

Committee on the Independent  
Commission Against Corruption



PARLIAMENT OF  
NEW SOUTH WALES

# Review of the 2020-2021 Annual Reports of the ICAC and the Inspector of the ICAC



Report 5/57 – October 2022

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

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# Membership

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## Chair's foreword

This report by the Joint Committee on the Independent Commission Against Corruption (ICAC) is a review of the 2020-21 annual reports of the ICAC and the Inspector of the ICAC. It reviews matters arising from the annual reports and other matters raised during the public hearing held in May 2022.

The Committee's report has two chapters. The first chapter looks at the operations of the ICAC focusing on key issues including: a funding model, the three-Commissioner model, staggering the Commissioners' and Inspectors' terms, reporting timeframes, restrictions on the ICAC's access to encrypted telecommunications, and its information handling practices. Other issues discussed include responses to the ICAC's recommendations, the mental health of witnesses, proceeds of crime and the ICAC's operations during COVID-19.

The second chapter covers the work of the Inspector of the ICAC with topics including the relationship between the Inspector and the ICAC, the Inspector's audit function, the gap in the Inspector's powers under the *Telecommunications Interception and Access Act 1979* (Cth) (TIA Act), and the length of the Inspector's term.

### **Independent funding model for the ICAC**

The Committee acknowledges the progress made on the funding model since the last reporting period. However, evidence given at the public hearing by the former Chief Commissioner, and at Budget Estimates by the Auditor General, indicates that there is still concern about aspects of the model. The Committee will continue to monitor the development and implementation of the new funding model and expects that the model will be reviewed to ensure it is working appropriately.

### **The three-Commissioner model and terms of the Commissioners and the Inspector**

At the hearing, the Committee heard feedback from the former Commissioners and the former Inspector about the three-Commissioner model. They expressed concerns about the functionality of the three-Commissioner model including unnecessary duplication of work; however, the Committee acknowledges that there were differing views about the best alternative solution. The Committee recommends that the Government review the existing three-Commissioner model to determine if it is the most appropriate solution for managing the workload and resourcing of the ICAC.

The Committee also recommends that consideration be given to staggering the terms of the Commissioners, the Chief Commissioner and the Inspector to prevent loss of institutional knowledge at the changeover of terms.

### **Reporting timeframes**

The timely production of reports has been an issue of concern to the Committee. For example, the recent inquiry, *Reputational impact on an individual being adversely named in the ICAC's investigations*, found that lengthy reporting timeframes can have a significant impact on the mental health, reputation and job prospects of individuals who are being investigated.

In this review, the Committee found that current staffing levels may impact the time taken to produce reports. The issue of whether time standards should be introduced for finalising reports will be examined in the Committee's current inquiry, *Review of aspects of the Independent Commission Against Corruption Act 1988*.

### **Access to encrypted telecommunications under the TOLA Act**

The Committee looked at the issue of access to encrypted telecommunications under the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (TOLA Act). The TOLA Act compels communications service providers to assist police and other law enforcement agencies with access to encrypted communications; however, this does not apply to the ICAC. The ICAC has expressed concern to the Commonwealth Government but with little progress.

The Committee shares the concerns of the former Chief Commissioner and the former Inspector that the gap in the ICAC's powers under the TOLA Act limits the ability of the ICAC to perform its functions effectively in an environment where communications are increasingly encrypted. The Committee recommends that the NSW Government update the Committee on any representations it has made or intends to make to the Commonwealth Government on this issue.

### **The Inspector of the ICAC**

The Committee heard evidence about the gap in the Inspector's powers under the TIA Act, which prevents the Inspector from accessing phone taps for the purpose of carrying out routine audits. There appears to be progress being made on this issue at a Commonwealth level through reforms to electronic surveillance legislation. The Committee will continue to monitor developments.

The Committee also heard evidence that the oversight of the ICAC may benefit from an Inspector who is able to help facilitate the transition between Commissioners and ensure that issues of ongoing concern are addressed. Accordingly, the Committee recommends that the Government consider allowing the Inspector to serve a maximum of two terms.

The role and powers of the Inspector will be examined further in the Committee's *Review of aspects of the Independent Commission Against Corruption Act 1988*.

### **Contributions of the ICAC Commissioners and the Inspector**

The Committee is especially pleased to hear of the continuing adaptations made by the ICAC and Inspector's offices, allowing their valuable work to proceed during COVID-19.

The Committee also congratulates the outgoing Chief Commissioner, the Hon. Peter Hall KC, the part-time Commissioners, Ms Patricia McDonald SC and Mr Stephen Rushton SC, and the Inspector of the ICAC, Mr Bruce McClintock SC, on the critical work they have delivered during their tenure, including the important work of guiding the ICAC through the pandemic period.

The Committee welcomes the ICAC's new Chief Commissioner, the Hon. John Hatzistergos AM, and the new Inspector, Ms Gail Furness SC. The Committee also looks forward to working with

the incoming Commissioners, the Hon. Helen Murrell SC and the Hon. Paul Lakatos SC.

I thank the inspector, the ICAC Commissioners and senior staff from the ICAC for participating in this inquiry. I also thank my fellow Committee Members for their diligence and input, and, finally, I thank the Legislative Assembly Committee staff for their hard work.



**The Hon. Leslie Williams, MP**  
Chair

## Findings and recommendations

Finding 1 _____	1
The Committee acknowledges the progress made on the funding model with an expectation that it be reviewed to ensure it is working appropriately.	
Finding 2 _____	1
The Committee will continue to monitor the development and implementation of the new funding model.	
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That the Government review the existing three-Commissioner model.	
Recommendation 2 _____	8
That the Government consider whether the terms of the ICAC Commissioners and the Inspector should be staggered.	
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The gap in the ICAC's powers under the <i>Telecommunications and other Legislation Amendment (Assistance and Access) Act 2018</i> (Cth) limits the ability of the ICAC to perform its functions effectively in an environment where communications are increasingly encrypted.	
Recommendation 3 _____	8
That the NSW Government update the Committee on any representations it has made or intends to make to the Commonwealth Government regarding the ability of the ICAC to access encrypted telephone communications.	
Recommendation 4 _____	10
That the ICAC update the Committee on the outcome of its review of its information handling practices.	
Finding 4 _____	12
Staffing levels may impact the time required to produce reports.	
Recommendation 5 _____	19
That the Government consider amending the <i>Independent Commission Against Corruption Act 1988</i> to allow an Inspector to serve a maximum of two terms.	



# Chapter One – ICAC

## Progress on funding model

### Finding 1

**The Committee acknowledges the progress made on the funding model with an expectation that it be reviewed to ensure it is working appropriately.**

### Finding 2

**The Committee will continue to monitor the development and implementation of the new funding model.**

- 1.1 The Committee acknowledges that funding, and specifically, an independent funding model, has been an ongoing issue of concern for the Independent Commission Against Corruption (ICAC). The Committee also continues to support, in principle, an independent funding model, and is pleased to see that progress has been made on the model during this reporting year.
- 1.2 However, the Committee acknowledges that the new model may not completely address issues raised by the ICAC and the Auditor-General and that some details still need to be clarified.
- 1.3 A detailed history of the funding model is set out in previous annual review reports, including the Committee's 2019-2020 annual review.<sup>1</sup> For context, a brief history of key developments relating to the funding model is set out below.
- 1.4 In 2020, to outline its ongoing concern and desire for change, the ICAC produced a special report, *The need for a new independent funding model for the ICAC*, discussing the ICAC's independence, problems with current funding arrangements and aspects of a proposed new model.<sup>2</sup>
- 1.5 In October 2020 the Audit Office of NSW then released a report, *The effectiveness of the financial arrangements and management practices in four integrity agencies*, with the ICAC being one of the four agencies reviewed.<sup>3</sup>
- 1.6 The Audit Office report flagged several concerns around the funding process of integrity agencies, including the ICAC. The Audit Office ultimately recommended that the Government should implement a funding model for the integrity agencies, including the ICAC, which addresses potential threats to their independence. This

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<sup>1</sup> Committee on the Independent Commission Against Corruption, [Review of the 2019-2020 Annual Reports of the ICAC and the Inspector of the ICAC](#), Report 3/57, Parliament of New South Wales, 11 August 2021, pp 3-6.

