develop the ICAC's proactive investigation capacity.²¹
- 1.27 Confirming that the CEO position is under active consideration and discussion by the ICAC, Commissioner McDonald told the Committee that she had a slightly different view on the matter from that of the Chief Commissioner. Commissioner McDonald noted that a CEO would be useful in coordinating major projects that span the ICAC's various divisions:

I do have a slightly different view...My preliminary view is that I am partial to the appointment of a CEO. Where my concern is that we have excellent people heading the various divisions, but often we have to have a project that involves the coordination of a number of divisions...With those very important projects where a number of divisions are involved, to have somebody in a position of overview is important.²²

- 1.28 Consistent with the Committee's 2016 report, Commissioner McDonald also indicated that the ICAC would benefit from having a CEO with specialist management and administrative skills, freeing the Commissioners to focus on matters over which they have greater expertise. Commissioner McDonald stated:

I also think for a lot of matters where I do not have the expertise and maybe our Chief Commissioner and Commissioner Rushton, who have come from a similar background, may not have expertise, a CEO may be of assistance. Although I take the Chief Commissioner's point that we are a relatively small organisation of only 102 employees, maybe something like a part-time CEO would be a good idea.²³

- 1.29 Another argument that has previously been put forward for the appointment of a CEO for the ICAC is that by separating the statutory decision-makers (the Commissioners) from the organisation itself (the CEO and staff), there is less risk of the decision-makers being captured by the organisation.²⁴ However, the Chief Commissioner told the Committee that, regardless of the structure under which they operate, the Commissioners must work closely with the ICAC's staff to carry out their statutory duties. Further, he challenged the idea that this results in organisational capture. He stated:

Being an investigative organisation, all of the Commission's processes are geared to performing the functions of investigation and prevention and consultation between

²⁰ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p4.

²¹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p4.

²² Ms Patricia McDonald SC, *Transcript of Evidence*, 20 November 2017, pp8-9.

²³ Ms Patricia McDonald SC, *Transcript of Evidence*, 20 November 2017, p9.

²⁴ See the submission of the Department of Premier and Cabinet to the Committee's 2016 Review of the Inspector's Report to the Premier, Submission 25, Department of Premier and Cabinet, p16.

the commissioners and investigators and it has to be that way...I must work closely with the investigators and take their advice, and I must give instructions on what I want them to do...There is no capture here at all; at the end of the day, I make the decisions as to whether we will or will not go down a certain path and I take responsibility for it...There is no organisational capture of the commissioners in the sense that we are captive to a group in the Commission, such as the investigators. We are not, the Commission's structure has always been based on the fact that we work as a team.²⁵

- 1.30 Commissioner McDonald also gave evidence that the three member Commission already operates as a guard against organisational capture. Under this structure, two of the three Commissioners are part-time, working for the remainder of their time as barristers, which gives them alternative contemporaneous experience upon which to draw when dealing with matters that come before the ICAC. Commissioner McDonald also stressed that certain decisions, such as the decision to proceed to a public inquiry, are only made following discussions between the three Commissioners in the absence of any of the ICAC's staff, including investigators and solicitors.²⁶

Procedural Fairness Guidelines

- 1.31 The change to the ICAC Act requiring the Commissioners to issue procedural guidelines for the conduct of public inquiries is particularly important to address concerns that the ICAC's procedures in reaching its findings are optimal, and that people who give evidence to the ICAC are treated fairly. At the Committee's public hearing, Commissioner McDonald provided the following update regarding the development of the guidelines and when they would probably be tabled in Parliament:

Guidelines have been drafted. There is one small aspect of the guidelines that the three Commissioners have to determine and I anticipate that will be done shortly. We anticipate that once the guidelines are finalised we will forward them to Mr McClintock, the Inspector of ICAC, to get his view on the guidelines. We are hopeful that will be done by the end of this month. Then we are aiming to get some comments from the Inspector and take those on board and have some discussions. Then we are aiming to have the guidelines tabled before Parliament when it resumes in February next year.²⁷

- 1.32 The guidelines were since tabled in both Houses of Parliament on 13 February 2018.²⁸
- 1.33 One matter of particular concern for the Committee regarding procedural fairness, relates to the credibility of witnesses who give evidence to the ICAC. This follows recent media reports about a complaint made to the ICAC Inspector that the ICAC had relied on the evidence of a particular witness in reaching its findings in Operation Jasper, despite that witness having made admissions in private to Counsel Assisting (during the compulsory examination phase of the

²⁵ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p10.

²⁶ Ms Patricia McDonald SC, *Transcript of Evidence*, 20 November 2017, p11.

²⁷ Ms Patricia McDonald SC, *Transcript of Evidence*, 20 November 2017, p5.

²⁸ The guidelines are available at the ICAC website: <http://www.icac.nsw.gov.au/documents/investigations/5047-section-31b-guidelines-february-2018-final/file>, viewed 19 February 2018.

inquiry), which called that witness' credibility into question. The complaint is reported to have stated that when the matter came on for public inquiry, Counsel Assisting did not attack the credibility of the witness despite the admissions he had previously made.²⁹

- 1.34 At the Committee's public hearing, the Deputy Chair asked the Chief Commissioner whether Counsel Assisting should have a duty in such cases to make a disclosure at the public inquiry about the witness credibility issues that he or she has previously been made aware of. The Chief Commissioner assured the Committee that the procedural guidelines that had been drafted specifically dealt with this issue:

The guidelines in their current draft form expressly deal with the issue you have raised....[I]f the Commission is in possession of what might be called exculpatory material, under the guidelines such material must be disclosed, subject to one important issue, and that is the timing of the disclosure...[T]he ultimate discretion as to when such material is disclosed must remain within the discretion of the particular commissioner conducting the investigation, for obvious strategic investigative reasons...But at the end of the day, no person should be denied procedural fairness – no person at all...The Commission is not there...to get scalps...it is there to uncover the truth and, wherever the truth lies, that is what should be disclosed.³⁰

- 1.35 Clause 4.1 of the guidelines tabled in Parliament on 13 February 2018 provide:

Where the Commission's investigation includes a public inquiry, it will make available to an affected person exculpatory evidence in its possession. The timing of the disclosure of any such evidence, and the form in which disclosure will be made, are matters for the Presiding Commissioner.

Opportunity for people to publicly respond to adverse ICAC findings made against them

- 1.36 As above, under recent changes to the ICAC Act, where the ICAC makes an adverse finding against a person in a report, it will generally have to publish an account of their response to that finding. At the Committee's public hearing, the Deputy Chair asked whether this change would require a review of the ICAC's processes and, if so, whether the necessary changes had been made. The Chief Commissioner told the Committee:

Yes, there will be a need to change the form of reporting. There will need to be a separate section in the report which identifies the nature of the case...that the person affected by the adverse finding sought to make out so that the reader will be able to understand, in summary form at least, what that person was contending for....As to a change in procedures, I think it will be ultimately the responsibility of Mr Waldon [Executive Director, Legal Division] and the individual Commissioners to ensure that those matters are properly dealt with and disclosed in public reports. We have not yet, as you know, released any reports since we have been in office, but I am mindful of the fact that in the New Year the very position you raised may very well become a reality and it needs to be addressed properly.³¹

²⁹ Merritt, C, 'Doubts on key witness in ICAC probe', *The Australian*, 10 November 2017, p24.

³⁰ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p7.

³¹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, pp7-8.

Public Inquiries

- 1.37 As above, another recent change to the ICAC Act relates to the ICAC's public inquiries. While previously the sole Commissioner could make the decision to proceed to a public inquiry, now agreement between the Chief Commissioner and at least one other Commissioner will be necessary. This change followed findings contained in the Committee's 2016 report that decisions to proceed to a public inquiry needed to be given more weight because of the grave consequences that can follow for the individuals concerned, including reputational damage.
- 1.38 The Committee continues to firmly support the ICAC having the power to hold public inquiries where it is in the public interest to do so. Public inquiries have many benefits including helping the ICAC to expose corruption (one of its primary functions), and promoting transparency and keeping the ICAC accountable for the way in which it carries out its functions. However, this formidable power must be exercised responsibly. The Committee will continue to monitor this issue in light of the recent legislative changes.
- 1.39 The Committee agrees with the following evidence from the Chief Commissioner that public inquiries must be carried out responsibly and in appropriate circumstances, and that decisions to proceed to a public inquiry must be evaluated on a case-by-case basis according to the requirements of the ICAC Act:
- [a] decision...has to be made at the beginning as to whether there is any investigative value in having a public inquiry. Once that question has been answered, and it is answered in the affirmative, then a public inquiry should be a balanced and an objective inquiry; it should on no account...turn into what some people refer to as a show trial.³²
- 1.40 The Chief Commissioner continued:
- I understand the concern you have for public inquiries and hearings, and whether there is in fact enough of them or whether there are too many of them. I think each case has to be evaluated according to the requirements of the Act.³³

Changes to internal processes as a result of the decision in ICAC v Cunneen

- 1.41 In response to a question about whether the High Court's 2015 decision in *ICAC v Cunneen* had necessitated significant change to the ICAC's internal processes, the ICAC indicated some processes had changed as a result of the decision:
- As the decision went to the Commission's jurisdiction under the ICAC Act, it occasioned some changes to the Commission's Assessment Section's processes in relation to the assessment of complaints and reports of alleged corrupt conduct, to ensure that there was a clear understanding within that Section of the Commission's jurisdiction under s8(2) of the ICAC Act. The decision did not require any significant changes to the Commission's processes for the conduct of investigations or corruption prevention initiatives.³⁴

³² Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p14.

³³ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p14.

³⁴ ICAC, *Response to Additional Questions*, 4 December 2017, p1.

The ICAC's Liaison with NSW Director of Public Prosecutions and NSW Electoral Commission

1.42 As above, another of the changes made by the 2016 Amendment Act means that the ICAC is now authorised, under section 52A of the ICAC Act, to continue to exercise certain investigative powers after the completion of its investigations for the purposes of gathering and assembling admissible evidence for a criminal prosecution, where requested to do so by the DPP or the NSW Electoral Commission. These investigative powers include:

- requiring a public authority or public official to produce a statement of information (under section 21 of the ICAC Act);
- requiring a person to produce a document or thing (section 22);
- entering and inspecting public premises (section 23); and
- applying to an authorised officer for a search warrant (section 40).

1.43 The Committee therefore asked the ICAC whether this change would require a review of processes and, if so, whether the necessary process changes had taken place. The ICAC responded that to date, no requests have been made by the DPP or the Electoral Commission for the ICAC to exercise powers under section 52A. Further, the ICAC stated:

The change will require a slight amendment to the relevant Operations Manual procedures for the exercise of powers under ss 21, 22, 23 and 40 to cover any future requests by the DPP or Electoral Commission. This will be done as part of the ongoing review of the Operations Manual procedures. However, the process for approval of the exercise of those powers will remain unchanged.³⁵

1.44 Changes made to the ICAC Act in 2015 also gave the ICAC jurisdiction to investigate breaches of certain NSW electoral and lobbying laws. Under section 13A of the ICAC Act, the ICAC now has the function of investigating conduct that may involve criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, that the Electoral Commission refers to the ICAC for investigation.

1.45 Therefore, the Committee also asked the ICAC whether these changes had necessitated a review of the ICAC's processes and whether the ICAC and Electoral Commission had taken joint steps to implement them. The ICAC indicated that it had entered into a memorandum of understanding with the Electoral Commission:

In May 2016, the Commission and the Electoral Commission entered into a Memorandum of Understanding (MOU) to facilitate a co-operative framework within which both parties can work together to perform their respective functions. The MOU sets out mechanisms for co-operation, information sharing and the investigation of matters, with specific reference to the investigation of matters

³⁵ ICAC, *Response to Additional Questions*, 4 December 2017, pp1-2.

referred to the Commission by the Electoral Commission under s13A of the ICAC Act. The changes did not require a significant review of the ICAC's processes.³⁶

Major Capacity-Building Projects

The Committee will continue to monitor the ICAC's functioning in light of its current major capacity-building projects

- 1.46 At the Committee's hearing on 20 November 2017, the Chief Commissioner told the Committee that the ICAC had two major capacity-building projects on foot, a review by KPMG, and a project to develop the ICAC's proactive investigation capacity. The Committee will continue to monitor progress on these capacity-building projects.

KPMG Review

- 1.47 The Chief Commissioner told the Committee that upon taking office he considered that the ICAC, like any organisation, would benefit from a thorough review of its processes to ensure that it is operating effectively and properly and is meeting modern standards. Therefore, the ICAC engaged KPMG to review all units of the ICAC, their functioning and communication with each other, and identify any areas for quality improvement, change and modernisation.³⁷

- 1.48 In particular, the Chief Commissioner told the Committee that KPMG was reviewing the ICAC's assessments and investigations divisions because the ICAC had identified the need for a better match between resources and demand within these divisions. The Chief Commissioner explained:

There are inevitably peaks and troughs, though just when they are likely to occur and for how long they are likely to occur are difficult to predict or assess. It is not uncommon in busy periods for particular investigators to be taken off one investigation team in order to help out with another. The result is that the first investigation stops or slows down until that particular investigator returns to the former investigation team... An inevitable consequence is that if resources cannot meet demand the pace of the investigation is likely to be reduced.³⁸

- 1.49 The Chief Commissioner stated that there is a need for a supplementary workforce component so that resources can be adjusted to meet demand. He told the Committee:

One possibility is an increase...in the required number of investigative and assessment staff personnel and the possible establishment of a pool of suitably qualified part-time investigators – for example, recently retired law enforcement investigators much like the Supreme and District Courts have the engagement of acting judges to meet the courts' list demand. There may also be a need to increase the number of the permanent investigation and assessment officers.³⁹

- 1.50 The Chief Commissioner indicated that KPMG would be 'likely to establish many of these matters by the end of the month' and that a final report was expected

³⁶ ICAC, *Response to Additional Questions*, 4 December 2017, p9.

³⁷ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, pp2-3.

³⁸ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p4.

³⁹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p4.

early in the new year, after which the ICAC would be able to decide how to proceed.⁴⁰

Development of the ICAC's Proactive Investigation Capacity

Recommendation 1

That in its future annual reports, the ICAC include details about the number of inquiries it has commenced on its own initiative during the reporting year, versus the number activated on the basis of complaints and notifications of alleged corrupt conduct.