<sup>2</sup> Independent Commission Against Corruption, [The need for a new independent funding model for the ICAC](#), Special Report, May 2020.

<sup>3</sup> Audit Office of New South Wales, [The effectiveness of the financial arrangements and management practices in four integrity agencies](#), Special Report, 20 October 2020.

includes expanding Parliament's role in the budget process and greater transparency around funding decisions.<sup>4</sup>

- 1.7 Shortly after the Audit Office report, the ICAC published another special report, *A parliamentary solution to a funding model for the ICAC*, in November 2020. This report noted the 'urgent need for an exercise of the NSW Parliament's role and authority in implementing ... a new funding model' and reiterated some of the findings in its first special report.<sup>5</sup>
- 1.8 In 2021, the Legislative Council's Public Accountability Committee also published a report about the funding arrangements of the ICAC and other integrity bodies, *Budget process for independent oversight bodies and the Parliament of New South Wales*.<sup>6</sup>
- 1.9 In its last annual review report, the Committee noted that it was awaiting the NSW Government's response to the funding model put forward by the ICAC and the Audit Office.<sup>7</sup>
- 1.10 In early 2022, the NSW Government proposed a new model for funding the ICAC. This will be explored in more detail below.

### The new funding model

- 1.11 In May 2022, the NSW Premier, the Hon. Dominic Perrottet MP, publicly announced the new funding model for the ICAC.<sup>8</sup> He outlined key elements of the model as follows:
- A specialist unit in Treasury will be set up to consider integrity agency funding. Integrity agencies will remain in the Department of Premier and Cabinet (DPC) cluster but will not be subject to usual cluster financial management processes.
  - The specialist unit in Treasury and a senior DPC representative will review funding bids for integrity agencies.
  - Integrity agencies will be able to comment on Treasury's proposed advice to the Expenditure Review Committee (ERC). The Premier will receive DPC advice on the bid, advice from Treasury, and integrity agencies' responses.
  - The Treasurer will write to the integrity agencies and the relevant parliamentary committee confirming the decision of the ERC. The Treasurer will also provide reasons for a departure from the agency's bid.

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<sup>4</sup> [Audit Office Special Report](#), p 9.

<sup>5</sup> Independent Commission Against Corruption, [A parliamentary solution to a funding model for the ICAC](#), November 2020, p 4.

<sup>6</sup> Legislative Council Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales - Final report](#), Report 7, Parliament of New South Wales, February 2021.

<sup>7</sup> [Review of the 2019–2020 Annual Reports](#), pp 3-4.

<sup>8</sup> New South Wales, Legislative Assembly, [Parliamentary Debates](#), 10 May 2022 (Mr Jamie Parker MP; The Hon. Dominic Perrottet MP, Premier of NSW).

- Funding in the 2022-2023 budget will be adjusted to better reflect resourcing needs in 'advance of a broader re-baselining exercise'.
- No efficiency dividends will be imposed on integrity agencies.
- Annual Appropriation Acts will include contingency funding for integrity agencies. Expenditure of contingency funds may be approved by the Treasurer at the request of the integrity agencies. The relevant parliamentary committee will be provided with a copy of the request and response.
- The new funding model will be codified in a charter of independence issued under a Treasurer's Direction.<sup>9</sup>

1.12 When asked about the new funding model and whether the Premier intended 'to reject the ICAC's model for genuinely independent funding', the Premier stated:

I believe this strikes the right balance. I accept that it is not completely in line, from their perspective, with the model that those at the ICAC proposed. But ultimately, in my view, it deals substantively with the issues that they have raised.<sup>10</sup>

1.13 The Premier indicated that most of the new funding model would be in place in time for this year's budget.<sup>11</sup>

1.14 The NSW Attorney General, The Hon. Mark Speakman SC, indicated in a government response to the Legislative Council's Public Accountability Committee budget process report, that the new funding model would be implemented as part of the 2022-23 budget.<sup>12</sup>

1.15 In its reply to a question on notice about whether the new funding model would be implemented this year, the ICAC noted that it would 'continue to monitor the NSW Government's processes surrounding the budget process for 2022–23 before being able to give a definitive answer to this question.'<sup>13</sup>

1.16 To the Committee's knowledge, at the time of writing, no charter of independence codifying the new funding arrangements has been published. The Committee will continue to monitor this issue and considers that the new arrangements should be formalised as a matter of priority.

#### ICAC's concerns about the new funding model

1.17 At the hearing, the Committee heard that, before announcing the new model, the Premier wrote to the former Chief Commissioner of the ICAC, the Hon. Peter Hall KC, seeking his views on the proposed reforms.<sup>14</sup>

<sup>9</sup> [Parliamentary Debates](#), 10 May 2022.

<sup>10</sup> [Parliamentary Debates](#), 10 May 2022.

<sup>11</sup> [Parliamentary Debates](#), 10 May 2022.

<sup>12</sup> [Correspondence](#) from the Hon. Mark Speakman SC, Attorney General, to Mr David Blunt, Clerk of the Parliaments, 9 May 2022; [Budget process for independent oversight bodies and the Parliament of New South Wales - Final report](#).

<sup>13</sup> [Response to Questions on Notice](#), p 6.

<sup>14</sup> The Hon. Peter Hall KC, Chief Commissioner of the ICAC, [Transcript of evidence](#), Monday 2 May 2022, p 7. (From 9 September 2022, Queen's Counsel is referred to as King's Counsel and the post-nominals of QC are now KC.)

1.18 In that letter, the Premier stated that the Government 'remains committed to ensuring that the integrity agencies receive sufficient funding' and that:

...while the annual budget process must be consistent with the constitutional principle that the Government of the day is accountable to the Parliament and the people of NSW for the proper management of the State finances, it should not compromise the actual and perceived independence of the integrity agencies from the Executive.<sup>15</sup>

1.19 However, in his letter, the Premier also acknowledged that the 'proposal differs in some respects from the model proposed by the ICAC in its May 2020 and November 2020 reports to the Parliament.'<sup>16</sup>

1.20 Former Chief Commissioner Hall responded to the Premier requesting clarification and voicing several concerns about the proposed funding model. He reiterated the ICAC's longstanding view, captured in its special reports on the subject, that 'involvement of the Executive in funding arrangements ...is incompatible with the Commission's independence'.<sup>17</sup>

1.21 While the former Chief Commissioner acknowledged that the proposed model provided some greater transparency, he also noted that it 'fails to address the risk to the Commission's independence and the need for safeguards.' Other concerns about the model included a lack of process for matters of disagreement and that there is no provision for Parliament to play a role in 'resourcing of the Commission'. In his view, the proposed model 'differs substantially' from the model put forward by the ICAC and the approach suggested in the Audit Office report.<sup>18</sup>

1.22 The Auditor-General, Ms Margaret Crawford, was also consulted on the proposed model and appeared to share some of the concerns of the former Chief Commissioner. Ms Crawford commented on the proposed reforms at a Budget Estimates hearing in April 2022 saying:

In general terms... the proposal would improve transparency of the process but did not go far enough to resolve the threats to the independence of agencies that were raised in my audit report. I also outlined a series of questions regarding the proposal, because a lot of it was quite high level and would need to be worked through.<sup>19</sup>

1.23 At the hearing, the former Chief Commissioner said that the provision for contingency funding was a 'suggested improvement on the present position'. However, he referred to his correspondence with the Premier where he had raised a number of concerns.<sup>20</sup>

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<sup>15</sup> [Correspondence](#), from the Hon. Dominic Perrottet MP, Premier of NSW, to the Hon. Peter Hall KC, Chief Commissioner of the ICAC, 14 February 2022, p [2](#).