1.51 The Chief Commissioner further told the Committee that the ICAC has a project on foot to develop its proactive investigation capacity. The Chief Commissioner explained:

The ICAC to date has pursued its important investigative function based on a reactive model, that is its investigative capacity has essentially been activated principally on the basis of complaints and notifications of alleged corrupt conduct. It is important that it continues to do so. However, in my judgment it is also important for the ICAC to determine whether there today exists a need to implement a more modern intelligence proactive model of investigation.⁴¹

1.52 The Chief Commissioner emphasised the benefits that a proactive approach would have for the ICAC's investigations, in particular, earlier intervention. He stated:

...with corrupt activities that are either ongoing or which are recurrent within a particular agency, [there is] the capacity for us to have earlier intervention in the investigation process – that is, to use our covert powers...earlier...than...currently.... The potential benefit of targeting either known or suspected corrupt conduct that is happening in real time or which is likely to be repeated as a pattern of conduct will provide us with a greater opportunity to intervene at an earlier stage and use our covert powers to obtain evidence upon activities at the moment, which is very difficult to prove after the fact...⁴²

1.53 The Committee considers that, in its future annual reports, the ICAC should clearly identify the number of inquiries that it has commenced on its own initiative during the reporting year, versus the number activated on the basis of complaints or notifications of alleged corrupt conduct. This would help to foster oversight of this new proactive approach.

1.54 The Chief Commissioner told the Committee that developing the ICAC's proactive investigation capacity is necessary because the NSW public sector has undergone significant change since the ICAC was established, and a more strategic and up to date approach needs to be adopted to combat corruption:

New current day forms of service delivery of government services and associated funding arrangements did not exist to the extent they do now, when the ICAC was established. Today, the new systems used for contracting government services, such

⁴⁰ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, pp2&4.

⁴¹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p2.

⁴² Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p7.

as public-private partnerships, outsourcing of government facilities, services to private sector entities including non-governmental agencies, all bring with them new corruption risks and threats... Today corrupt conduct is potentially more complex in nature than it has been in the past and correspondingly more difficult to combat.⁴³

1.55 The Chief Commissioner indicated that integrity agencies in other states have developed their proactive investigation capacity including the Queensland Crime and Corruption Commission, the Western Australian Corruption and Crime Commission, and the Victorian Independent Broad-based Anti-Corruption Commission.⁴⁴

1.56 The Chief Commissioner also provided more detail about what a proactive approach to investigations would involve. The Chief Commissioner told the Committee that steps were being taken to establish a strategic intelligence unit within the ICAC in 2018, which would use the ICAC's 'own motion power' to analyse relevant data relating to public sector agencies. This will not only assist the ICAC with its corruption prevention and investigation activities but will be shared with the agencies to help them better proof their systems against corruption.⁴⁵ The Chief Commissioner stated:

It is the own motion power that is already in the Act that I have seen as providing the window of opportunity for this proactive approach. With the analysis of relevant data, we expect to be in a position to identify – not just for the benefit of ourselves but for the agencies themselves – what risks their operations present, what controls they have in place to manage corruption risks, and the adequacy of those controls.⁴⁶

1.57 In response to a question from Mr Mark Taylor MP about how proactive investigations would differ from 'fishing expeditions', the Chief Commissioner told the Committee:

[The proactive approach] requires collecting data from a very large number of sources. The reliability of the data is put through analysis to determine whether or not it is material that is relevant. It is not a fishing expedition in the sense of it being limited to trying to get evidence on the subject matter, the objective of which is unknown...⁴⁷

1.58 The Chief Commissioner emphasised that the sort of information that would be obtained could be obtained through surveying agencies and would be from the source, that is, from officers of the agency being examined. He indicated he would expect executives of such agencies to welcome an examination of their systems by the ICAC for their own protection, and that this had been the case interstate:

The surveys that have been undertaken both in Western Australia and Victoria, which have been extensive throughout the public sectors in both States, were designed to identify what controls those agencies have and whether there are any gaps in them. It was emphasised...that it was not to be taken as a judgment as to the

⁴³ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p2.

⁴⁴ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p3.

⁴⁵ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, pp3,6&7.

⁴⁶ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p6.

⁴⁷ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p15.

adequacy of the agency or to level some criticism on them. It was simply a fact-finding exercise...As I understand it, the interstate agencies were almost uniformly cooperative and willing to support...⁴⁸

1.59 The Chief Commissioner further stated that, while it has obvious advantages for investigations, being able to mine and access data that agencies already hold but cannot currently fully access does not, in his view, constitute fishing. Such advantages include being able to draw and link associations between people in relation to relevant matters.⁴⁹

1.60 The Committee asked the Chief Commissioner what resources would be necessary to develop the ICAC's proactive investigation capacity. The Chief Commissioner indicated the ICAC would need to recruit at least two specialist intelligence analysts and purchase new computer-based capability.⁵⁰ Regarding the computer-based capability, Mr John Hoytink, Acting Executive Director of the ICAC's Investigation Division, told the Committee:

We currently operate a number of different intelligence databases – one which is currently used by a number of law enforcement agencies. We will be looking to enhance that. So we already have the base system. It is really the add-on software that is required to be able to talk to the other different databases.⁵¹

1.61 Regarding costings, the Chief Commissioner told the Committee that the ICAC would be submitting a budget proposal to Treasury in December 2017 that would include costings for the extra resources needed to develop the ICAC's proactive investigation capacity.⁵² When asked what these costings would amount to, the ICAC indicated staff and other operational costs would be approximately \$2.5 million, although this figure appears to include not only the cost of the two specialist intelligence analysts for the proactive approach, but nine officers within the ICAC's investigations area to deal with demand more generally.⁵³ The ICAC also indicated that computer-based capability could be in the order of \$50,000 to \$200,000:

It is estimated that the cost of additional software to enhance data analytics capability would be \$20,000. However, this capability is very likely to result in a need to further upgrade data storage and processing information technology infrastructure to improve computing speeds. An initial general ballpark estimate would be in the range of \$50,000 to \$200,000 to acquire faster computing servers and expand storage capacity.⁵⁴

⁴⁸ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p15.

⁴⁹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p15.

⁵⁰ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p5.

⁵¹ Mr John Hoytink, *Transcript of Evidence*, 20 November 2017, p6.

⁵² Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p5.

⁵³ See *Transcript of Evidence*, 20 November 2017, p5, in particular the evidence of Mr Hoytink and Mr Koureas.

⁵⁴ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p1.

Liaison Between the Inspector and the ICAC

The Committee welcomes recent steps taken to promote a productive working relationship between the ICAC and its Inspector

- 1.62 In a further change for the ICAC, a new ICAC Inspector, Mr Bruce McClintock SC, was appointed on 1 July 2017. The Inspector conducts a vital oversight role to ensure that the ICAC's formidable covert and coercive powers are properly exercised and adequately scrutinised.⁵⁵
- 1.63 In its recent report to review the ICAC Inspector's annual reports, the Committee noted that a productive working relationship between the Inspector and the ICAC is essential to allow them to perform their functions effectively. Further, to promote such a relationship at the outset, the Committee recommended that the newly appointed Inspector and three member Commission should review their memorandum of understanding (MoU) as soon as practicable.⁵⁶
- 1.64 At the Committee's public hearing on 20 November 2017, in response to a question from the Chair, the Chief Commissioner provided the following update about the review of the MoU:
- We recently revised the MoU with the Inspector and provided it to him with some suggested changes [and] he embraced the revised memorandum with the new substantive provisions in it.⁵⁷
- 1.65 In an email to the Committee secretariat dated 22 November 2017, the Inspector confirmed that the MoU had been concluded on 2 November 2017, and later provided a copy for the Committee's information. A copy of the MoU can be found at Appendix Four to this report.
- 1.66 Further, at the hearing the Chief Commissioner updated the Committee on the working relationship between the ICAC and the Inspector more generally:
- It was at the time of discussions about the MoU that I proposed to the Inspector that we have, if he saw any sense in it, a get-together on a quarterly basis or, alternatively, if he would prefer to do it on an ad hoc basis, that is to say periodic meetings to discuss matters concerning either of us or involving either the Commission or his office. He responded positively and proposed that we meet in December, so there will be a meeting with the Inspector...From my perspective the relationship has been wholly productive. It is a good relationship as I anticipated it would be.⁵⁸

Other Matters

- 1.67 As has been noted, it is a time of significant change for the ICAC. However, in conducting its review of the ICAC's 2014-2015 and 2015-2016 annual reports, the

⁵⁵ The Inspector's functions and powers are set out in the *Independent Commission Against Corruption Act 1988*, ss57B and 57C.

⁵⁶ See Committee on the ICAC, *Review of the 2014-2015 and 2015-2016 Annual Reports of the ICAC Inspector*, Report 3/56, September 2017, pp9-10 and recommendation 3.

⁵⁷ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p12.

⁵⁸ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p12.

Committee has also examined more routine, ongoing matters that are of no less importance for the ICAC's functioning. The remainder of the Committee's report is devoted to these matters, first in the area of the ICAC's assessments and investigations, and then in the area of its corruption prevention and education activities.

Assessments and Investigations

General Procedures

- 1.68 All complaints and reports of corrupt conduct received by the ICAC are evaluated by its Assessments Section to determine if they are within the ICAC's jurisdiction, and whether further investigation is warranted. The Assessments Section reports matters within jurisdiction to the Assessment Panel, with a recommendation for action to be taken, and the Assessment Panel makes a final determination about the appropriate action to take.⁵⁹ Options include referring the complaint to another agency; requesting that another agency conduct an investigation and report the outcome to the ICAC in writing; requesting further information; providing corruption prevention analysis or advice; or undertaking a preliminary investigation.⁶⁰
- 1.69 During the reporting years of 2014-2015 and 2015-2016, the Committee understands the Assessment Panel comprised the Commissioner and members of the ICAC's senior executive.⁶¹ The Committee further understands that following the ICAC's restructure in August 2017, the Commissioners and the senior executive continue in this role.⁶²
- 1.70 Decisions to undertake a preliminary investigation are taken where a matter is serious and likely to need the ICAC's special powers to investigate, for example, requiring the production of documents or information, executing a search warrant or conducting covert operations. These matters are referred to the ICAC's Investigation Division.⁶³ If appropriate, the preliminary investigation can be escalated to a full investigation, known as an operation. In addition, the ICAC can decide to hold a public inquiry as part of the investigation process if it is satisfied that it is in the public interest to do so.⁶⁴

⁵⁹ ICAC, *Annual Report 2015-2016*, p14, ICAC website, <https://www.icac.nsw.gov.au/docman/about-the-icac/corporate-reporting/4901-annual-report-2015-16-final/file>, viewed 8 January 2018; and ICAC, *Annual Report 2014-2015*, p14, ICAC website, <http://www.icac.nsw.gov.au/documents/about-the-icac/corporate-reporting/4675-annual-report-2014-15/file>, viewed 8 January 2018; see also Commissioner McDonald's evidence to the Committee's inquiry into protections for people who make voluntary disclosures to the ICAC, Ms Patricia McDonald SC, *Transcript of Evidence*, 15 September 2017, p5.

⁶⁰ ICAC, *Annual Report 2015-2016*, pp21-23; and ICAC, *Annual Report 2014-2015*, pp23-25.

⁶¹ See ICAC, *Annual Report 2015-2016*, p14; and ICAC, *Annual Report 2014-2015*, p14. See also the evidence of the then ICAC Commissioner, the Hon Megan Latham, to the Committee's public hearing to review the ICAC's 2013-2014 Annual Report, indicating the composition of the Assessment Panel prior to the ICAC's restructure, *Transcript of Evidence*, 7 August 2015, p11.

⁶² See Commissioner McDonald's evidence to the Committee's inquiry into protections for people who make voluntary disclosures to the ICAC, Ms Patricia McDonald SC, *Transcript of Evidence*, 15 September 2017, p5.

⁶³ ICAC, *Annual Report 2015-2016*, p23.

⁶⁴ ICAC, *Annual Report 2015-2016*, p25, see also *Independent Commission Against Corruption Act 1988*, s31(1).

Decline in number of matters reported to the ICAC

- 1.71 During the reporting periods of 2014-2015 and 2015-2016, there was a decline in the number of matters reported to the ICAC as illustrated in the below table.⁶⁵

Year	Number of matters reported
2013-2014	3,386
2014-2015	3,146
2015-2016	2,436

- 1.72 The ICAC stated that one possible reason for the decline was a lower number of high profile public inquiries conducted by the ICAC in 2015-16.⁶⁶
- 1.73 At the Committee's public hearing, Commissioner McDonald acknowledged the decrease but indicated the ICAC has since experienced an upward trend in the number of matters reported:

Even though the past report indicated a decrease in the number of, for example, complaints on matters received, it seems we are now on an upward trend. For example, the 2016-17 period indicates a 2.2 per cent increase in the number of matters received compared with 2015-16. Just looking at our statistics for the first quarter of 2017-18, it is of a similar upward trend. It seems that the number of complaints will at least be consistent with the increased number we received in 2016-17.⁶⁷

Decline in number of 'Section 11 Reports'

- 1.74 More particularly, the Committee noted a decline in the number of 'section 11 reports' to the ICAC over the 2014-2015 and 2015-2016 reporting years. Section 11 of the ICAC Act requires principal officers of NSW public sector agencies as well as the Ombudsman, the Commissioner of Police and Ministers of the Crown to report suspicions of corrupt conduct to the ICAC. Recent figures for section 11 reports are as follows:
- in 2012-2013 there were 756 section 11 reports to the ICAC;
 - in 2013-2014 there were 674 section 11 reports to the ICAC;
 - in 2014-2015 there were 641 section 11 reports to the ICAC;
 - in 2015-2016 there were 605 section 11 reports to the ICAC.
- 1.75 At the Committee's public hearing, Revd the Hon Fred Nile MLC asked the ICAC whether there was any explanation for this decline, and whether it has any

⁶⁵ ICAC, *Annual Report 2015-2016*, p15.

⁶⁶ ICAC, *Annual Report 2015-2016*, p15.

⁶⁷ Ms Patricia McDonald SC, *Transcript of Evidence*, 20 November 2017, p8.

implications for corruption prevention in NSW.⁶⁸ In response, the ICAC indicated it is not aware of the reason for the decline and noted that in 2016-2017, the number of section 11 reports had increased to 650.⁶⁹ Mr Lewis Rangott, Executive Director of the ICAC's Corruption Prevention Division told the Committee:

A fall in those types of reports is arguably a good thing. In any case, we would expect some natural statistical variation throughout the years, which might account for some of that difference. The other thing we find from time to time is that those section 11 reports are driven by the amount of publicity the ICAC gets and the amount of attention that is given to corruption issues within an agency, within the public sector. They tend to wax and wane a little bit with the attention that some of our major public inquiries are receiving.⁷⁰

1.76 The Chief Commissioner emphasised that senior officers and staff of public sector agencies must receive adequate training about relevant legislative requirements to encourage the reporting of corrupt conduct.⁷¹ On this point, the ICAC told the Committee:

The Commission is proactive in educating the NSW public sector concerning section 11 reporting:

- each financial year, the Commission undertakes Rural and Regional Outreach visits... During these visits, Commission representatives also [meet] with Principal Officers and relevant staff of public authorities and [discuss] their reporting obligations under the ICAC Act;
- Commission representatives regularly meet or hold teleconferences with Principal Officers or their delegates for the purposes of educating them in, or answering questions concerning, reporting obligations under the ICAC Act;
- where the Commission identifies issues with a section 11 report, the Commission draws this to the attention of the Principal Officer or provides information concerning section 11 reporting generally in the Commission's communications.

Information is also specifically available on the Commission's website to both Principal Officers and Ministers concerning their reporting obligations under the ICAC Act.⁷²

1.77 The ICAC also told the Committee that changes in the total volume of section 11 reports does not have a strong bearing on its corruption prevention activities. The ICAC advised that while it relies on the content and outcomes of section 11 reports to inform its thinking and establish productive working relationships with

⁶⁸ Revd the Hon Fred Nile MLC, *Transcript of Evidence*, 20 November 2017, p11.

⁶⁹ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

⁷⁰ Mr Lewis Rangott, *Transcript of Evidence*, 20 November 2017, p12.

⁷¹ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p11.

⁷² ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

senior officials, there are many other sources of information that support the ICAC's corruption prevention work.⁷³

Decline in the number of Decisions to Investigate

- 1.78 The Committee also noted a decline since 2012-2013 in the number of ICAC decisions to investigate a matter. The figures are as follows:
- In 2012-2013, the ICAC commenced 71 preliminary investigations and 22 full investigations.⁷⁴
 - In 2013-2014, the ICAC Commenced 42 preliminary investigations and 10 full investigations.
 - In 2014-2015, the ICAC commenced 42 preliminary investigations and 14 full investigations.
 - In 2015-2016, the ICAC commenced 41 preliminary investigations and 10 full investigations.⁷⁵
- 1.79 In response to a question from Revd the Hon Fred Nile MLC about the reasons for the decline, the ICAC told the Committee that there has been no change in the Assessment Panel's operation or terms of reference. The ICAC stated:

The variation in the numbers of matters investigated is due to the Commission's assessment of whether reported matters justify investigation by the Commission. The decision whether or not to investigate a matter will depend on a number of factors, including whether the matter involves or is likely to involve serious corrupt conduct or systemic corrupt conduct, whether the matter could be effectively dealt with by another public authority and whether the matter is too remote in time to justify investigation.⁷⁶

Disclosure of Confidential Information

Recommendation 2

That in its future annual reports, the ICAC publish the number of unauthorised disclosures of confidential information that have been made in the course of ICAC investigations during the reporting year (of which it has become aware), and the details of any action the ICAC has taken in response.

- 1.80 The Committee monitors the issue of unauthorised disclosures made during ICAC investigations on an ongoing basis, and will continue to do so. The unauthorised disclosure of confidential information in the course of an ICAC investigation is a serious matter and serious penalties exists under sections 111 and 114 of the ICAC Act for such conduct.

⁷³ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

⁷⁴ ICAC, *Annual Report 2012-2013*, p3, ICAC website, <http://www.icac.nsw.gov.au/documents/about-the-icac/corporate-reporting/4210-icac-annual-report-2012-2013/file>, viewed 9 January 2018.

⁷⁵ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p3.

⁷⁶ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p3.

- 1.81 To foster effective oversight of this matter, the Committee considers that, in its future annual reports, the ICAC should publish the number of unauthorised disclosures made during the reporting year (that it has become aware of), and the details of any action that it has taken in response.
- 1.82 The ICAC Inspector's 2014-2015 Annual Report included details of a complaint to the Inspectorate about the disclosure to the media of information relating to an ICAC investigation.⁷⁷ The ICAC and the Inspector should take ongoing steps to ensure that their officers and any other persons who have access to confidential information are aware of the applicable confidentiality provisions.
- 1.83 During the course of the current inquiry, the Committee asked the ICAC what action it is currently taking to address concerns about the disclosure of confidential information obtained during ICAC investigations. The ICAC noted that such disclosures contravene section 111 of the ICAC Act and the ICAC's Code of Conduct and stated that its employees are made aware of their obligations as part of their induction. The ICAC also stressed that there is no evidence that any ICAC officer has ever improperly disclosed any information obtained during an ICAC investigation.⁷⁸
- 1.84 In addition, the ICAC provided information about its Information Security Policy:
- [The Information Security Policy]...specifies the need for security controls to be implemented according to the needs of the Commission...to ensure information security, availability, accessibility and compliance with applicable laws and regulations and defines responsibilities for information security. In particular, it provides that all staff are responsible for:
- familiarisation and compliance with the information security policy and the relevant standards and procedures;
 - exercising a duty of care to protect information assets; and
 - reporting suspected breaches, in accordance with information management procedures.⁷⁹

Stored Communication Warrants

- 1.85 The Committee noted from the ICAC's 2014-2015 Annual Report that the Commonwealth Ombudsman had inspected the ICAC's stored communications warrants and preservation notices in October 2014, finding 'one minor issue' that the ICAC immediately rectified.⁸⁰ It is vital that the ICAC exercises its significant information gathering powers with care and in accordance with all applicable requirements to avoid unwarranted intrusions into the privacy of the persons concerned. For this reason, the Committee requested further information about what the minor issue was and how it was rectified.

⁷⁷ Inspector of the ICAC, *2014-2015 Annual Report*, para 5.6, p17.

⁷⁸ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

⁷⁹ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

⁸⁰ ICAC, *Annual Report 2014-2015*, p48.

- 1.86 The ICAC told the Committee that during the Commonwealth Ombudsman's inspection, it was discovered that a telecommunications carrier had provided the ICAC with stored communications that did not appear to be within the authority of the ICAC's stored communications warrant. The ICAC stated further:

The minor issue was that the Commission had not quarantined that information and sought further advice from the carrier to clarify whether the stored communications related to Commission's stored communications warrant.⁸¹

- 1.87 The ICAC also provided details about how it rectified the issue, stating that it contacted the carrier and was told the stored communications related to another stored communications warrant and should not have been sent to the ICAC:

The Commission destroyed the relevant stored communications. Commission work instructions were amended to require the section responsible for recording stored communications to monitor all product provided by carriers to ensure the stored communications provided by the carrier are those authorised by a stored communications warrant and to quarantine and destroy any that are not so authorised.⁸²

Time Targets for Finalising a Complaint to the ICAC

- 1.88 Another area of interest for the Committee is the amount of time the ICAC would generally expect to take to finalise a complaint from first receiving it to preliminary investigation and full investigation, if applicable. The Committee considers targets are important in providing persons subject to investigations, complainants, and the public (where relevant) with an idea when the results of an investigation can be expected.
- 1.89 The ICAC told the Committee that the Assessments Section aims to provide straightforward matters to the Assessment Panel within 28 days of receipt, and complex matters within 42 days of receipt.⁸³
- 1.90 Should a matter progress to preliminary investigation, the target is to complete 80 per cent of preliminary investigations within 120 days. In relation to matters escalated to full investigation, the ICAC aims to complete the confidential phase of such matters within 12 months in 80 per cent of cases.⁸⁴
- 1.91 If a public inquiry is held for an investigation, the confidential phase of the investigation ends, and the time taken to complete a public inquiry can vary. The ICAC told the Committee:

The time taken to complete a public inquiry depends upon a number of factors including the complexity of the matter. Where a public inquiry has been held, the

⁸¹ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p3.

⁸² ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p3.

⁸³ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2. The Committee notes that while the time target for the Assessments Section to provide a straightforward matter to the Assessment Panel was 28 days for the 2016-2017 reporting period, during the 2014-2015 and 2015-2016 reporting periods it was 21 days. See ICAC, *Annual Report 2016-2017*, p14, ICAC website, <https://www.icac.nsw.gov.au/docman/about-the-icac/corporate-reporting/5023-icac-annual-report-2016-17/file>, viewed 1 February 2018; ICAC, *Annual Report 2015-2016*, p14; and ICAC, *Annual Report 2014-2015*, p14.

⁸⁴ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

Commission aims to produce its report on the investigation within 60 days from the receipt of final submissions (where the...public inquiry was five days or less) or within 90 days of the receipt of final submissions (where the...public inquiry was more than five days).⁸⁵

- 1.92 Mr Roy Waldon, Executive Director of the ICAC's Legal Division also told the Committee that once a matter is complete, complainants and those complained of will generally be informed of the results, subject to some exceptions for people who do not know they have been investigated:

The complainant would probably be notified. The person who is complained against, if they know they were complained against, either because the complainant has made that public or someone else has made it public, or they have been interviewed by us and we have asked them questions so they know they have been investigated, will, as a matter of course, be written to and told that the investigation has now been finalised. If someone does not know that they were the subject of an investigation then we prefer not to enlighten them at that stage, we do not tell them.⁸⁶

Corruption Prevention and Education

- 1.93 While the wider community often focusses on the ICAC's role of investigating and exposing public sector corruption, the ICAC also has important statutory functions to prevent corruption including through educating public officials and the public about strategies to combat corruption, and about its detrimental effects.⁸⁷ The ICAC's Corruption Prevention Division undertakes work in the following three areas: Sector-wide Projects; Investigations and Education.⁸⁸

Sector-wide Projects

- 1.94 The Corruption Prevention Division identifies and analyses corruption risks of sector-wide significance to make corruption prevention recommendations to government. Projects undertaken are selected on the basis of the degree of public concern and the extent of the corruption risks.
- 1.95 In 2014-2015, the Corruption Prevention Division conducted six projects of sector-wide significance in the areas of invoice payments; political donations, disclosure and expenditure; international students; employment screening; facilities maintenance; and change management.⁸⁹
- 1.96 In 2015-2016, the Corruption Prevention Division conducted four projects of sector-wide significance in the areas of employment screening; facilities maintenance and change management; and a community attitudes survey to examine the attitudes and perceptions of members of the public regarding corruption and the ICAC itself.⁹⁰

⁸⁵ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p2.

⁸⁶ Mr Roy Waldon, *Transcript of Evidence*, 20 November 2017, p13.

⁸⁷ *Independent Commission Against Corruption Act 1988*, s13(d)-(k).

⁸⁸ See organisation chart, ICAC, *Annual Report 2015-2016*, p5; and organisation chart, ICAC, *Annual Report 2014-2015*, p5.

⁸⁹ ICAC, *Annual Report 2014-2015*, pp34-37.

⁹⁰ ICAC, *Annual Report 2015-2016*, pp33-34.

- 1.97 The Committee asked the ICAC whether the community attitudes survey resulted in any suggestions to improve the ICAC's relationship with the public, and whether any concerns were raised regarding the ICAC's jurisdiction. The ICAC answered in the negative to both questions, and further advised that the survey did not ask any specific questions about these issues.⁹¹

Investigations

- 1.98 Officers of the Corruption Prevention Division are attached to most ICAC investigations to identify processes, structures, human factors, external influences and possible legislative issues that allowed the corrupt conduct to occur, and to formulate recommendations for change. Section 111E(2) of the ICAC Act requires any public authority to which recommendations are made to inform the ICAC in writing within three months (or such longer period as the ICAC may agree to in writing) if it proposes to implement any plan of action in response to the recommendations and, if so, of the plan of action.⁹²
- 1.99 In 2014-2015, final reports received by the ICAC indicated that 93 per cent of corruption prevention recommendations made to agencies were fully implemented.⁹³ In 2015-2016, final reports received by the ICAC indicated that 82 per cent of corruption prevention recommendations made to agencies were fully implemented.⁹⁴

Education

- 1.100 The Education Unit provides advice to public sector agencies and members of the public, holds training workshops free-of-charge to the public sector, and delivers presentations at speaking engagements.
- 1.101 Regarding the provision of advice, the Committee noted the ICAC provides advice on the ways in which corrupt conduct can be prevented, detected, or its frequency and effects reduced. The advice service is free, and available to all officers of the NSW public sector and members of the public. The Committee further noted that in the last four reporting years, there have been fluctuations in the number of advice requests as demonstrated in the below table.⁹⁵

Requests for Advice from Government Agencies and the Public	
Reporting Period	Number of Requests
2012-2013	106
2013-2014	102
2014-2015	134
2015-2016	94

- 1.102 In response to a request for comment about these fluctuations the ICAC advised it has little influence over the demand for advice and stated that the factors that

⁹¹ ICAC, *Response to Additional Questions*, 4 December 2017, p6.

⁹² ICAC, *Annual Report 2014-2015*, p34.

⁹³ ICAC, *Annual Report 2014-2015*, p38.

⁹⁴ ICAC, *Annual Report 2015-2016*, p35.

⁹⁵ ICAC, *Annual Report 2015-2016*, p36; and ICAC, *Annual Report 2014-2015*, p39.

may prompt an agency or individual to request advice vary widely. The ICAC noted that the volume of telephone calls and emails seeking its advice may be affected by the quality and availability of advice:

- provided by staff employed in integrity-related roles within public sector agencies;
- already publicly available on the Commission's website;
- provided by ICAC officers during training and speaking engagements (which is not recorded as 'advice');
- provided by private sector consultants and experts; or
- published by other integrity and anti-corruption agencies.⁹⁶

1.103 The ICAC also provided an expanded table, setting out advice figures for the last 11 years. The ICAC noted the figures do fluctuate from year to year but further noted a relatively clear reduction in advice requests started from approximately 2008-2009.⁹⁷ The table is reproduced below:

Measure	15-16	14-15	13-14	12-13	11-12	10-11	09-10	08-09	07-08	06-07	05-06
Requests for Corruption Prevention Advice	94	134	102	106	133	97	155	252	211	244	246

1.104 Regarding training workshops, the Committee noted that in 2015-2016, the ICAC introduced four new workshops:

- Corruption prevention for planning professionals;
- Corruption prevention for local government operational staff;
- Corruption prevention for Local Aboriginal Land Councils;
- Strategic approaches to corruption prevention for senior executives.⁹⁸

1.105 The Chair asked the ICAC what had spurred the creation of the four new training workshops and what the feedback regarding them had been like. Mr Rangott told the Committee:

...I understand that it was an attempt to broaden the offering of educational products that were available and were quite successful but fairly standard one-size-

⁹⁶ ICAC, *Response to Additional Questions*, 4 December 2017, p7.