<sup>16</sup> [Correspondence](#), 14 February 2022, p [3](#).

<sup>17</sup> [Correspondence](#) from the Hon. Peter Hall KC, Chief Commissioner of the ICAC, to the Hon. Dominic Perrottet MP, Premier of NSW, 3 March 2022, pp [4-9](#).

<sup>18</sup> [Correspondence](#), 3 March 2022, pp [4-9](#).

<sup>19</sup> Ms Margaret Crawford, Auditor-General of NSW, Office of the Auditor-General, [Transcript of evidence](#), Thursday 21 April 2022, p [81](#).

<sup>20</sup> Chief Commissioner, [Transcript of evidence](#), p [7](#).

- 1.24 The former Chief Commissioner also reaffirmed his view that the ICAC is an independent agency of Parliament and Parliament is 'ultimately the body to which the ICAC is responsible, not to the Executive Government'.<sup>21</sup>
- 1.25 The former Chief Commissioner stated funding for the ICAC 'must be examined carefully on its own merits, not having regard to what is required for the Electoral Commission, the LECC or the Ombudsman'. He added those agencies, 'have very meritorious grounds for a suitable funding mechanism that should be independent,' but at present, funding for the ICAC is determined 'by those over whom we have oversight... it is more than an anomaly; it is a total inconsistency'.<sup>22</sup>
- 1.26 The Committee acknowledges the ICAC's concerns about the lack of true independence in the proposed new funding model and understands the need for further clarification of the proposal. While the Committee welcomes its increased role in the new funding model, it also acknowledges that the ICAC envisioned a much greater role for the Parliament.
- 1.27 The Committee will continue to monitor the development and implementation of the new model. Although this issue has a long history and the Committee is pleased to see progress on the funding model, it expects that the model will need to be reviewed to ensure it is working appropriately.

### **Increase to the ICAC's funding**

- 1.28 In this year's budget, the ICAC received funding of \$35 million, an increase of approximately \$3 million from 2021.<sup>23</sup>
- 1.29 Appropriate funding is critical for the ICAC to perform its important work and the amount of funding is another longstanding issue of concern to this Committee and has been explored in its previous annual review reports, including in 2019-20.<sup>24</sup>
- 1.30 While the increase in funding is a welcome development, the Committee acknowledges that the amount of funding is, in some respects, a separate issue to the nature of the independent funding model. The Committee acknowledges that adequate funding for the ICAC is vital for it to perform its essential functions effectively and will continue to monitor this issue.

## **Need for three-Commissioner model**

### **Recommendation 1**

#### **That the Government review the existing three-Commissioner model.**

- 1.31 In October 2016 the Committee recommended in its report, *Review of the Independent Commission Against Corruption: consideration of the Inspector's*

<sup>21</sup> Chief Commissioner, [Transcript of evidence](#), p 2-4.

<sup>22</sup> Chief Commissioner, [Transcript of evidence](#), p 18.

<sup>23</sup> [Appropriation Bill 2022](#) (NSW), s 27; [Appropriation Bill 2021](#) (NSW), s 25.

<sup>24</sup> [Review of the 2019–2020 Annual Reports](#), pp 1-2.

reports, 'that the ICAC be re-structured so that there is a panel of three Commissioners'.<sup>25</sup> The Government accepted this recommendation.

- 1.32 A key reason outlined in the report was to 'improve the ICAC's functioning and decision-making capacity', especially relating to public hearings which can have 'grave consequences' for individuals. Decision-making by three commissioners would 'place more weight on significant decisions at the time they are made, potentially improving the quality of those decisions'.<sup>26</sup>
- 1.33 The report also stated the three-Commissioner model would allow commissioners to conduct separate inquiries and investigations concurrently.<sup>27</sup>
- 1.34 In November 2016, the NSW Parliament passed the *Independent Commission Against Corruption (Amendment) Act 2016*, which came into force on 7 August 2017.
- 1.35 The Act abolished the sole Commissioner model and introduced a three-Commissioner model consisting of a full-time Chief Commissioner and two part-time Commissioners.<sup>28</sup>
- 1.36 Under the Act, all three Commissioners are able to exercise the ICAC's functions and powers. If the Commissioners do not agree, the Chief Commissioner's decision will prevail. The exception is the decision to hold a public inquiry where agreement between the Chief Commissioner and at least one other Commissioner is necessary.<sup>29</sup>
- 1.37 At the recent hearing in May 2022, Mr Stephen Rushton SC,<sup>30</sup> former Commissioner of the ICAC, raised the issue of the three-Commissioner model. He said he did not support the model because it 'is very inefficient and has sometimes resulted in duplication of work'.<sup>31</sup>
- 1.38 Former Commissioner Rushton observed that when commissioners are part-time there can be conflict between the work of the ICAC and other professional commitments.<sup>32</sup>
- 1.39 Finally, former Commissioner Rushton explained that, in his view, there is no need for three Commissioners. He said:

If due care is taken to the appointment of a sole Commissioner, the Government should have confidence that he or she will fulfil their statutory functions. I have no doubt whatever that our Chief Commissioner could have performed as well without

<sup>25</sup> Committee on the Independent Commission Against Corruption, [Review of the Independent Commission Against Corruption: Consideration of the Inspector's reports](#), Report 2/56, Parliament of New South Wales, October 2016, pp 1-5.

<sup>26</sup> [Consideration of the Inspector's reports](#), pp 1, 2, 4.

<sup>27</sup> [Consideration of the Inspector's reports](#), p 3.

<sup>28</sup> [Independent Commission Against Corruption Act](#), pt 2, s 5; [sch 1](#), cl 4.

<sup>29</sup> [Independent Commission Against Corruption Act](#), s 6.

<sup>30</sup> Although Mr Stephen Rushton SC completed his term as Commissioner on 6 August, the Committee understands he is serving as an Assistant Commissioner of the ICAC on a part-time basis until 23 December 2022.

<sup>31</sup> Mr Stephen Rushton SC, Commissioner of the ICAC, [Transcript of evidence](#), Monday 2 May 2022, p 6.

<sup>32</sup> Commissioner Rushton, [Transcript of evidence](#), p 6.

me or without Commissioner Patricia McDonald. To have the Chief Commissioner constantly distracted by our views on particular matters was unnecessary.<sup>33</sup>

- 1.40 The former Chief Commissioner, Mr Hall, told the Committee that the sole Commissioner model worked well in the past and he would not oppose a return to it.<sup>34</sup>
- 1.41 The former Chief Commissioner explained:
- If, on consideration, a person is to be offered the position of Commissioner—Chief Commissioner for that matter—and the person has the requisite credentials, ability and so forth, there should never be any requirement for somebody to be also appointed to second-guess what the presumably able person of integrity is being asked to do as the Commissioner.<sup>35</sup>
- 1.42 In contrast, Ms Patricia McDonald SC, former Commissioner of the ICAC, supports the three-Commissioner model. At the hearing she gave evidence that for some 'very important decisions' the 'different views' of two Commissioners were 'essential for just and appropriate decisions being made'.<sup>36</sup>
- 1.43 However, former Commissioner McDonald did express concern about how the ICAC dealt with the three Commissioners and thought there should be a review of the most appropriate way of allocating work involving the two part-time Commissioners.<sup>37</sup>
- 1.44 Mr Bruce McClintock SC, former Inspector of the ICAC, told the Committee he supported the three-Commissioner model when it was being adopted. However, at the hearing, he said there may be 'no right or wrong answer' and that it 'depends upon the people you appoint to the roles'.<sup>38</sup> He went on to acknowledge the benefits of a two-Commissioner model:
- I think there should be a second Commissioner, and that may lead into a two Commissioner model, but that can be debated. Part of the reason is that I think you need someone who can step into the shoes of the Commissioner if the Commissioner is absent for some reason—for example, for annual leave—and who is cognisant of the operations of the Commission and can take over.<sup>39</sup>
- 1.45 In his evidence, the former Inspector also pointed out that the Law Enforcement Conduct Commission now has a two-Commissioner model.<sup>40</sup>
- 1.46 The former Chief Commissioner told the Committee that there is provision in the Act for Assistant Commissioners to be appointed. This allows the ICAC to bring someone in to help with a particular investigation. He further clarified that it alleviates the workload and demands of the Commissioner, but it does not help

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<sup>33</sup> Commissioner Rushton, [Transcript of evidence](#), p 6.

<sup>34</sup> Chief Commissioner, [Transcript of evidence](#), p 8.

<sup>35</sup> Chief Commissioner, [Transcript of evidence](#), p 8.

<sup>36</sup> Ms Patricia McDonald SC, Commissioner of the ICAC, [Transcript of evidence](#), Monday 2 May 2022, p 6.

<sup>37</sup> Commissioner McDonald, [Transcript of evidence](#), p 6.

<sup>38</sup> Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), Monday 2 May 2022, p 21.

<sup>39</sup> Inspector, [Transcript of evidence](#), p 21.

<sup>40</sup> Inspector, [Transcript of evidence](#), p 22.

investigators and analysts who do the groundwork. He gave the example of Commissioner Ruth McColl who has recently helped the ICAC in Operation Keppel.<sup>41</sup>

- 1.47 In light of these differing views about the number of Commissioners needed, the Committee suggests that it may be timely for the Government to review the three-Commissioner model.

## Staggering the terms of the Commissioners and the Inspector

### Recommendation 2

**That the Government consider whether the terms of the ICAC Commissioners and the Inspector should be staggered.**

- 1.48 The Chief Commissioner and part-time Commissioners' five-year terms all ended on 6 August 2022.<sup>42</sup> At the hearing in May, the former Inspector gave evidence that it was 'unfortunate' that all three Commissioner terms were due to end on the same day, stating that it risked a 'big loss of institutional knowledge'.<sup>43</sup>
- 1.49 The former Inspector's term expired on 30 June 2022, within six weeks of the expiry date of the Commissioners' terms.<sup>44</sup> The former Inspector also suggested this was undesirable because an established Inspector could pass on information to a new Commissioner and vice versa. He suggested that the term of the Inspector also be staggered with the terms of the Commissioners.<sup>45</sup>
- 1.50 The Committee shares the former Inspector's view that terms expiring at the same time is not ideal. While acknowledging that the new Commissioners and Inspector have recently commenced their terms, the Committee recommends that the Government consider whether future terms of the ICAC Commissioners and the Inspector should be staggered.

## Gap in powers of the ICAC under the TOLA Act

### Finding 3

**The gap in the ICAC's powers under the *Telecommunications and other Legislation Amendment (Assistance and Access) Act 2018 (Cth)* limits the ability of the ICAC to perform its functions effectively in an environment where communications are increasingly encrypted.**

### Recommendation 3

**That the NSW Government update the Committee on any representations it has made or intends to make to the Commonwealth Government regarding the ability of the ICAC to access encrypted telephone communications.**

<sup>41</sup> Chief Commissioner, [Transcript of evidence](#), p 9.

<sup>42</sup> New South Wales, Legislative Council, [Parliamentary Debates](#), 23 June 2022 (The Hon. Taylor Martin, MLC).

<sup>43</sup> Inspector, [Transcript of evidence](#), p 21.

<sup>44</sup> [Parliamentary Debates](#), 23 June 2022.

<sup>45</sup> Inspector, [Transcript of evidence](#), p 21.



- 1.51 The Committee recognises that there has been huge growth in encrypted communication methods in recent years and that, where appropriate, the ICAC should have access to encrypted communications when undertaking its anti-corruption investigations.
- 1.52 The former Chief Commissioner gave evidence at the hearing that growth in the use of encrypted devices has led to a 'massive reduction' in intercepted telecommunications and that these intercepted communications are 'vital to the work of the Commission'.<sup>46</sup>
- 1.53 To deal with the issue of increasing encryption technologies, the Commonwealth Government passed the *Telecommunications and other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (TOLA Act). It amended the *Independent National Security Legislation Monitor Act 2010* (Cth) to compel communications service providers to assist police and other law enforcement agencies with access to encrypted communications. The ICAC and other state-based anti-corruption agencies were excluded from these access rights.<sup>47</sup>
- 1.54 Anti-corruption bodies had been included in an earlier version of the TOLA legislation but were removed following a recommendation of the Parliamentary Joint Committee on Intelligence and Security in 2018.<sup>48</sup>
- 1.55 The *Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019* sought to again include anti-corruption agencies, but the Bill lapsed at the end of the 45<sup>th</sup> Commonwealth Parliament in 2019.<sup>49</sup>
- 1.56 It was then suggested in a 2020 report on the TOLA Act, by the then Independent National Security Legislation Monitor, that 'anti-corruption agencies should have the same access to Schedule 1 TOLA powers as police do'.<sup>50</sup>
- 1.57 The ICAC has made representations on this issue to the Commonwealth Government without success, including joint representations with other state anti-corruption bodies. At the hearing, the former Chief Commissioner highlighted this issue with urgency, calling it 'an aberration' and 'disturbing'. The former Inspector agreed it was 'disturbing'. However, they both recognised the limited powers of the Committee to influence a matter that falls under Commonwealth jurisdiction.<sup>51</sup>

<sup>46</sup> Chief Commissioner, [Transcript of evidence](#), p 5.

<sup>47</sup> See [Telecommunications and Other Legislation Amendment \(Assistance and Access\) Act 2018](#) (Cth), [sch 1](#), amendments to the [Independent National Security Legislation Monitor Act 2010](#) (Cth), s 317B, definition of 'interception agency'.

<sup>48</sup> Parliamentary Joint Committee on Intelligence and Security, [Advisory Report on the Telecommunications and Other Legislation Amendment \(Assistance and Access\) Bill 2018](#), Parliament of the Commonwealth of Australia, December 2018, Recommendation 3, p 3.

<sup>49</sup> [Telecommunications and Other Legislation Amendment \(Miscellaneous Amendments\) Bill 2019 \(Cth\); Telecommunications and Other Legislation Amendment \(Miscellaneous Amendments\) Bill 2019](#)

<sup>50</sup> Independent National Security Legislation Monitor, [Trust but verify: A report concerning the Telecommunications and Other Legislation Amendment \(Assistance and Access\) Act 2018 and related matters](#), 9<sup>th</sup> Report, Australian Government, 30 June 2020, paragraph 1.65, p 38. Schedule 1 gives police and intelligence agencies new powers to agree or require significant industry assistance from communications providers.

<sup>51</sup> Chief Commissioner, [Transcript of evidence](#), p 5; Inspector, [Transcript of evidence](#), p 21.