⁹⁷ ICAC, *Response to Additional Questions*, 4 December 2017, p7.

⁹⁸ ICAC, *Annual Report 2015-2016*, p36.

fits all training workshops...[I]t was an attempt to explore areas such as town planning, for instance, which...comes on our radar from time to time. Some of our standard offerings are the ones that get the most attendees, but to date we have had some pleasant feedback from these workshops as we have delivered them.⁹⁹

- 1.106 Regarding speaking engagements, the Committee also noted that in 2015-2016, ICAC officers delivered 68 speaking engagement presentations to over 2,796 attendees. 14 of these speaking engagements were delivered in regional NSW, nine were held interstate and two were held in New Zealand.¹⁰⁰ The Chair asked the ICAC how its speaking engagements come about, and Mr Rangott told the Committee:

Mr RANGOTT: Typically we will be contacted by an agency. It is very common for an agency to contact us; they might be conducting their own ethics training or corruption prevention initiative, and they might ask us to contribute by making some sort of a presentation or giving an address. They typically are initiated from senior managers in the public service.

The CHAIR: I take it you would be fairly receptive to those applications for speaking engagements.

Mr RANGOTT: Indeed.¹⁰¹

- 1.107 During the inquiry, the Committee further noted that in 2015-2016, external visitor traffic to the ICAC website was down 30 per cent from the previous reporting year. In 2015-2016, external visitor traffic to the ICAC website was 513,521 compared with 781,591 visits in 2014-2015.¹⁰²
- 1.108 At the Committee's public hearing Revd the Hon Fred Nile MLC asked the ICAC about the reasons for this downturn and whether there was a need for the ICAC to publicly promote its role. Revd Nile asked:
- Commissioner, in 2015-16 external visitor traffic to the ICAC website was down 30 per cent from the last reporting year. Is there any explanation for that? Could it be due to the extensive public and parliamentary criticism of ICAC's previous Commission and its commissioners? Has the public's confidence in ICAC been undermined?...¹⁰³
- 1.109 The Chief Commissioner responded that he was not aware as to why the traffic had decreased, but suggested there may be a link with the fall in the number of public inquiries during the period:

...the Commission over the last 18 months to two years has been through a difficult period...[I]t now being past history the intent is to ensure that the Commission conducts all of its operations in a way...that meets community expectations...I do not take any downturn in the traffic accessing the website as indicative of a fall in public support for the Commission. It is possibly due to the fact that in part of the troubled

⁹⁹ Mr Lewis Rangott, *Transcript of Evidence*, 20 November 2017, p13.

¹⁰⁰ ICAC, *Annual Report 2015-2016*, pp36-37.

¹⁰¹ Mr Lewis Rangott, *Transcript of Evidence*, 20 November 2017, p13.

¹⁰² See ICAC, *Annual Report 2015-2016*, p8 and ICAC, *Annual Report 2014-2015*, p8.

¹⁰³ Revd the Hon Fred Nile MLC, *Transcript of Evidence*, 20 November 2017, p8.

period...there has been a reduction in public hearings and that itself accounts for some reduction in the traffic. Other commissions similar to our own have noted their experience that every time they have a public inquiry there is a spike of interest from the public and more hits on the website occur.¹⁰⁴

- 1.110 In answering Revd Nile's further question about whether there was a need for the ICAC to publicly promote itself, the ICAC indicated that generally speaking it does not engage in activities solely aimed at promoting itself. Notwithstanding this, the ICAC highlighted initiatives that raise its profile including the recent Australian Public Sector Anti-Corruption Conference that it had co-hosted, attracting 500 attendees, and its regional outreach program that involves corruption prevention workshops.¹⁰⁵ Commissioner McDonald told the Committee:

We recently co-hosted the Australian Public Sector Anti-Corruption Conference, and there has been some publicity through that about our role. In addition, when we last appeared before the Committee, we had just returned from Albury, where we attended a public gathering for community leaders at which the three commissioners spoke, and also our corruption prevention section...ran a number of workshops for the local community...[T]hat is something we will continue to do – indeed we might have another trip into the country planned for maybe May of next year...¹⁰⁶

- 1.111 The ICAC also noted that its public inquiries, investigation reports and corruption prevention work tend to attract media attention thereby raising the ICAC's profile. The ICAC stated:

The Commission's mandate and functions are well-known within the NSW public sector and the community. Our 2015 Community Attitudes Survey found that 83% of respondents had some awareness of the Commission. This is a positive response and is consistent with a strong recognition of the Commission over a number of years.¹⁰⁷

¹⁰⁴ Hon Peter Hall QC, *Transcript of Evidence*, 20 November 2017, p8.

¹⁰⁵ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p1.

¹⁰⁶ Ms Patricia McDonald SC, *Transcript of Evidence*, 20 November 2017, p8.

¹⁰⁷ ICAC, *Answers to Questions Taken on Notice*, 20 November 2017, p1.

Appendix One – Committee's Functions

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

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

Nothing in the ICAC Act authorises the Committee to:

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

Appendix Two – Transcript of Evidence

This appendix contains a transcript of evidence taken at a public hearing held by the Committee on 20 November 2017. Page references cited in the 'commentary' section of the report relate to the numbering of the original transcript, as found on the Committee's webpage.

The CHAIR: Good morning and thank you for attending this public hearing of the Joint Committee on the Independent Commission Against Corruption. Today's hearing is a review of the 2014-2015 and 2015-2016 annual reports of the ICAC. This morning the Committee will hear from witnesses from the New South Wales Independent Commission Against Corruption: the Chief Commissioner, the Hon. Peter Hall, QC; Ms Patricia McDonald, SC, Commissioner; and members of the ICAC's executive. At the outset I thank all witnesses for making themselves available to appear today.

I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment. For the benefit of the gallery, I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of the public proceedings. Copies of the guidelines governing the coverage of proceedings are available. I now declare the hearing open.

PETER MICHAEL HALL, Chief Commissioner, Independent Commission Against Corruption, sworn and examined

PATRICIA EMILY McDONALD, Commissioner, Independent Commission Against Corruption, sworn and examined

ROY ALFRED WALDON, Executive Director, Legal Division, Independent Commission Against Corruption, sworn and examined

LEWIS ALEXANDER RANGOTT, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined

JOHN ROBERT HOITINK, Acting Executive Director, Investigations Division, Independent Commission Against Corruption, sworn and examined

ANDREW KOUREAS, Executive Director, Corporate Services Division, Independent Commission Against Corruption, sworn and examined

The CHAIR: Thank you for appearing before the Committee today. Before we proceed, do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

WITNESSES: No.

The CHAIR: Commissioner, the general practice is that we invite you, or anyone for that matter, to make an opening statement, if you are so disposed.

Mr HALL: Yes, thank you. First, I tender Commissioner Rushton's apologies; he is otherwise engaged in professional duties in the Supreme Court and is unable to be here today. There are just a few matters that I thought I would update the Committee as to some of the matters that have been developing in the ICAC since Ms McDonald, myself and Commissioner

Rushton took up our positions, which may be of interest to the Committee. To that end, there are four areas in this opening statement on which I will make some comment.

First is what I would refer to as some in-house programs which we are developing at the Commission, and they have commenced development in the period since August until now; secondly, to advert to the position concerning the guidelines under the amended legislation, and I will ask Commissioner McDonald to address that; thirdly, the overview of development of what I would refer to as our investigation program going into 2018; and, fourthly, the question of the CEO position under the amendments to the ICAC Act. Before dealing with the first of those, so far as any matters concerning relevant statistics concerning our operations, we are in a position to provide any information in that respect, and, again, Commissioner McDonald will address any queries that there may be as to any matters arising from the statistical data concerning the operations of the Commission to date.

As to the first of those areas, the in-house programs, there have been steps taken towards two new programs: one is what I call the development of proactive investigation of the Commission against the reactive jurisdiction; secondly, the review that is ongoing as we speak of all units of the Commission and the functioning of those units and the operations between them and the communication platforms that exist between all members of the Commission within those units, is a review that is being undertaken by KPMG that has been engaged by the Commission to undertake that work on the basis that they will be in a position to provide us with an interim report by the end of this month. The final report will, I expect, be produced early in the new year.

The ICAC to date has pursued its important investigative function based on a reactive model, that is its investigative capacity has essentially been activated principally on the basis of complaints and notifications of alleged corrupt conduct. It is important that it continues to do so. However, in my judgement it is also important for the ICAC to determine whether there today exists a need to implement a more modern intelligence proactive model of investigation. I hold the view that there are powerful reasons for it to do so. The public sector environment has evolved and it has changed over time. New current day forms of service delivery of government services and associated funding arrangements did not exist, or did not exist to the extent they do now, when the ICAC was established. Today, the new systems used for contracting government services, such as public-private partnerships, outsourcing of government facilities, services to private sector entities, including non-governmental agencies, all bring with them new corruption risks and threats. In other words, the operating environment has changed. Today corrupt conduct is potentially more complex in nature than it has been in the past and correspondingly more difficult to combat. As with what I call old corruption, the new forms of corruption remain easily suppressed and disguised in secrecy.

The New South Wales public sector has undergone significant change since the ICAC was established. It is recognised that changes in service delivery methods giving rise to corrupting forces have become more complex in nature and sophisticated in operation. That makes it difficult for agencies to combat. Accordingly, with such fundamental changes, in my opinion a more strategic approach needs to be adopted and developed by the Commission so as to properly understand and address and then respond to the complex changing environment in order to ensure that the Commission does function flexibly and effectively. Today, new ventures and partnership arrangements between government and non-government organisations for the delivery of government services can give rise to close and possibly conflicted relationships between representatives of government and public administration and private industry.

While public sector agencies may encourage the involvement or the engagement of private enterprise inter-ventures or partnerships, such relationships may bring with them increased corruption risks, for example arising from conflicts of interests, gifts and benefits. Accordingly, the need for a proactive methodology requires there to be a review of the Commission's resources and its capacity in order for it to effectively combat corruption. Such a methodology will require specialised personnel. It will require new databases and new investigative methodologies. In short, a new approach must be considered. Investigations in my view will increasingly be intelligence-led, identifying and targeting areas of medium-high to high-risk. That in turn will facilitate the deployment of resources where they are most needed. With increasing pressure on resources, in my view that makes perfect sense.

Strategic intelligence assessment also enhances the capacity for corruption prevention as well as providing intelligence data that will direct and guide certain investigative operations. Strategic intelligence facilitates the assessment as to where and in what form control systems are needed in order to prevent or interrupt corrupt schemes and activities. The strategic model draws upon a vast and varied pool of data relevant to the public sector. There will be an ongoing need for data holdings to be reviewed on a regular basis, thereby feeding into and guiding the investigative priorities and objectives. The time for updating the ICAC's investigative operations through the implementation of a proactive jurisdiction has not only arrived, it is overdue.

It may be noted that developments for a proactive jurisdiction have occurred in other States. The Crime and Corruption Commission [CCC] in Queensland has developed an intelligence-based approach. The rationale for, the design of and the operational requirements for the intelligence model were the subject of an excellent presentation by Dr Rebecca Denning of the CCC at last week's Australian Public Sector Anti-Corruption Conference [APSAC]. The Corruption and Crime Commission of Western Australia commenced a program for the development of a proactive capacity in the 2016-17 year. The Independent Broad-based Anti-corruption Commission [IBAC] in Victoria introduced an intelligence-based proactive capacity within a similar time frame as the West Australian Commission. The Corruption and Crime Commission of Western Australia said in its annual report:

The Commission analyses allegations received and information gained from investigations to identify corruption and misconduct trends, patterns and emerging risks. In 2016-17 a Strategic Intelligence Team within the Assessment and Strategy Development Directorate was established. This team has the primary objective of providing advice to the Commission and the broader public sector on trends and areas of risk for serious misconduct and corruption. This intelligence helps us to inform priority-setting and to ensure the Commission remains positioned to face the challenges of existing and emerging serious misconduct risks.

The IBAC in its 2015-16 report observed:

As a contemporary anti-corruption agency, IBAC aims to take a more strategic, intelligence based approach to our operations, rather than being a reactive complaints-driven body. In this way, we aim to ensure our resources and powers are best directed to most effectively expose and prevent serious systemic corruption and police misconduct.

A widespread intelligence assessment requires then the collection, collation and analysis of a wide range of data from both government departments and agencies, local governments and other organisations. It is only by risk assessment of the inherent corruption risks within the public sector, having regard to the changes in the operating environments to which I have referred, that a strategic assessment methodology can be devised, both in terms of developing operating strategies and corruption prevention measures. An assessment of this kind will also become available to public sector agencies in order to inform them of the corruption control strategies that they need to have in place to meet the risks. At the moment steps are being

planned to establish in the new year what I might here refer to as a strategic intelligence unit within the Commission. There is a considerable amount of work to be done to that end but I am confident and it is my intention to have it up and running in the first half of next year.

The second review is the review that is being conducted and overseen by KPMG. In taking office I took the view that the ICAC, like any organisation, needs to have a thorough examination of all its processes to ensure that it is operating effectively and properly and is meeting modern standards. Accordingly, KPMG representatives were met and a scope of work was finally determined with officers of the Commission. The reports to result from this inquiry, we hope, expect, will identify those areas where there is a need for quality improvement, change and modernisation. It is important, particularly in an organisation such as the ICAC, which is divided into separate units, that there be an open and consistent communication path between all units.

The work of the Commission does not occur over any given year at a consistent or uniform volume or rate. There are inevitably peaks and troughs, though just when they are likely to occur and for how long they are likely to occur are difficult to predict or assess. It is not uncommon in busy periods for particular investigators to be taken off one investigation team in order to help out with another. The result is that the first investigation stops or slows down until that particular investigator returns to the former investigation team of which he or she was a member. An inevitable consequence is that if resources cannot meet demand the pace of investigation is likely to be reduced. This position has been noted in particular with the reduction from four to three investigation teams within the Commission following the redundancies that occurred last year.

The Commission is investigating a program for a review of its assessments and investigation divisions. There is a need for there to be a better match between resources and demand for investigative services and assessment services by a scheme that includes a supplementary workforce component so that resources can be adjusted to meet demand. The same applies to the assessments section of the Commission. To date, under what at times is great pressure on the assessments section, that section has managed to operate within required processing times. Accordingly, the external consultancy of KPMG has been engaged to provide a recommended scope of works to undertake, and identify such changes as may be required, to ascertain with some precision what are the resource demand imperatives in both the investigations and the assessments sections. A decision will then be made by the Commission on how we should proceed.

One possibility is an increase—I foreshadow—in the required number of investigative and assessment staff personnel and the possible establishment of a pool of suitably qualified part-time investigators—for example, recently retired law enforcement investigators much like the Supreme and District Courts have the engagement of acting judges to meet the courts' list demand. There may also be a need to increase the number of the permanent investigation and assessment officers. I anticipate the external review will establish many of these matters by the end of this month. That completes my comments on those two what I call internal reviews or internal programs that are under way.

I should say something in relation to the development, in very general terms, of our investigative programs. A number of live investigations have been underway for some considerable time. There has been a need to escalate the pace at which those investigations have proceeded and we have taken steps in the appointment of Mr Hoitink to head up the investigation division to maximise resources to accelerate current investigations. We anticipate that going into 2018 there will be a requirement for the three commissioners to

consult as to whether or not public inquiries should be held in any one of a number of investigations that are currently reaching a conclusion in terms of the investigative stages.

Before dealing with the guidelines I will turn to the chief executive officer [CEO] position. The CEO position, of course, was created under the amending legislation last year. As I indicated to the Committee on the last occasion, I have deferred the appointment of the CEO. I did that following discussions with relevant officers of the Commission in order to determine what a CEO would do and how the CEO would fit into the structure and running of the organisation. Many of the functions that a CEO would perform are already being capably handled and dealt with by Mr Koureas, who is here today. The responsibilities in addition to the duties and functions performed in that role would be handled by a CEO but would not by themselves warrant a full-time CEO. Because the other functions that a CEO would perform are now and have for some time been competently performed by the officer in charge of such matters, it would not be an acceptable option to terminate that officer in order to make way for a CEO to take over his functions about which there is no criticism. Indeed, there is a high regard for the performance by him of those functions. I am not prepared to see that officer terminated in order to make way for a CEO.

The question then is how would a CEO fit into the structure, given those matters to which I have referred? A CEO position normally is suitable for a larger organisation than the Commission. At the moment we have just over 100 personnel. The CEO would simply not have enough to do on a full-time basis. It seems that one possible option which has been under consideration is perhaps for the appointment of somebody who may be a recently retired person who is highly experienced in corporate governance matters and familiar with government and the way it operates to take up that position on perhaps a part-time basis such as Monday, Wednesday and Friday of each week. In addition, the sorts of programs that I have been outlining in my opening comments could be programs which such a person could have ownership over to ensure that they are properly implemented and conducted.

Members of the Committee, the position of the CEO is under active consideration. I have made no decision yet as to any appointment in that respect. We are mindful of the requirement to give it active consideration and to look at all angles so far as the Commission is concerned and that is being done. Commissioner McDonald will address the issue of the guidelines.

Ms McDONALD: The reference to the guidelines is a reference to section 31B of the Act, which provides that the Commission will develop guidelines to assist or give guidance in the conduct of public inquiries, in particular focusing on matters such as exculpatory evidence, the investigation of such evidence, its disclosure to affected persons and also questions about credibility of witnesses, ability to cross-examine on credibility and general procedural fairness being granted to persons attending or being subject to a public inquiry. This is really an update for the Committee.

Guidelines have been drafted. There is one small aspect of the guidelines that the three commissioners have to determine and I anticipate that will be done shortly. We anticipate that once the guidelines are finalised we will forward them to Mr McClintock, the Inspector of ICAC, to get his view on the guidelines. We are hopeful that will be done by the end of this month. Then we are aiming to get some comments from the Inspector and take those on board and have some discussions. Then we are aiming to have the guidelines tabled before Parliament when it resumes in February next year.

Mr PAUL LYNCH: From the things you have said about moving towards a proactive focus and the KPMG review, it inevitably sounds to me that you will need more resources for ICAC. Have you had any discussions with the Government about increases in funding?

Mr HALL: We certainly have given the question of funding consideration. It is still under active consideration. We propose to have included in the budget submission for the next year a separate submission dealing with this area in which there will be an endeavour to give some costings as to what this will entail in terms of computer based data systems and software programs and the appointment of two specialist intelligence analysts. Those are the principal cost items. There would be a need for at least two specialist intelligence analysts. I understand—I stand to be corrected on this—that the Independent Broad-based Anti-corruption Commission [IBAC] currently has three such specialists.

They—this form of intelligence analyst—are in demand by law enforcement agencies in the country generally. They command pretty substantial salaries. They are hard to obtain because the numbers do not meet the demand; hence law enforcement agencies are only too happy to snap them up if they can. However, the general costing will be put forward in the submission in the budget. I anticipate that there could also be an additional requirement for other personnel in the Commission. Certainly, as I have indicated, at the moment, current demands cannot be satisfactorily met by existing numbers. We have been taking steps to engage people on a short-term basis to handle particular investigations. That has proceeded apace. We now have a number of additional investigators coming on line, but for fixed periods only, at this stage.

Mr PAUL LYNCH: How many extra people do you need to meet the current demand adequately?

Mr HALL: Mr Hoitink is in a better position and I might, with your permission, ask him to address that issue. It is a matter that he has been closely involved in.

Mr HOITINK: Eleven within the investigation area. That would basically include the two people for the strategic intelligence unit.

Mr PAUL LYNCH: What does that amount to in dollar terms?

Mr HOITINK: For that I would have to go to Mr Koureas; I am looking at the staff.

Mr KOUREAS: With the inclusion of other operating expenses—of balancing et cetera—it would be in the vicinity of \$2.5 million. It could be a little bit higher, as we fine-tune the request. The submission will form part of the Treasury final budget proposals during the first week in December. We are aiming to have them completed at the end of this month for submission to Treasury and consideration.

Mr PAUL LYNCH: Just so that I am clear on this, that is extra staff to meet the demand? That does not include whatever other extra resources might be required to fit in with the proactive approach that has been discussed?

Mr KOUREAS: That includes the provision for additional intelligence analysts for the strategic intelligence unit.

The Hon LYNDA VOLTZ: But it does not include the hard equipment—the new computer and technological investment?

Mr KOUREAS: That includes our operating costs but capital costs form part of a separate business case also being prepared for Treasury's consideration. The Commission is seeking to change its funding model or ICT and we are in the process of finalising that over the

next two weeks. That will provide for data allowance et cetera for additional software and hardware for the strategic intelligence unit. They are estimated costs at this stage.

The Hon. LYNDIA VOLTZ: Because you are waiting for the KPMG report?

Mr KOUREAS: No, the KPMG report is looking at the operational costs—the recurrent costs, if you like. Capital funding is a separate business case. We have obtained information from IBAC, for example, to help us provide an estimate of the capital acquisition costs for software and hardware and running costs of the software to be able to submit a case to Treasury for consideration.

Mr HALL: If I could go back to Mr Lynch's question, one of the important outcomes of the KPMG review which is presently underway is to determine, with precision, what an objective assessment would indicate as to the need to increase existing manpower to meet existing demands. We do not have, yet, the information which tells us the number, but I anticipate that, when we receive the interim report at the end of this month, the report should indicate, with precision, what KPMG assesses is the current need, in terms of personnel, to meet current demands. Whether it is another 8, 10 or 11 is subject to the KPMG assessment.

Mr PAUL LYNCH: Who has funded the KPMG review? Is that from ICAC's own resources?

Mr HALL: Yes, that is so.

Mr PAUL LYNCH: I would like to go back to the cost of the capital equipment. Do you have an estimate yet—even a ballpark estimate—of what that might involve?

Mr KOUREAS: I do not have that information but I will take it on notice.

Mr HALL: Mr Hoitink may be in a position to have some evidence on that, I think.

Mr HOITINK: We currently operate a number of different intelligence databases—one which is currently used by a number of law enforcement agencies. We will be looking to enhance that. So we already have the base system. It is really the add-on software that is required to be able to talk to the other different databases.

Mr RON HOENIG: Chief Commissioner, in the Commission's 2009-10 report to Parliament it said that in 2009-10 the unit "will continually monitor trends and issues in the public sector with a view to developing proactive approaches to investigations". I gather from what you have told us that you are elevating the priority of proactive investigations, or did you not have sufficient resources to focus on that area?

Mr HALL: Firstly, I am not sure whether the report to which you refer—the 2009-10 report—identifies what was being referred to as a "proactive intelligence approach". Whether it is the strategic intelligence approach which is in Queensland, Western Australia, Victoria—and it is my intention to bring it here—which was in mind, certainly the capacity to carry out that sort of proactive investigation has not existed until now, as you would understand from what I have already said. Whatever the proactive approach was that that report was referring to, it is plainly not enough. A different approach is needed, in my estimation, which will require an approach that I anticipate will assist in three main areas of the Commission—investigations, prevention and assessments. Trying to answer your question, I do not understand what proactive approach the author of the report had in mind at that time. It is not the one that I have in mind.

Mr RON HOENIG: When you talk about a strategic, proactive approach, I understand what you are referring to in terms of the private sector's involvement to a far greater extent in delivering government services and conflicts of interest that flow from that, particularly in

relation to government or elected people. How does the Commission go about doing that? Do you monitor a variety of those activities? Do you, of your own motion, begin to examine them? The amount spent on some of those activities is now huge—some are record infrastructure investments. How does the Commission go about doing that? Without disclosing operational matters, at what point do you go in? Do you, of your own motion, just decide to look at something?

Mr HALL: It is the own motion power that is already in the Act that I have seen as providing the window of opportunity for this proactive approach. With the analysis of relevant data, we expect to be in a position to identify—not just for the benefit of ourselves but for the agencies themselves—what risks their operations present, what controls they have in place to manage corruption risks, and the adequacy of those controls. It requires establishing and also maintaining over time an informed appreciation as to how particular agencies are equipped to deal with emerging risks arising from new forms of contracting and the like. It involves an own motion type of investigation in order to provide a solid base to understand what control systems particular agencies have, having regard to the risks in procurement, for example, that are likely to arise and whether they are equipped and trained and so on to be able to manage those risks.

Therefore the intelligence data outcome is not only to assist us with our prevention and investigation activities; it should provide benefit directly to the agencies themselves. It is not as if we want to keep secret from them any of our assessments and analysis which they might be able to benefit from to improve their system. It is more of an own motion, as necessary, driven by the intelligence data we obtained—if necessary, directly from the agencies themselves. As I indicated earlier, there will need to be constant monitoring of the data relevant to all of those matters.

The other side of the scope from this approach is to identify in particular, with corrupt activities that are either ongoing or which are recurrent within a particular agency, the capacity for us to have earlier intervention in the investigation process—that is, to use our covert powers at an earlier time than would currently be the case. The potential benefit of targeting either known or suspected corrupt conduct that is happening in real time or which is likely to be repeated as a pattern of conduct will provide us with a greater opportunity to intervene at an earlier stage and use our covert powers to obtain evidence upon activities at the moment, which is very difficult to prove after the fact, as I am sure Committee members would fully appreciate.

In summary, those are the sorts of benefits that come from the approach. I refer the Committee to a report that was produced by the Western Australian Commission which outlines the objectives and benefits from this sort of approach. It is called "Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector", Corruption and Crime Commission, 26 March 2016. It is a report which is quite readable, it is not over-lengthy and it provides an excellent analysis as to the scope and purpose of this form of investigation.

The CHAIR: I take it that there are specific examples, using this pro-active approach that you have identified and endorsed, whereby it has uncovered corrupt activities.

Mr HALL: I am not in a position to say how—

The CHAIR: Not your own organisation but, say, the Western Australian one.

Mr HALL: No. I am not in a position to say how the methodology was employed, for example, by IBAC or the Western Australian Commission in particular investigations, other than to refer, as I have already have, to their observations as to the need for and the benefits

that flow out of this form of approach, both from a prevention perspective and potentially for investigative potential.

Mr GEOFF PROVEST: Where witness credibility issues arise during one of ICAC's compulsory examinations and the matter ultimately proceeds to public inquiry, should counsel assisting have a duty to disclose those issues at the public inquiry? Should this be a matter included in ICAC's procedural fairness guidelines for conduct of public inquiries? Would any confidentiality issues arise?

Mr HALL: Firstly, I will take the first part of that question. The guidelines in their current draft form expressly deal with the issue that you have raised—quite properly, with respect. That is to say that if the Commission is in possession of what might be called exculpatory material, under the guidelines such material must be disclosed, subject to one important issue, and that is the timing of the disclosure, for obvious reasons. The ultimate discretion as to when such material is disclosed must remain within the discretion of the particular commissioner conducting an investigation, for obvious strategic investigative reasons. But at the end of the day, no person should be denied procedural fairness—no person at all. In respect to what you raise, procedural fairness includes, in particular, the need to ensure that any exculpatory material is produced.

The Commission is not there, as it were, to get scalps, to win cases and so on; it is there to uncover truth and, wherever the truth lies, that is what should be disclosed. Confidentiality would only apply in the circumstances which I have indicated that it should be withheld until the commissioner determines it is an appropriate time to disclose. As to whether there could be any other confidential limitations upon such information, it could, for example, include issues such as statutory obligations of confidentiality or legal-professional privilege. I think each case would have to be determined on its own facts.

Mr GEOFF PROVEST: Under the recent changes to the ICAC Act, where ICAC makes an adverse comment about a person or a body, it will generally have to publish a fair account of their response. How will you implement this change? Will it require a review of processes? If so, have the necessary changes been made?

Mr HALL: Yes, there will be a need to change the form of reporting. There will need to be a separate section in the report which identifies the nature of the case, as it were, that the person affected by the adverse finding sought to make out so that the reader will be able to understand, in a summary form at least, what that person was contending for. It is a question of fact finding. As to a change in procedures, I think it will be ultimately the responsibility of Mr Waldon and the individual commissioners to ensure that those matters are properly dealt with and disclosed in public reports. We have not yet, as you know, released any reports since we have been in office, but I am mindful of the fact that in the New Year the very position you raised may very well become a reality and it needs to be addressed properly.

Reverend the Hon. FRED NILE: This is a general question. Commissioner, in 2015-16 external visitor traffic to the ICAC website was down 30 per cent from the last reporting year. Is there any explanation for that? Could that be due to the extensive public and parliamentary criticism of ICAC's previous Commission and its commissioners? Has the public's confidence in ICAC been undermined? If so, what action are you taking to rectify that?