- 1.58 The Committee may consider writing to the Minister for Home Affairs to express concerns about the gap in the ICAC's powers in relation to telecommunications access and ask for it to be addressed as a matter of urgency.
- 1.59 In the meantime, the Committee looks forward to receiving updates from the NSW Government on representations it has made or intends to make to the Commonwealth Government regarding the ICAC's access to encrypted telephone communications.

## Review of information handling practices

### Recommendation 4

**That the ICAC update the Committee on the outcome of its review of its information handling practices.**

- 1.60 The information handling practices of the ICAC have been an ongoing issue of concern to the Committee. In its 2019-20 annual review report, the Committee was critical of the erroneous upload of a confidential transcript to the ICAC's website in Operation Keppel.
- 1.61 The ICAC introduced several measures to prevent further similar incidents, including updating the Operations Manual. The ICAC also contracted a paralegal until 30 June 2022 who was trained to upload checked and approved transcripts in accordance with a new work process.<sup>52</sup>
- 1.62 However, the Committee considered that the serious nature of the matter required ongoing attention and review.<sup>53</sup>
- 1.63 The former Inspector also had concerns about some of the ICAC's information handling practices and published a special report in 2021 on the use of an intercepted phone call during Operation Keppel. There was concern that this may have been a violation of international law. The former Inspector made no finding of maladministration but said the ICAC should have been more cautious dealing with the intercepted call and could have obtained advice from the Department of Foreign Affairs and Trade. His recommendations aimed to improve the processes for handling intercepted material especially when matters of international law are involved.<sup>54</sup>
- 1.64 Following on from these events, the former Inspector's annual report expressed ongoing concerns about the information handling practices of the ICAC. Specifically, the former Inspector noted that after his special report on the

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<sup>52</sup> See [Correspondence](#) from the Hon. Peter Hall KC, Chief Commissioner of the ICAC, to The Hon. Ms Tanya Davies MP, former Chair of the Committee on the ICAC regarding the updated operations manual, 19 August 2021.

<sup>53</sup> [Review of the 2019–2020 Annual Reports](#), p 8-10.

<sup>54</sup> Office of the Inspector of the Independent Commission Against Corruption, [Report concerning circumstances surrounding the Independent Commission Against Corruption's use of certain telephone intercept material during Operation Keppel](#), Special Report 2021/03, 27 August 2021, pp 7-22.

erroneous upload in Operation Keppel, 'several separate incidents arose involving the Commission's information handling'.<sup>55</sup>

- 1.65 Although the former Inspector had considered performing an audit of the ICAC's information handling practices himself, he formed the view that such an audit by his Office would be limited by expertise, resources and time available.<sup>56</sup>
- 1.66 On this basis, the ICAC agreed to the former Inspector's suggestion that the ICAC conduct a formal audit of its information handling practices. The ICAC indicated that it was settling on the steps for conducting such an audit and would keep the Inspector informed.<sup>57</sup>
- 1.67 At the hearing, the former Inspector gave evidence that 'the jury was out' on the remedies the ICAC had undertaken to address the shortcomings in its information handling practices. The Committee notes that the former Inspector and the ICAC appear to have a lengthy history of correspondence on this subject.<sup>58</sup>
- 1.68 The Committee looks forward to hearing the outcome of the ICAC's review of its information handling practices in due course.

## Response to ICAC recommendations

- 1.69 At the hearing in May 2022, the former Chief Commissioner referred to the Operation Eclipse and Operation Halifax investigations which focused on lobbying of public officials and authorities, related procedures, and the regulatory system in NSW.<sup>59</sup>
- 1.70 The former Chief Commissioner was concerned that, in regard to Operation Eclipse whose findings were tabled during the 2020-21 reporting year, the ICAC had received no communication from the Government other than a preliminary letter from then Special Minister of State, the Hon. Don Harwin MLC indicating the report was being 'looked at'.<sup>60</sup> In the Operation Eclipse report, the ICAC made 27 recommendations to the Government and two to NSW Parliament.<sup>61</sup>
- 1.71 However, the Committee notes that since the hearing, the Government announced that it supports each of the recommendations directed toward it.<sup>62</sup>

<sup>55</sup> Office of the Inspector of the Independent Commission Against Corruption, [Annual report for the period ending 30 June 2021](#), 29 October 2021, p 34.

<sup>56</sup> [Annual report for the period ending 30 June 2021](#), pp 34-35.

<sup>57</sup> [Annual report for the period ending 30 June 2021](#), pp 34-35.

<sup>58</sup> Chief Commissioner, [Transcript of evidence](#), p 29.

<sup>59</sup> Chief Commissioner, [Transcript of evidence](#), p 12.

<sup>60</sup> Chief Commissioner, [Transcript of evidence](#), p 12.

<sup>61</sup> Independent Commission Against Corruption, [Investigation into the regulation of lobbying, access and influence in NSW](#), June 2021.

<sup>62</sup> Department of Premier and Cabinet, [NSW to implement strongest lobbying integrity measures in Australia](#), Media release, NSW Government, 19 July 2022, viewed 4 October 2022.

- 1.72 In relation to Operation Halifax, the Premier has said that all 17 recommendations were implemented by the Government 'in full, in part or by alternative means'.<sup>63</sup>
- 1.73 The hearing also addressed the further issue of whether the responses to ICAC recommendations are a satisfactory 'outcome in the public interest', especially when the reports are so time and resource intensive.<sup>64</sup>
- 1.74 The former Chief Commissioner suggested that in certain investigations, such as Operation Eclipse, there should be 'post-reports' and the establishment of a task force to do follow up work. The task force might include representatives of the ICAC, the Government and stakeholders. The task force would continue the work of the Commission, ensuring that a constructive outcome would eventually be produced.<sup>65</sup>
- 1.75 While the Committee is pleased that the Government has responded to the ICAC's recommendations in Operations Eclipse and Halifax, it also understands that the ICAC has concerns when a response to recommendations is delayed, or a report does not result in recommended reforms. The Committee understands that the work of an ICAC investigation is time and resource intensive and should ideally result in a timely response with constructive outcomes. The Committee will continue to monitor this issue.

## Realistic reporting timeframes

### Finding 4

#### Staffing levels may impact the time required to produce reports.

- 1.76 Reporting timeframes have also been an issue of concern to the Committee and was explored in the Committee's recent inquiry into *Reputational impact on an individual being adversely named in the ICAC's investigations* (Reputational impact). In the report, the Committee was concerned that the passage of time between a final hearing and the delivery of a report can take a number of years.<sup>66</sup>
- 1.77 The report also recommended that the Committee review whether there should be time standards in place for the ICAC to finalise reports, who should develop them, what those standards should be, whether they should be legislated and whether there should be exceptions to those standards.<sup>67</sup>
- 1.78 Time standards in place for the ICAC to finalise reports will be considered as part of this Committee's current inquiry, *Review of aspects of the Independent Commission Against Corruption Act 1988*.<sup>68</sup>

<sup>63</sup> New South Wales, Legislative Assembly, [Parliamentary Debates](#), 19 May 2022 (The Hon. Dominic Perrottet MP, Premier of NSW).

<sup>64</sup> Chief Commissioner, [Transcript of evidence](#), p 12.

<sup>65</sup> Chief Commissioner, [Transcript of evidence](#), p 12.

<sup>66</sup> Committee on the Independent Commission Against Corruption, [Reputational impact on an individual being adversely named in the ICAC's Investigations](#), Report 4/57, Parliament of New South Wales, November 2021, p 25.

<sup>67</sup> [Reputational impact](#), p 25.

<sup>68</sup> Committee on the Independent Commission Against Corruption, [Review of aspects of the Independent Commission Against Corruption Act 1988](#), webpage, Parliament of New South Wales.

- 1.79 However, at the hearing for this annual review, the former Chief Commissioner gave evidence that the length of recent investigations, including the timeframes for producing reports, had been impacted by inadequate funding and staffing arrangements. He cited COVID-19 as an additional reason for delays in report writing.<sup>69</sup>
- 1.80 The former Chief Commissioner explained that the availability of lawyers was an issue impacting report writing:
- It is a case of being stretched and pulled between competing commitments simply because there is nobody else.... So, funding comes into it and it comes back to this issue of staffing levels.<sup>70</sup>
- 1.81 The former Inspector confirmed that long reporting timeframes under current staffing arrangements were to some extent unavoidable given that the reports needed to be 'absolutely meticulous' in their findings. He emphasised that the extended timeframes were a 'resourcing issue'.<sup>71</sup>
- 1.82 However, the former Inspector also acknowledged that the time taken to produce reports was a 'real issue' and noted there were occasions where he had written to the ICAC enquiring about the status of a report.<sup>72</sup>
- 1.83 The ICAC has stated that the corporate goal for furnishing reports after the end of a public inquiry is 60 days for inquiries of five days or less and 90 days otherwise. A public inquiry is considered to be complete at the date of receipt of final submissions.<sup>73</sup>
- 1.84 At the hearing, the former Chief Commissioner suggested that although recent changes had been made to key performance indicators (KPIs) for investigations, the ICAC was open to reconsidering whether its corporate goals regarding the time to furnish reports should be amended. He also acknowledged that such goals should be 'realistic' and 'if those stated targets cannot be met, we need to revise the situation'.<sup>74</sup>
- 1.85 The Committee acknowledges that staffing levels may impact the time it takes to produce reports. This issue may be explored further when it examines the time standards for finalising reports in its inquiry into the *Review of aspects of the Independent Commission Against Corruption Act 1988*.

## Update on the ICAC's operations during COVID-19

- 1.86 The Committee commends the ICAC for continuing to adapt to the challenging circumstances of the ongoing COVID-19 pandemic. Many of the challenges

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<sup>69</sup> Chief Commissioner, [Transcript of evidence](#), p 8.

<sup>70</sup> Chief Commissioner, [Transcript of evidence](#), p 8.

<sup>71</sup> Inspector, [Transcript of evidence](#), p 23.

<sup>72</sup> Inspector, [Transcript of evidence](#), p 23.

<sup>73</sup> Independent Commission Against Corruption, [Annual report 2020-21](#), 29 October 2021, p 56.

<sup>74</sup> Chief Commissioner, [Transcript of evidence](#), pp 14-15.

presented by COVID-19 in the 2019-20 reporting period persisted into the 2020-21 year.

- 1.87 In its last annual review report, the Committee noted that the ICAC's offices had been closed to staff and the public from March 2020. During this time, members of the public could not phone or attend the ICAC.
- 1.88 From March to August 2020, no compulsory examinations or public inquiries were held.<sup>75</sup>
- 1.89 However, the ICAC adapted to the challenges presented by COVID-19 by upgrading IT systems so staff could work from home, implementing social distancing protocols, increasing online engagement, and redesigning its corruption prevention workshops for online delivery.<sup>76</sup>
- 1.90 Remote work continued in the first half of the 2020-21 reporting period, with a return to the office commencing in December 2020.<sup>77</sup>
- 1.91 As COVID-19 continued into 2020-21, the ICAC undertook risk assessments of its activities to ensure they could continue efficiently and safely. As a result, changes were made to the office, hearing rooms and conduct of off-site investigative activities.<sup>78</sup>
- 1.92 The Committee commends the ICAC for adapting its procedures so that fieldwork, compulsory examinations and public inquiries were quickly restarted in the 2020-21 reporting year.
- 1.93 Operational fieldwork began again in July 2020 and, in eight months, the ICAC executed 24 search warrants, compared to two the previous reporting year.<sup>79</sup>
- 1.94 Compulsory examinations by audio-visual link began in August 2020 and ten audio-visual examinations were held that month. Protocols for the conduct of public inquiries via audio-visual link were then adopted in September 2020, and public inquiries recommenced that month. These protocols are subject to ongoing reviews as circumstances change.<sup>80</sup>
- 1.95 A new wave of COVID-19 emerged at the end of the 2020-21 reporting period, presenting additional challenges to the ICAC's operations. The Committee looks forward to hearing more about how the ICAC met these challenges in its next annual report.

### **Delays to investigations**

- 1.96 In its annual report, the ICAC indicated that investigations were impacted by COVID-19. The pandemic reduced witness availability for investigations and

<sup>75</sup> Independent Commission Against Corruption, [Response to Questions on Notice](#), published 30 May 2022, p 4.

<sup>76</sup> [Review of the 2019–2020 Annual Reports](#), pp 6-8; [Annual report 2020-21](#), pp 4, 55, 64.

<sup>77</sup> [Annual report 2020-21](#), p 4.

<sup>78</sup> [Annual report 2020-21](#), p 61.

<sup>79</sup> [Annual report 2020-21](#), p 32.

<sup>80</sup> [Response to Questions on Notice](#), pp 2-6.

hearings, kept the ICAC from executing search warrants, and caused delays in obtaining information from other agencies due to office closures and staff work from home arrangements.<sup>81</sup>

- 1.97 Although all investigations were delayed, five investigations were substantially impacted by COVID-19: Operations Paragon, Witney, Galley, Keppel and Hector.<sup>82</sup>
- 1.98 The Committee acknowledges that COVID-19 has created a difficult operating environment for the ICAC and understands that this may be responsible for some delays to investigations.

### Protecting the mental health of witnesses

- 1.99 The recent Reputational impact inquiry recommended that the ICAC should consider implementing mental health protocols for individuals as part of its investigations.<sup>83</sup>
- 1.100 The Committee was concerned about the range of negative impacts on the mental health of witnesses and other individuals linked to investigations, including damage to reputation and livelihood, loss of privacy, and the risk of compounded pressures where inquiries are of substantial duration.<sup>84</sup>
- 1.101 This issue remains of great concern to the Committee following the recent death of a witness after he was cross-examined in Operation Galley.<sup>85</sup>
- 1.102 At the May public hearing, the former Chief Commissioner updated the Committee on its response to the recommendation of the Reputational impact report. He outlined the ICAC's new policy document titled, *Managing risks to the health and safety of those involved in investigations*, which sets out the procedures in place to deal with mental health risks that might arise for individuals who receive a notice to produce documents, attend the ICAC for compulsory examinations, or attend to give evidence at public inquiries.<sup>86</sup>
- 1.103 The former Chief Commissioner noted that the ICAC has responsibility to identify potential health and other issues early and to take appropriate action or, if necessary, to obtain advice to deal with the problem.<sup>87</sup>
- 1.104 The Committee continues to be concerned about the mental health of individuals linked to ICAC investigations and will continue to monitor this issue. It may be of benefit for the new Inspector to conduct an audit on the welfare of witnesses, as discussed in the next chapter.

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<sup>81</sup> [Annual report 2020-21](#), p 32.

<sup>82</sup> [Response to Questions on Notice](#), pp 3-4.

<sup>83</sup> [Reputational impact](#), Recommendation 1, p 3.

<sup>84</sup> [Reputational impact](#), Recommendation 1, pp 3-7.

<sup>85</sup> Megan Gorrey, [ICAC witness found dead in office after giving evidence](#), article, The Sydney Morning Herald, 8 July 2022, viewed 28 September 2022.

<sup>86</sup> Chief Commissioner, [Transcript of evidence](#), p 16.

<sup>87</sup> Chief Commissioner, [Transcript of evidence](#), p 16.