Mr HALL: I am not familiar with the statistics about the downturn in the traffic that you referred to. It is a matter that I am happy to look into and, if necessary, provide a further answer. As to reasons as to why that traffic might be down on previous years, I am quite frankly not in a position to give you an explanation. It is no secret, however, that the Commission over the last 18 months to two years has been through a difficult period. It is a

matter of concern that the difficult period occurred, but it now being past history the intent is to ensure that the Commission conducts all of its operations in a way, as I have indicated, that meets community expectations in terms of procedural fairness and in terms of the legal requirements to do so. I do not take any downturn in the traffic accessing the website as indicative of a fall in public support for the Commission. It is possibly due to the fact that in part of the troubled period I referred to there has been a reduction in public hearings and that itself accounts for some reduction in the traffic. Other commissions similar to our own have noted their experience that every time they have a public inquiry there is a spike of interest from the public and more hits on the website occur. That could be another partial explanation as to why those numbers are down on 2015-16.

Reverend the Hon. FRED NILE: Was there any corresponding decrease in other public interaction with the Commission, such as complaints and so on?

Mr HALL: Yes. I might, with your leave, have Commissioner McDonald take you through those figures, which might assist in answering your question better than I can do.

Ms McDONALD: We have received some internal information about current statistics. Even though the past report indicated a decrease in the number of, for example, complaints on matters received, it seems we are now on an upward trend. For example, the 2016-17 period indicates a 2.2 per cent increase in the number of matters received compared with 2015-16. Just looking at our statistics for the first quarter of 2017-18, it is of a similar upward trend. It seems that the number of complaints will at least be consistent with the increased number we received in 2016-17. If you then look at the next stage, the matters referred to a preliminary investigation, again in 2016 we had a decrease from the previous year. Again, in 2017-18 it appears that the numbers have increased and will reach the same level as 2015-16. On current trends we will probably match that number as well. It does seem that in 2015-16 there was a decrease in the number of complaints and then matters being escalated to a preliminary investigation. That seems to have been reversed last year, and we are continuing with that upward trend at the moment.

Reverend the Hon. FRED NILE: I know ICAC is very important and I support it. Is there any need to consider whether there needs to be some promotion of ICAC itself? I know it does not normally do that—you do that through your job and through inquiries—but it may be an issue you could examine.

Ms McDONALD: We recently co-hosted the APSAC, and there has been some publicity through that about our role. In addition, when we last appeared before the Committee, we had just returned from Albury, where we attended a public gathering for community leaders at which the three commissioners spoke, and also our corruption prevention section then ran a number of workshops for the local community.

Reverend the Hon. FRED NILE: That is very important.

Ms McDONALD: Yes, and that is something we will continue to do—indeed, we might have another trip into the country planned for maybe May of next year, if we have the resources. We are continuing with that type of work, but an overall view of the opposition within the community is something we will have to take on notice.

Mr MARK TAYLOR: Commissioner McDonald, we have heard from the Chief Commissioner about the CEO position. Do you hold a similar or different view to that of the Chief Commissioner?

Ms McDONALD: I do have a slightly different view, and I have to preface it by the fact that I come from working as a barrister for 20 years, where I was in business for myself and

dealing with management and any enterprise other than with about 30 barristers is something new to me. This is not a final position; I am still learning about ICAC and seeing how it functions. My preliminary view is that I am partial to the appointment of a CEO. Where my concern arises is that we have excellent people heading the various divisions, but often we have to have a project that involves the coordination of a number of divisions and, in particular, the planned proactive group is a case in point. It is not just going to be the investigation; Mr Rangott's section will be fundamental for it and also Mr Koureas' section of the assessment section will be very important. With those very important projects, where a number of divisions are involved, to have somebody in a position of overview is important. I also think, for a lot of matters where I do not have the expertise and maybe our Chief Commissioner and Commissioner Rushton, who have come from a similar background, may not have expertise, a CEO may be of assistance. Although I take the Chief Commissioner's point that we are a relatively small organisation of only 102 employees, maybe something like a part-time CEO would be a good idea. I should echo the Chief Commissioner's view that this is no criticism of our current executive of corporate matters, but he has a particular role and fits in with the hierarchy in a particular way.

The CHAIR: This was raised earlier in relation to your approach to conducting investigations, when you said that we should have a much more proactive model rather than a reactive model. Is the funding and resourcing you have identified and that Mr Koureas explained to us, new funding that you would seek to adopt in relation to rolling out the new model?

Mr HALL: Yes, that is right.

The CHAIR: Is it the case that last week, when you spoke to the APSAC conference, you identified that the current level of resourcing from the New South Wales Government is more than adequate for your purposes?

Mr HALL: I was not addressing the whole of the budgetary requirements of the Commission. What I indicated was that the Commission acknowledged that there had been continuing support and, in particular, additional support in recent times. I did not go into the details as to what it was for, but I can do so.

In addition to the budgetary position, as the Committee would know, there have been special allocations from time to time to deal with particular investigations. It is that to which I was expressly referring, although not in terms of the fact that the Government has responded to our submission for additional funding on an allocation basis and it responded by granting our request as asked and not some lesser amount. That has enabled us to proceed with an important investigation. Without that additional funding we would not have been able to do it.

The CHAIR: Last week this Committee tabled in the Parliament a report relating to voluntary disclosures. I do not know whether you have had the opportunity to see that report, but one of the issues that arose in relation to it was the extent to which persons who make voluntary disclosures should receive protections in relation to the making of those disclosures. There was a concern of this Committee in relation to the potential damage to reputation and potential weaponising of ICAC for political purposes. It has been recommended that ICAC potentially form a view about how it would lessen the damage to people's reputation by virtue of the weaponising of ICAC. Do you have a view as to how you would deal with that issue?

Mr HALL: Yes. I have not read the report in detail—that is, the recent report of this Committee on protections for people who make voluntary disclosures—but I have read enough of it to understand the basis, and I have read all the recommendations made in the report. Against that background, turning to the specific question you have raised, I share the

concern that certain people, certain situations and particular local government areas use ICAC as a weapon without there being any opportunity to test the basis upon which the accusation or the alleged reporting has been made.

My only knowledge as to where this question has been looked at is, as I recall, in Queensland, and there was a report—I am assuming for a moment that it was the equivalent oversight body in Queensland, although I would need to check that and am prepared to do so—in which a proposal was put forward to Government to deal with this, and Committee members may be aware of it. My recollection is the thrust of the recommendations was that where, for example, in the course of the lead-up to a government election, a person refers to the fact that a third person has been reported to ICAC or to an equivalent body in Queensland, there be a three-month period within which it would be an offence to disclose that until, in other words, the three months has elapsed, giving the Commission the opportunity to assess whether there is any substance to the allegation. My information—and I cannot recall where I got it—is that that recommendation has not gone anywhere so far in Queensland. Why that is the case I do not know.

I think, Chair, that is the extent of my knowledge about it. I share the concern, as I have said. It should not occur. It seems now to be becoming commonplace for the person who is subject of a report to put in a report to ICAC against themselves, in effect, saying, "I've been accused of so-and-so and I want this inquired into." That seems to be the modern counter to the weaponisation approach. None of that is satisfactory and I think it should be an issue which would benefit from this Committee examining it. If it would be of any assistance, I will provide details as to that report in Queensland that I referred to.

The CHAIR: I think the recommendation contained in our report asks you to make recommendations!

Mr HALL: Happy to do so. We will take that on notice.

Mr RON HOENIG: Chief Commissioner, I return to the CEO issue. Several weeks ago the Australian published a story which emanated from a leak of conversations some Committee members had amongst themselves which, moderately accurately, probably described the mode of reasoning behind the appointment of a CEO and the amendment of the Act. The reasoning was that the commissioners have a determinative function and a fact-finding responsibility from the evidence to provide some mechanism of separation between the investigators and the fact-finding commissioners and probably to allow the commissioners to perform that role without regular personal contact with the investigators.

That is similar to the way in which judicial officers might operate, or where there are royal commissioners and roles of that nature the relationship between the investigators and the commissioner and counsel assisting is only a temporary one during the course of the royal commission, and where there it is an appointment for a five-year period and you are the supervisor of the investigators. Does not one run the risk of everybody being human, similar to ensuring that judges do not communicate with one counsel or anybody during a hearing? Are our concerns justified? After all, commissioners are appointed temporarily; there are successors after you.

Mr HALL: Your concerns are not justified, with respect. It is an interesting topic you have raised. I go back to square one, if I might—that is, where did this recommendation come from? I have not brought with me the particular report from the Department of Premier and Cabinet that produced the foundation report which in due course became incorporated by way of the amendments. I have read very carefully the relevant section dealing with the very matter you have raised. The report in that section refers to or uses the phrase "organisation

capture" or words to that effect. I was concerned to determine whether the author of the report was referring to the commissioners being captive of investigators or others, or whether it had a different meaning or intent—and it did have a different meaning or intent. If members read the report, they would see that what the author was saying was that the commissioners should concentrate on what they are there to do, which is to investigate and to carry out the other functions of the Act. They should not be caught up with administration and governance issues; they should be separate and should not be caught up in or captive to being distracted by dealing with all those administrative functions, of which there are many. They should be separated so that the CEO concentrates on the organisational and administrative issues and the commissioner or commissioners can concentrate on what they are there to do, that is, investigation work.

From my reading of the report—I invite members to read it—it had nothing to do with suggesting that the commissioners somehow could be captive of the investigation division within the Commission. It is wholly different, as Mr Hoenig and other members appreciate, from the judicial forum, where the judge remains aloof and has no contact with either party without both being present. Being an investigative organisation, all of the Commission's processes are geared to performing the functions of investigation and prevention and consultation between the commissioners and the investigators, and it has to be that way. I have regular communications and conferences with Mr Hoitink for obvious reasons.

The Commission's work is ongoing and it is teamwork. I find it wholly different from the background from which I came, including my almost 12 years on the Supreme Court. That was a solo operation; we operate solo at the bar. As a judge, although we are members of an institution, essentially we are working on our own cases. My experience of the Commission is wholly different; it is all about teamwork, and it must be. I must work closely with the investigators and take their advice, and I must give instructions on what I want them to do, and that is certainly true of Commissioner McDonald and Commissioner Rushton. I am not captive of anyone in the Commission.

Mr Hoitink acts on the basis that it is my call. All he does—which is a lot—is supervise his investigators to ensure that what they are doing is correct and that it is on target. He comes with enormous experience as an investigator, and I value his input in advising me in relation to each and every matter. There is no capture here at all; at the end of the day, I make the decisions as to whether we will or will not go down a certain path and I take responsibility for it. That is part of my function. Commissioner McDonald is in exactly the same position. There is no organisational capture of any of the Commissioners in the sense that we are captive to a group in the Commission, such as the investigators. We are not; the Commission's structure has always been based on the fact that we work as a team. I am not an investigator, or I have not been until taking up this position. We need specialists who are familiar with, for example, how and in what way we strategically employ covert powers to maximise the scope for obtaining evidence of corrupt conduct if it is occurring. That is their role, their skill and their experience, and I look to them for advice. However, as I said, at the end of the day, the call is mine, Commissioner Rushton's and Commissioner McDonald's.

I have taken the time to explain that because it is not a form of capture which the question suggested and which others have suggested. The CEO position was not established to act as a brake or a filter on the work of the commissioners in some way. That is not, and I do not believe it ever was, the intention. In my view, the perception that has been written about in certain media is wholly wrong. Having said that, I am confident that this Committee should have no concern about organisational capture. I am mindful of the dangers of any organisation that is of limited numbers having a small gene pool that can feed off itself. That could be bad

because it affects one's objective thinking about matters. That is inevitable with an organisation of this size, but it is certainly something of which I am ever mindful. I do not want to have a mindset that is not entirely my own.

Ms McDONALD: I think the Commission's new structure assists or acts against the form of organisational capture referred to by the very fact that Commissioner Rushton and I are part-time commissioners. We are still running prosecutions and defending people within the criminal justice system. We employ the same principles of fairness that are second nature when we are acting in that arena that we use when acting in our commissioner role. Given the way the three-commissioner model is functioning, there are obviously some decisions under the Act where the three of us have to have discussions and the majority decides.

For example, the public inquiry decision is not a decision that the investigators, the solicitors or the legal division make; it is a decision that the three of us will make when we sit down by ourselves and determine whether in the circumstances a public inquiry is appropriate, taking into account factors which the new Act raises about protection of people's reputations, adherence to procedural fairness and so on. Even moving away from the provisions in the Act requiring us to act together, the three of us regularly have meetings to discuss matters and we do that on the basis of appropriate conduct, principles et cetera. I think the three-commissioner model and the Chief Commissioner's background at the bar and then as a judicial officer for 12 years, and Commissioner Rushton and myself still being out there, in a sense, at the coalface, act against any possible organisational capture.

Reverend the Hon. FRED NILE: I have another question relating to your reports. In 2012-13 there was a decline in section 11 reports from public agencies such as the Ombudsman, the Commissioner of Police et cetera to the ICAC. In 2012-13, there were 756 section 11 reports, and in 2015-16 there were only 605. Is there any explanation of the decline, is the Commission doing anything to address it, and does it have any implications for corruption prevention in New South Wales?

Mr HALL: Yes. I can deal in part with that question. I have noted a decline in protected disclosures to the ICAC, and I think the annual reports reflect that decline for two years. Although I could not attend the committee meeting involving the Ombudsman, who is of course the oversight agency for protected disclosures, I had my delegate raise that issue with the committee to ascertain the reason. The response was that the decline in reporting to the ICAC by the Ombudsman under the protected disclosures legislation is not peculiar to the ICAC; it is more a general pattern that there has been a reduction in protected disclosures generally. I have been concerned and I am concerned about that decline. That form of protected disclosure is, of course, vital to the Commission.

I have read a recent report in the Federal arena that looked at some of the problems that can arise under disclosure legislation. Some of it is attributable to the fact that even senior officers within agencies and departments do not properly understand the legislation, and they do not have proper training programs for staff. If they do not understand it, there is little hope of those beneath understanding it. It is a very good report. It was in the Federal report. I cannot remember the title of it. I am sure it was a report made last year. It seems to me that more needs to be done. I have been impressed with the vigour with which IBAC has pursued protective disclosures in Victoria. IBAC, unlike New South Wales, is the oversight agency for their protective disclosure legislation. It has conducted many seminars and training programs to overcome the sort of problems I have indicated. It will be a matter that I will certainly be taking up with the new Ombudsman, who is due to be appointed shortly, as I understand it. I would like to see whether more can be done in respect of informing people as to how the legislation works and how people should be responding, and also sending the message that

people should be encouraged to do this as part of their duty. They should not be regarded as stepping out of line from their fellow workers. If they see something, they should report it, to encourage people to understand the purpose behind the legislation so that there is proper reporting.

Reverend the Hon. FRED NILE: Section 11 is not only the Ombudsman.

Mr HALL: No.

Reverend the Hon. FRED NILE: It is the Commissioner of Police.

Mr HALL: That is true, yes.

Reverend the Hon. FRED NILE: All Ministers of the Crown, et cetera.

Mr HALL: Yes. I am afraid I am not in a position to answer for other agencies. However, if I could take that on notice we will see if we can provide a more detailed answer for you.

Reverend the Hon. FRED NILE: Thank you.

Mr HALL: I accept it is an area of concern. Mr Rangott, who is the director of our Corruption Prevention Division within the Commission, may be in a better position to supply more information. If it is acceptable to you, I will ask him to respond.

Mr RANGOTT: Reverend Nile, the section 11 complaints are of a class where the reporting CEO, the head of the agency, has formed a reasonable suspicion there may be corrupt conduct. A fall in those types of reports is arguably a good thing. In any case, we would expect some natural statistical variation throughout the years, which might account for some of that difference. The other thing we find from time to time is that those section 11 reports are driven by complaint patterns within agencies. In turn, they are sometimes driven by the amount of publicity that the ICAC gets and the amount of attention that is given to corruption issues within an agency, within the public sector. They tend to wax and wane a little bit with the attention that some of our major public inquiries are receiving. That may explain some of the difference, but as the Chief Commissioner said, we will investigate further and provide you with more detail.

Mr PAUL LYNCH: Is it perhaps the case that one of the reasons there might have been a fall in reports is the change of the definitions "corrupt behaviour" and "corrupt conduct"? There has been a bit of publicity saying that ICAC no longer has jurisdiction over everything; it can only be serious matters. Does that perhaps lead you to suspect that fewer complaints are being made because of that?

Mr HALL: Yes, that does tend to affect the position that has happened in several States. Victoria is certainly one of them where less serious matters have been hived off and are now dealt with by their other integrity agency and the emphasis in the Act of serious and systemic corruption and not other lower forms of corruption could very well account for that. I think it has been reflected in the statistics, as I recall, of other commissions, although I cannot be precise about that. It does reflect the fact that the jurisdiction is seen to be dealing with the heavier forms of misconduct or corruption.

The CHAIR: One of the issues that we asked you to look at was the relationship between yourself and the Inspector. Tell us how that relationship has evolved. Is there a memorandum of understanding [MOU] in place between you and the Inspector as to how that relationship is fostered?

Mr HALL: We recently revised the MOU with the Inspector and provided it to him with some suggested changes. He replied to that. I cannot remember when but it was not that long

ago. Apart from picking up on two typos he embraced the revised memorandum with the new substantive provisions in it. It was at the time of discussions about the MOU that I proposed to the Inspector that we have, if he saw any sense in it, a get-together on a quarterly basis or, alternatively, if he would prefer to do it on an ad hoc basis, that is to say periodic meetings to discuss matters concerning either of us or involving either the Commission or his office. He responded positively and proposed that we meet in December, so there will be a meeting with the Inspector.

The Inspector has referred to us a number of historic matters that he has been asked to investigate and he has sent those matters to us. They are being progressively looked at. From my perspective the relationship has been wholly productive. It is a good relationship, as I anticipated it would be. The Inspector has a very good understanding of course as to the Commission, its functions, of the legislation, and I have indicated to him that from my point of view it is a completely open door so far as he is concerned and to make contact with me any time that he wishes to. To answer your question, all is well in our relationship.

The CHAIR: I have a question about time limits. What would be the expectation of the Commission for finalising a complaint? What is the general time frame from first receiving the complaint and then dealing with it by way of a preliminary inquiry to its finalisation?

Mr HALL: I am afraid I cannot answer that in respect of any actual statistics. I think there are some statistics that we keep that would give a better idea as to what the timeline is. If I could take on notice that question, we will supply it. Perhaps Mr Hoitink, being head of investigations, might be in a position to say something.

The CHAIR: I will give some background to the question. Often the public are aware of a substantive matter that ICAC is investigating and there has never been, or appears not to have been, a public finalisation of that matter. Either the matter may well have been disposed of and no-one knows that it has been disposed of or it is ongoing. I am interested, generally, what the process is for investigations starting and when a result would be anticipated or completed.

Mr HOITINK: Ideally our key performance indicators are around the 16-month mark once an investigation comes in. We look at limiting an investigation to a period of 120 days. Within that 120 days the matter is assessed. If the panel decides that it goes on to an investigation, we look at a period of 16 months. That obviously relates to particular matters. There may be some matters that would extend beyond that period based on the complexity of the matter.

The CHAIR: When a matter is resolved or finished, is the complainant and the person complained of notified in relation to the decision which has been reached by the Commission?

Mr WALDON: I might answer that. It rather depends. The complainant would probably be notified. The person who is complained against, if they know they were complained against, either because the complainant has made that public or someone else has made it public, or they have been interviewed by us and we have asked them questions so they know they have been investigated, will, as a matter of course, be written to and told that the investigation has now been finalised. If someone does not know that they were the subject of an investigation then we prefer not to enlighten them at that stage, we do not tell them.

Reverend the Hon. FRED NILE: Commissioner, I note in your reports over a number of years that the ICAC's assessment panel has made fewer decisions to investigate matters in the last three reporting periods—the decrease is almost 50 per cent. In 2013-14 there were 76 decisions to investigate and in 2015-16 it decreased to only 41. Is there any explanation for

that, as to the decrease in the number of matters ICAC decides to investigate? Has there been some change in ICAC's assessment panel's operation or the terms of reference?

Mr HALL: I know it is variable and it does depend on a number of matters. Our director of assessments is here today. He is in a position to give some evidence, I think, as to his perception as to the way in which that trend has occurred and, with your leave, I could ask him to address that.

The CHAIR: He is not sworn. Can you take it on notice?

Mr HALL: I will take that on notice and come back to you with some more precise statistics and also explanations as to why there has been a fewer number of decisions going to investigators.

The CHAIR: I might run through a few issues that have been raised in relation to the report. In 2015-16 the ICAC had four new training workshops on offer. What spurred the creation of those four new training workshops and what has the feedback been like?

Mr HALL: Can I ask Mr Rangott to answer that?

Mr RANGOTT: That decision predates my term at the Commission, but I understand that it was an attempt to broaden the offering of educational products that were available and were quite successful but fairly standard one-size-fits-all training workshops. For some reason it was an attempt to explore areas such as town planning, for instance, which is something that comes on our radar from time to time. Some of our standard offerings are the ones that get the most attendees, but to date we have had some pleasant feedback from these workshops as we have delivered them.

The CHAIR: In the same period, you had 68 speaking engagements. How do they come about?

Mr RANGOTT: Typically we will be contacted by an agency. It is very common for an agency to contact us; they might be conducting their own ethics training or corruption prevention initiative, and they might ask us to contribute by making some sort of a presentation or giving an address. They typically are initiated from senior managers in the public service.

The CHAIR: I take it you would be fairly receptive to those applications for speaking engagements.

Mr RANGOTT: Indeed.

The CHAIR: In 2014, the Commonwealth Ombudsman inspected the ICAC's stored communication warrants and the preservation of those and found the ICAC compliant except for one minor issue. What was that minor issue?

Mr HALL: I am not in a position to respond to that question. I am not sure whether Mr Hoitink is, otherwise I will need to take that on notice.

The CHAIR: And perhaps the manner in which it was rectified.

Ms TANIA MIHAILUK: Commissioner, going back to your introductory statement, in your statement you made clear that there are a number of matters; there is obviously a backlog in ICAC, and that next year you will be making a decision, together with the other commissioners, on which matters would require public hearing and which order. I now appreciate that the legislation enables the Commission to have more options. My only concern with that is the perception that may transpire in the future that ICAC is not being seen as undertaking enough public inquiries. I raise this because obviously we know what kind of year

we have had in the last 12 months, but I think it is something for the Commission to think about. I am making this more of a statement rather than a question, but I am concerned about that for the future and for the reputation of ICAC.

Mr HALL: The question of public hearings keeps coming up as the important issue. At the APSAC conference last week, at the closing session the commissioners present from Queensland, Victoria, Tasmania and myself were all asked to address it. The approach taken, of course, was driven by the different legislation in those States, in particular Tasmania. There were varied responses as to the approach taken to public inquiries. There was support, I might say, from two of the commissioners for the power to conduct public hearings and inquiries. In my response I indicated that public hearings, like many issues, have their upsides and downsides. The upsides include the fact that it does bring to the community notice and corruption is exposed—what I would describe as the deterrence value of the nature of the corruption then exposed in the public arena, to encourage people who would not otherwise come forward to the Commission to do so when they see a matter being dealt within a public inquiry.

The Act itself does address functions of the Commission to expose corruption, and public hearings can be a proper way in which to expose corrupt conduct. Apart from the general arguments for, and, of course there are others against, in particular the risk of damage to reputation, that is avoidable. There are a number of other issues which I sought to address in the conference last week; they include, in my view, the decision that has to be made at the beginning as to whether there is any investigative value in having a public inquiry. Once that question has been answered, and it is answered in the affirmative, then a public inquiry should be a balanced and an objective inquiry; it should on no account, in my view, turn into what some people refer to as a show trial. But if conducted responsibly and properly in a balanced manner, there is a safeguard that it will only be conducted in public in a way in which it does not needlessly damage reputations for those involved in some shape, manner or form in corrupt conduct—the damage, of course, associated with their own wrongdoing as proved by cogent evidence.

My answer, in summary, is there is a need for public inquiries, they do serve a useful purpose in many different respects. They must be conducted responsibly and, if they meet all those tests, community confidence in the functioning of the ICAC will be maintained and enhanced. I understand the concern you have for public inquiries and hearings, and whether there is in fact enough of them or whether there are too many of them. I think each case has to be evaluated according to the requirements of the Act. Some of these issues that need to be addressed before an inquiry is decided upon do not lend themselves to ready answers and do require the input of the three commissioners, who I am sure will have different perspectives on some issues relevant to whether or not there should be a public inquiry. I am not sure if I have answered your question.

Ms TANIA MIHAILUK: That is very good.

The CHAIR: One of the things that you do is prepare a strategic plan, which is on the website. In view of the observations you have made here today, I take it that that strategic plan will be amended—is that proposed?

Mr HALL: I am not sure that it will need to be amended, but I need to look at it. I have not read it in recent times. If it did not accord with the present requirements of the Act then it would need to be changed.

The CHAIR: It might reflect, for example, a different emphasis that the Commission is adopting in relation to proactive investigations of corrupt behaviour.

Mr HALL: Yes, and certainly it would be the subject of the annual report, as IBAC does and Western Australia does. But, as I have indicated, we will not be up and running with that until the first half of next year. I accept that those sorts of changes should be made.

Mr MARK TAYLOR: Chief Commissioner, you indicated that you believed you had the power for own motion inquiries. You are using this at the start about your proactive strategy. Is it the case that you believe you have the current powers to conduct proactive investigations?

Mr HALL: Yes.

Mr MARK TAYLOR: Are you satisfied with the powers that you have?

Mr HALL: Yes.

Mr MARK TAYLOR: In order to reassure the community, is it possible for you to put in layman's terms your idea of proactive investigations? How do proactive investigations differ from fishing expeditions or random audits of agencies?

Mr HALL: It requires collecting data from a very large number of sources. The reliability of the data is put through analysis to determine whether or not it is material that is relevant. It is not a fishing expedition in the sense of it being limited to trying to get evidence on the subject matter, the objective of which is unknown. I think I have emphasised that the sort of information which would be obtained can be obtained by way of survey or from different agencies and is information obtained from the source—that is, those people whose organisation you are examining. You and I would expect that the executives of such agencies would welcome the examination of their systems by the ICAC for their own protection and would be willing participants, as has been the case interstate in this sort of exercise.

The surveys that have been undertaken both in Western Australia and Victoria, which have been extensive throughout the public sectors in both States, were designed to identify what controls those agencies have and whether there are any gaps in them. It was emphasised in their report that it was not to be taken as a judgement as to the adequacy of the agency or to level some criticism on them. It was simply a fact-finding exercise, and that was explained to the agencies. As I understand it, the interstate agencies were almost uniformly cooperative and willing to support. I am talking about the intelligence data there so far as the particular agency or departments of government rather than personal conduct of individuals. It is not a fishing expedition; it is really a fact-finding operation. That will support the corruption prevention function of the Commission and aid in the assessment of investigations. Being able to mine and access the data you already hold, which at the moment cannot be fully accessed, has obvious advantages of drawing and linking associations between people in relation to relevant matters. I do not see that as fishing.

As I have indicated, there are some investigations in which it is very difficult to get firsthand evidence of corrupt conduct. It is only through the use of our covert powers used strategically in the ways that are employed that we can construct, almost mosaic-like, piece by piece, a case of corrupt conduct. The more worthwhile information you have, obviously the easier it is to build the mosaic. I do not see that this is equivalent to perhaps a mischievous fishing expedition which sometimes can be conducted in certain quarters. It is really quite targeted. It is intended to produce an overview and some detailed drilling down into various scenarios to better direct resources, should they be implied, in certain areas where there are procurement risks, or in other areas of local government.

In other words, part of the rationale or objective is to ensure the resources are being targeted to where they are most needed in terms of the efficiency and use of limited resources from

government in all States. It paints the landscape and gives us direction as to where to go. In an operational sense, as I have indicated, in certain classes of investigations where there is ongoing corrupt conduct, it permits an early intervention use of our powers. All of that must be a good thing and it must enhance the capacity of the Commission. I cannot see it would in any way attract criticism.

The CHAIR: It has been a very worthwhile discussion. The Committee appreciates the work that you have put into preparing for today. It has been enlightening for us to hear the way that you and your assistant commissioners have approached your new roles. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. The replies to those questions will form part of the evidence and be made public. Would you be happy to provide written replies to any further questions within five business days?

Mr HALL: Yes, we will do that.

The Hon. TREVOR KHAN: Is that enough time?

The CHAIR: I am in your hands, if you need more time—

The Hon. TREVOR KHAN: Taking into account the time of the year, I do not think it is time critical.

The CHAIR: It is not time critical.

The Hon. TREVOR KHAN: Can they be allowed 14 days?

The Hon. LYNDA VOLTZ: Yes, 14 days.

The CHAIR: Fourteen days will be fine.

Mr HALL: Thank you, that would be appreciated. If there is a need for further time in relation to any matter, we will advise.