## Proceeds of corrupt conduct

- 1.105 The former Chief Commissioner gave evidence at the hearing about \$10 million of proceeds of corrupt conduct that have been frozen or forfeited to the State in connection with the ICAC's investigations, described below.<sup>88</sup>
- 1.106 While the ICAC has no power to recover proceeds of corrupt conduct, the ICAC can refer evidence to the NSW Crime Commission so it can consider whether to initiate proceedings under the *Criminal Assets Recovery Act 1990*. This occurred in Operation Paragon, where the ICAC's referral of evidence to the Crime Commission resulted in the recovery of approximately \$3.94 million.<sup>89</sup>
- 1.107 Separately, civil proceedings initiated by Transport for NSW in connection with Operation Paragon resulted in freezing assets of about \$876,000. Civil proceedings initiated by Transport for NSW in connection with Operation Ember also resulted in the recovery of \$5.175 million.<sup>90</sup> It is noted that proceedings relating to this latter sum were settled by the involved parties, and no admissions of fault or liability were made by the company or people affected.<sup>91</sup>
- 1.108 The former Chief Commissioner stated that the ICAC could explore its ability to apply directly to the Supreme Court to recover proceeds of corrupt conduct rather than going through the Crime Commission.<sup>92</sup>
- 1.109 The Committee notes that there is currently not enough evidence to form a view of whether it would be appropriate or practical for the ICAC to have powers to recover proceeds of corrupt conduct. The Committee is open to hearing further about this issue in future annual reviews.
- 1.110 However, the Committee does note that the substantial sums recovered by other agencies in connection with ICAC investigations highlights the importance of the ICAC's work.

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<sup>88</sup> Chief Commissioner, [Transcript of evidence](#), p 2.

<sup>89</sup> [Annual report 2020-21](#), p 38.

<sup>90</sup> [Annual report 2020-21](#), p 38.

<sup>91</sup> Commissioner McDonald, [Transcript of evidence](#), p 13.

<sup>92</sup> Chief Commissioner, [Transcript of evidence](#), p 13.



## Chapter Two – Inspector of the ICAC

### Relationship between the Inspector and the ICAC

- 2.1 The Committee is pleased that the former Inspector, Mr Bruce McClintock SC, continued his constructive relationship with the ICAC during the 2020-21 reporting year.
- 2.2 At the hearing, the former Inspector characterised this relationship as 'cooperation but not capture'. A cooperative relationship promotes the free exchange of information, but the Inspector must still maintain independent oversight of the ICAC. On occasion, this involves criticism.<sup>93</sup>
- 2.3 The former Inspector cited his special report into the use of intercepted communications during Operation Keppel as an example of such criticism, but also noted that he did not make any actual findings of misconduct.<sup>94</sup>

### Memorandum of Understanding between the ICAC and the Inspector

- 2.4 The successful relationship between the former Inspector and the former Commissioners of the ICAC during their respective terms has been framed in part by a Memorandum of Understanding (MOU) signed by the former Inspector and former Chief Commissioner in 2017.<sup>95</sup>
- 2.5 The Committee has learned that a MOU has been signed between the new Inspector, Ms Gail Furness SC, who commenced her term on 1 July 2022, and the ICAC.
- 2.6 The Committee is pleased that an MOU has been entered into and looks forward to hearing progress of the working relationship between the new ICAC Commissioners and the new Inspector.

### Use of Inspector's audit function

- 2.7 In its 2019-2020 review, the Committee found that it would continue to monitor the Inspector's audits and examine them in its next review.<sup>96</sup> Under s 57B(1)(a) of the *Independent Commission Against Corruption Act 1988* (ICAC Act), a principal function of the Inspector is to audit the operations of the ICAC to monitor compliance with the law of the State.
- 2.8 However, the former Inspector did not undertake any audits in the 2020-21 reporting year, aside from the audit of search warrants tabled on 27 October 2020. This audit was discussed in the Committee's 2019-20 annual review report.<sup>97</sup>

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<sup>93</sup> Inspector, [Transcript of evidence](#), pp 20-21.

<sup>94</sup> Inspector, [Transcript of evidence](#), pp 20-21.

<sup>95</sup> Inspector, [Transcript of evidence](#), pp 20-21.

<sup>96</sup> [Review of the 2019–2020 Annual Reports](#), Finding 8, p 19.

<sup>97</sup> [Review of the 2019–2020 Annual Reports](#), p 20.

- 2.9 At the hearing, the former Inspector expressed regret about his inability to undertake more audits of the ICAC during his term. He attributed this in part to the gap in the Inspector's powers under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) which is discussed below.<sup>98</sup>
- 2.10 In its 2019-20 review, the Committee noted that two audits had been undertaken by the former Inspector during his term: an audit of the ICAC's applications for and execution of search warrants, and an audit of the ICAC's procedures for dealing with Counsel Assisting.<sup>99</sup>
- 2.11 That review also referred to an audit which the former Inspector was hoping to undertake into the welfare of ICAC witnesses. However, the audit had been delayed because the former Inspector was seeking advice as to the appropriate protocols that should be adopted for completing such an audit.<sup>100</sup>
- 2.12 Although the audit on the welfare of witnesses was not discussed at this year's annual review hearing, the Committee continues to be interested in this issue. The Committee understands this could be of benefit and is something the new Inspector of the ICAC may wish to pursue during her term.

### Special reports

- 2.13 In the 2020-21 reporting year, the Committee notes that the former Inspector tabled two special reports. These included a report determining a complaint by Mr Arthur Moses SC on behalf of former Premier Ms Gladys Berejiklian MP against the Commission, and a special report under s 77A about the gap in the Inspector's powers under the TIA Act.<sup>101</sup> Both reports were discussed in the Committee's 2019-20 annual review. However, the gap in the Inspector's powers under the TIA Act will be discussed below.
- 2.14 In late 2021, the former Inspector also tabled special reports arising from Operation Keppel relating to the ICAC's use of intercepted material and the decision to hold a further public inquiry.<sup>102</sup>

### Serious gap in the Inspector's powers under the *Telecommunications (Interception and Access) Act 1979* (Cth)

- 2.15 The gap in the powers of the Inspector under the TIA Act is an issue of ongoing concern to the Committee and was raised in its last review.

<sup>98</sup> Inspector, [Transcript of evidence](#), p 21.

<sup>99</sup> [Review of the 2019–2020 Annual Reports](#), Finding 8, p 19-20.

<sup>100</sup> [Review of the 2019–2020 Annual Reports](#), p 21.

<sup>101</sup> Office of the Inspector of the Independent Commission Against Corruption, [Report pursuant to sections 57B\(5\) and 77A of the Independent Commission Against Corruption Act 1988 determining a complaint by Mr Arthur Moses SC on behalf of the Hon Gladys Berejiklian MP against the Commission](#), 27 November 2020; [Telecommunications \(Interception and Access\) Act 1979 \(Cth\) - Serious Gap in Inspector's Powers](#), 27 October 2020.

<sup>102</sup> [Special Report 2021/03](#); Office of the Inspector of the Independent Commission Against Corruption, [Special Report by the Inspector of the Independent Commission Against Corruption pursuant to s 77A of the Independent Commission Against Corruption Act 1988 regarding the Decision to Hold a Further Public Inquiry in Operation Keppel 2022](#), Special Report 2022/01, 29 October 2021.