The Hon LYNDA VOLTZ: You can always ask.

Mr HALL: Thank you for the extra 14 days.

The CHAIR: Thank you very much. That concludes the public hearing today. I place on record my thanks for the work that you have done.

Appendix Three – Extracts from Minutes

MINUTES OF MEETING No 29

9:08am, 15 September 2017
Jubilee Room, Parliament House

Members Present

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Revd Nile and Mr Taylor.

Officers in Attendance

Jason Ardit, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

1. Apologies

Apologies were received from Mr Humphries, Ms Mihailuk and Mr Patterson.

2. ***

3. ***

4. Inquiry to review the 2014-15 and 2015-16 Annual Reports of the ICAC

The Committee considered when to conduct hearings to review the 2014-15 and 2015-16 annual reports of the ICAC.

Discussion ensued.

The Committee noted that where public hearings are held on a sitting week, Fridays from 10am onwards are often the most suitable.

The Committee deferred its consideration of when to conduct hearings for the review.

5. ***

6. ***

7. ***

8. Public Hearing – Inquiry into protections for people who make voluntary disclosures to the ICAC

At 10:29am, the Chair declared the public hearing open and witnesses and the public were admitted. Mr Lynch had arrived during the morning tea adjournment, and Mr Khan had departed.

9. Resumption of deliberative meeting

9.1 Inquiry to review the 2014-15 and 2015-16 Annual Reports of the ICAC

The Committee reconsidered when to conduct hearings to review the 2014-15 and 2015-16 annual reports of the ICAC.

Resolved, on the motion of Mr Taylor:

- That the Committee conduct an inquiry to review the 2014-15 and 2015-16 annual reports of the ICAC;
- That the Chair write to the ICAC inviting ICAC witnesses to a public hearing in October 2017;
- That the Chair issue a media release announcing the inquiry.

9.2 ***

10. Next meeting

The Committee adjourned at 12 noon, until 19 September 2017 at 1pm.

MINUTES OF MEETING No 30

1:06pm, 19 September 2017
Room 1254, Parliament House

Members Present

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Ms Mihailuk (from 1:11pm), Revd Nile, Mr Patterson (from 1:09pm), Mr Taylor.

Officers in Attendance

Jason Arditi, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

1. Apologies

Apologies were received from Ms Voltz.

2. Confirmation of Minutes

Resolved, on the motion Mr Taylor, seconded by Mr Khan:

That the draft minutes of meeting no 29, held on 15 September 2017, be confirmed.

3. ***

4. ***

5. ***

6. General business

Mr Hoenig noted the ICAC Chief Commissioner's evidence at the Committee's 15 September public hearing for its voluntary disclosures inquiry, that he is considering whether to appoint a

Chief Executive Officer in accordance with s104 of the *Independent Commission Against Corruption Act 1988*.

Discussion ensued.

The Committee noted there will be opportunity to further examine the matter at the Committee's public hearing to review the ICAC's 2014-15 and 2015-16 annual reports.

7. Next meeting

The Committee adjourned at 1:12pm until a date and time to be determined.

MINUTES OF MEETING No 31

1:02pm, 14 November 2017
Room 1254, Parliament House

Members Present

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Mr Lynch, Ms Mihailuk, Revd Nile, Mr Taylor and Ms Voltz.

Officers in Attendance

Jason Arditi, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

1. Apologies

An apology was received from Mr Humphries.

2. Confirmation of Minutes

Resolved, on the motion Mr Taylor, seconded by Mr Provest:
That the draft minutes of meeting no 30, held on 19 September 2017, be confirmed.

3. Correspondence

The Committee considered the following items of correspondence sent:

- a. Letter to Hon Peter Hall SC, Chief Commissioner, ICAC, dated 20 September 2017, inviting ICAC witnesses to a public hearing to review the ICAC's 2014-15 and 2015-16 annual reports.
- b. ***

The Committee also considered the following items of correspondence received ***

- a. Letter from Hon Peter Hall SC, Chief Commissioner, ICAC, dated 22 September 2017, advising of the ICAC witnesses to appear at the Committee public hearing on 16 October 2017.
- b. ***
- c. ***
- d. ***

e. ***

Resolved, on the motion of Mr Khan, seconded by Mr Hoenig:

- That the correspondence be noted.
- ***

4. ***

5. ***

6. ***

7. Next meeting

The Committee adjourned at 1:23pm until Monday 20 November 2017 at 10am.

MINUTES OF MEETING No 32

10:06am, 20 November 2017
Room 814-815, Parliament House

Members Present

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Mr Khan, Mr Lynch (from 10:10am), Ms Mihailuk (from 10:09am), Revd Nile (from 10:09am), Mr Taylor and Ms Voltz.

Officers in Attendance

Jason Arditi, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

1. Apologies

Apologies were received from Mr Humphries and Mr Patterson.

2. Confirmation of Minutes

Resolved, on the motion Mr Provest, seconded by Mr Hoenig:
That the draft minutes of meeting no 31, held on 14 November 2017, be confirmed.

3. ***

4. Inquiry to review the 2014-15 and 2015-16 Annual Reports of ICAC

The Committee considered standard resolutions for the conduct of its public hearing on Monday 20 November 2017, for the inquiry.

Resolved, on the motion of Mr Hoenig, seconded by Mr Provest:

- That the Committee conduct a public hearing on 20 November 2017, for its inquiry to review the 2014-15 and 2015-16 Annual Reports of the ICAC;
- That the Committee take evidence from witnesses from the Independent Commission Against Corruption;

- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 20 November 2017;
- That the Chair send questions on notice to witnesses following the public hearing on 20 November 2017 as required;
- That the Committee secretariat publish the answers to any questions taken on notice at the public hearing on 20 November 2017 on the Committee's webpage;
- That the Committee secretariat publish the transcript of evidence taken at the public hearing on 20 November 2017, after making corrections for recording inaccuracy, on the Committee's webpage.

5. General Business

Ms Mihailuk and Revd Nile arrived at 10:09am, and Mr Lynch arrived at 10:10am.

6. Public Hearing – Inquiry to Review the 2014-15 and 2015-16 Annual Reports of the ICAC

At 10:15am the Chair declared the public hearing open, and witnesses and the public were admitted.

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

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

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

Mr Lewis Rangott, Executive Director, Legal Division, Independent Commission Against Corruption was affirmed and examined.

Mr John Hoitink, Acting Executive Director, Investigations Division, Independent Commission Against Corruption was sworn and examined.

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

The Chief Commissioner made an opening statement.

At 12:02pm, the evidence of the witnesses concluded, and the witnesses withdrew.

At 12:02pm, the public hearing concluded, and the public withdrew.

7. Next meeting

The Committee adjourned at 12:02pm until a date and time to be determined.

MINUTES OF MEETING No 33

1:03pm, 8 March 2018

Room 1136, Parliament House

Members Present

Mr Tudehope (Chair), Mr Provest (Deputy Chair), Mr Hoenig, Ms Mihailuk, Revd Nile, Mr Patterson and Ms Voltz.

Officers in Attendance

Jonathan Elliott, Elspeth Dyer, Jacqueline Linnane and Millie Yeoh.

1. Apologies

An apology was received from Mr Humphries.

2. Confirmation of Minutes

Resolved, on the motion Mr Provest, seconded by Revd Nile:

That the draft minutes of meeting no 32, held on 20 November 2017, be confirmed.

3. ***

4. Inquiry to review the 2014-15 and 2015-16 Annual Reports of the ICAC – Report Consideration

The Committee noted the Chair's draft report, *Review of the 2014-2015 and 2015-2016 Annual Reports of the ICAC*, distributed to members by email on 27 February 2018.

Resolved, on the motion of Mr Patterson, seconded by Revd Nile:

That the Committee consider the Chair's draft report, *Review of the 2014-2015 and 2015-2016 Annual Reports of the ICAC, in globo*.

Chair's draft report put, *in globo*.

Resolved, on the motion of Revd Nile, seconded by Mr Patterson:

That the Committee adopt the Chair's draft report and that it be signed by the Chair and presented to both Houses.

Resolved, on the motion of Mr Provest, seconded by Revd Nile:

- That the Committee authorise the Secretariat to make appropriate final editing and stylistic changes as required.
- That once tabled the report be published on the Committee's webpage.
- That the Chair issue a media release announcing the tabling of the Committee's report, for dissemination by the Committee Secretariat.

5. ***

6. ***

7. Next meeting

The Committee adjourned at 1:08pm until a date and time to be determined.

Appendix Four – Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INDEPENDENT COMMISSION AGAINST CORRUPTION
AND
THE INSPECTOR
OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

This Memorandum of Understanding ("MOU") is made on the *2nd* of November 2017 between the Independent Commission Against Corruption ("the Commission") and the Inspector of the Independent Commission Against Corruption ("the Inspector").

1. BACKGROUND

- 1.1 The Inspector's role was created by the provision of the *Independent Commission Against Corruption (Amendment) Act 2005* which inserted Part 5A into the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). The relevant provisions commenced operation on 1 July 2005.
- 1.2 The principal functions of the Inspector are set out in section 57B of the ICAC Act:
1. *The principal functions of the Inspector are:*
 - a) *to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*
 - b) *to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and*
 - c) *to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and*
 - d) *to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*
 2. *The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to*

the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

3. *The Inspector is not subject to the Commission in any respect.*
4. *For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:*
 - a) *contrary to law, or*
 - b) *unreasonable, unjust, oppressive or improperly discriminatory, or*
 - c) *based wholly or partly on improper motives.*
5. *Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:*
 - a) *make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and*
 - b) *provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any affected person.*

1.3 Section 57C of the ICAC Act sets out the powers of the Inspector and provides as follows:

The Inspector:

- a) *may investigate any aspect of the Commission's operation or any conduct of officers of the Commission, and*
- b) *is entitled to full access to the records of the Commission and to take or have copies made of any of them, and*
- c) *may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and*
- d) *may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operation or any conduct of officers of the Commission, and*

- e) *may investigate and assess complaints about the Commission or officers of the Commission, and*
- f) *may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and*
- g) *may recommend disciplinary action or criminal prosecution against officers of the Commission.*

2. PURPOSE

- 2.1 To set out arrangements for liaison between the Commission and the Inspector concerning referral of matters, access to information and points of contact between both agencies.

3. INTENT

- 3.1 The Commission undertakes to co-operate fully and frankly with the Inspector and his staff in order to assist the discharge of the Inspector's functions under the ICAC Act.

4. LIAISON

- 4.1 The primary point of liaison will be between the Inspector and the Chief Commissioner.
- 4.2 The Inspector and the Chief Commissioner agree to meet periodically, to discuss relevant issues and raise any matters touching on the Inspector's functions and the conduct of the Commission. Both the Inspector and the Chief Commissioner will keep their own short notes of these meetings.
- 4.3 If the Inspector or his staff need information or material or to inquire of the Commission regarding a complaint or other matter touching on the conduct of the Chief Commissioner or other Commissioner, this will be referred to the Chief Commissioner in the first instance. In the absence of the Chief Commissioner or of another Commissioner, such inquiry will be directed to the Solicitor to the Commission.

- 4.4 For any other matters arising from the Inspector's functions, general inquiries, or requests for information and material etc, liaison shall occur between the Inspector's staff and Commissioner McDonald or Commissioner Rushton. In the absence of a Commissioner, such inquiry will be directed by the Inspector's staff to the Solicitor to the Commission.
- 4.5 Where the Inspector and/or his staff wish to interview any of the Executive Directors of the Commission in connection with a complaint, the Chief Commissioner will be notified wherever possible.
- 4.6 Where the Inspector and/or his staff wish to interview any staff of the Commission in connection with a complaint, Commissioner McDonald or Commissioner Rushton will be notified wherever possible.
- 4.7 The Commission acknowledges however, there may be occasions where the Inspector and his duly authorised staff may need to act unilaterally without prior notification as outlined in paragraphs 4.5 and 4.6.
- 4.8 Written correspondence from the Commission to the Inspector will be addressed to the Inspector and marked "Private and Confidential" c/-;

Office of the Inspector of the Independent Commission Against Corruption
GPO Box 5341
SYDNEY NSW 2001

Or by email to oiicac_executive@oiicac.nsw.gov.au

Or such other address as the Inspector may advise.

5. NOTIFICATION OF COMPLAINTS OF MISCONDUCT BY THE COMMISSION TO THE INSPECTOR

- 5.1 The Commission (usually through the Solicitor to the Commission) will notify the Inspector of matters which come to its attention which involves conduct of an officer of the Commission that comes within the principal functions of the Inspector.

- 5.2 Unless urgent and requiring immediate attention, in which case oral communication will be provided to the Inspector as soon as possible to be subsequently confirmed in writing, all such matters will be communicated to the Inspector by way of written notification.
- 5.3 Unless the Inspector decides to deal with the matter directly, the Commission will keep the Inspector informed of what action it takes with respect to each matter.
- 5.4 The Commission will make information concerning the Inspector's role and functions publicly available to complainants. This includes:
- a) having appropriate information about the Inspector and links to the Inspector's website on the ICAC webpage;
 - b) where a determination is made not to investigate a complaint, further advise the complainants of the basis upon which they may be able to pursue a complaint with the Inspector and provide the Inspector's contact details.
- 5.5 Furthermore, where requested, Commission officers will provide any persons with the contact details for the Inspector as per the address details in paragraph 4.8 and/or the Office of the Inspector's general telephone number of (02) 9228 5260.

6. REGULAR PROVISION OF INFORMATION TO THE INSPECTOR

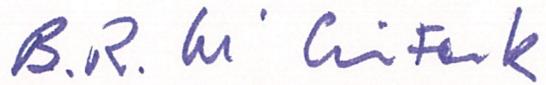
- 6.1 The Chief Commissioner will arrange for a copy of the monthly Investigations Management Group (IMG) reports to be provided to the Inspector as soon as possible after each IMG meeting. Certain information in the IMG reports relating to telecommunications interception may be redacted to comply with the requirements of the *Telecommunications (Interception and Access) Act 1979*.
- 6.2 The Manager Assessments will provide the Inspector with a quarterly report setting out the number of matters received by the Commission during the quarter, a breakdown of the matters (including complaints by Government sector and Government function), the number of matters escalated to investigation and the number or current operations.

7. **REVIEW**

7.1 This MOU may be reviewed at any stage at the request of either party but in any event shall be reviewed no later than 24 months from the date of the MOU.



The Hon. Peter Hall QC
Chief Commissioner of the ICAC



Bruce McClintock SC
Inspector of the ICAC