- 2.16 The gap relates to the inability of the Inspector to access telecommunications material intercepted by the ICAC for the purpose of undertaking its audit function under ss 57B(1)(a) and (d) of the ICAC Act. Although the Committee understands the Inspector can access such material for the purpose of undertaking certain investigations, it cannot access this material for use in its audit function. The Committee further understands that an amendment to s 68(eb) of the TIA Act would likely resolve the issue.<sup>103</sup>
- 2.17 The Committee shares the former Inspector's concerns that the gap in the TIA Act limits the Inspector's powers and ability to carry out one of its key functions, the audit function under s 57B(1)(a) of the ICAC Act. He raised these issues again at the hearing.<sup>104</sup>
- 2.18 More generally, the Committee commends the efforts of the former Inspector to draw attention to this issue during his term, including through the tabling of his special report *Telecommunications (Interception and Access) Act 1979 (Cth) - Serious Gap in Inspector's Powers*. The Committee also commends the former Inspector's appeals to the Independent National Security Legislation Monitor.
- 2.19 In its last review the Committee recommended that the NSW Government provide an update to the Committee regarding the progress of the Commonwealth Government's stakeholder consultation into the review of the TIA Act and other Commonwealth electronic surveillance legislation.<sup>105</sup>
- 2.20 The Committee received a briefing from the NSW Attorney General on this issue in late 2021, and has corresponded with the Minister for Home Affairs about the status of the Commonwealth review. The review recommended that the relevant electronic surveillance legislation be consolidated into a single Act, and a discussion paper on the proposed framework was released in December 2021.<sup>106</sup>
- 2.21 The Committee understands that an exposure draft of a Commonwealth bill which may remedy this gap in the Inspector's powers is likely to be released in late 2022. Feedback will be used to finalise the bill in 2023.<sup>107</sup>
- 2.22 The Committee will continue to monitor this issue.

## Reviewing the term of the Inspector

### Recommendation 5

**That the Government consider amending the *Independent Commission Against Corruption Act 1988* to allow an Inspector to serve a maximum of two terms.**

<sup>103</sup> [Serious Gap in Inspector's Powers](#), pp 6-7.

<sup>104</sup> Inspector, [Transcript of evidence](#), p 21.

<sup>105</sup> [Review of the 2019–2020 Annual Reports](#), p 18.

<sup>106</sup> Department of Home Affairs, [Reform of Australia's Electronic Surveillance Network – Discussion Paper](#), Australian Government, December 2021.

<sup>107</sup> Department of Home Affairs, [Reform of Australia's electronic surveillance framework discussion paper](#), webpage, Australian Government, viewed 6 July 2022.

- 2.23 The former Inspector's term concluded on 30 June 2022. This was closely followed by the end of the terms of all three Commissioners of the ICAC on 6 August 2022.<sup>108</sup>
- 2.24 At the hearing, the former Inspector suggested that consideration be given to extending the term of the Inspector; for example, by allowing an Inspector to serve two five-year terms. Currently, the maximum term that may be held by both the Inspector and the Commissioners of the ICAC is five years.<sup>109</sup> The former Inspector noted that while a five-year limit to the term of Commissioners was appropriate, especially to prevent agency capture, this same thinking did not apply to the Inspector.<sup>110</sup>
- 2.25 The Inspectors of similar bodies in other jurisdictions are able to be reappointed. For example, the Inspector of the Western Australia Corruption and Crime Commission serves a term of five years and is able to be reappointed once.<sup>111</sup>
- 2.26 The Inspector of the Victorian Independent Broad-based Anti-Corruption Commission, who also oversees other integrity bodies, holds office for a term not exceeding five years but is eligible to be reappointed.<sup>112</sup>
- 2.27 The Inspector of the ACT Integrity Commission cannot be appointed for more than seven years, but a note in the legislation suggests that the same person may be reappointed.<sup>113</sup>
- 2.28 In South Australia, the Reviewer of the ICAC, who performs a similar function to the Inspector, is appointed for a term not exceeding three years, and is eligible for reappointment.<sup>114</sup>
- 2.29 However, the Queensland Parliamentary Crime and Corruption Commissioner, which performs a role similar to the Inspector, is not eligible to serve a term of more than five years.<sup>115</sup> Likewise, the Northern Territory Inspector of the Independent Commission Against Corruption, who is currently Mr McClintock, cannot serve for combined terms of more than five years.<sup>116</sup>
- 2.30 While there are good reasons for the limit on the term of the Commissioners, the Committee agrees that these reasons may not apply in the same way to the role of the Inspector.
- 2.31 Rather, oversight of the ICAC may benefit from an Inspector who is able to help facilitate the transition between Commissioners of the ICAC and ensure that issues of ongoing concern are addressed. The ability to reappoint an Inspector may also

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<sup>108</sup> [Parliamentary Debates](#), 23 June 2022.

<sup>109</sup> [Independent Commission Against Corruption Act, sch 1, cl 5; sch 1A, cl 4](#).

<sup>110</sup> Inspector, [Transcript of evidence](#), p 25.

<sup>111</sup> [Corruption, Crime and Misconduct Act 2003](#) (WA), [sch 3](#), cl 1.

<sup>112</sup> [Victorian Inspectorate Act 2011](#) (VIC), [s 21](#).

<sup>113</sup> [Integrity Commission Act 2018](#) (ACT), [s 233](#).

<sup>114</sup> [Independent Commission Against Corruption Act 2012](#) (SA), [sch 4](#), cl 2.

<sup>115</sup> [Crime and Corruption Act 2001](#) (QLD), [s 309](#).

<sup>116</sup> [Independent Commissioner Against Corruption Act 2017](#) (NT), [s 134\(3\)](#).

mean that their important work can continue without time being lost to the necessary onboarding that occurs with the start of a new Inspector.

- 2.32 For these reasons, the Committee recommends that the Government consider amending the Act to allow an Inspector to serve a maximum of two terms. The Committee may also explore this issue in its *Review of aspects of the Independent Commission Against Corruption Act 1988*, where the Committee will review the role and powers of the Inspector.

## Appendix One – Committee's functions

Under section 64 of the *Independent Commission Against Corruption Act 1988*, the function of the Committee is 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 of any matter appearing in, or arising out of, any such report
- Examine trends and changes in corrupt conduct and practices and methods relating to corrupt conduct, and report to Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector
- Inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Nothing in the ICAC Act authorises the Committee to:

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

## Appendix Two – Conduct of review

This report fulfils one of the Committee's obligations under its establishing legislation, the *Independent Commission Against Corruption Act 1988* the (ICAC Act). The Committee's functions include examining each annual and other report of the ICAC, and of the Inspector of the ICAC, and reporting to Parliament on any matter appearing in or arising out of those reports. This report is the result of the Committee's review of the ICAC's and the Inspector's 2018-2019 annual reports.

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

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

The ICAC investigates, exposes and prevents public sector corruption and educates the community and the public sector about corruption. Its principal functions include investigating complaints of corrupt conduct; examining laws, practices and procedures to detect corrupt conduct and to secure changes in work methods or procedures that may be conducive to corrupt conduct; advising and instructing public authorities and officials about changes in practices and procedures to reduce the likelihood of corrupt conduct; and educating the public and providing information about the detrimental effects of corrupt conduct and the importance of maintaining integrity in public administration.<sup>117</sup>

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

- auditing the ICAC's operations to monitor compliance with the law of the State
- dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct by the ICAC or its officers
- dealing with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasion of privacy) by the ICAC or its officers
- assessing the effectiveness and appropriateness of the ICAC's procedures relating to the legality or propriety of its activities.<sup>118</sup>

As part of its review of the ICAC's and the Inspector's 2020-2021 annual reports, the Committee held a public hearing on 2 May 2022. Witnesses from the ICAC and the Inspector appeared before the Committee – see Appendix Three for the names and titles of the witnesses. The transcript from the public hearing is available on the Committee's [webpage](#).

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<sup>117</sup> [Independent Commission Against Corruption Act 1988, s13.](#)

<sup>118</sup> [Independent Commission Against Corruption Act 1988, s57B.](#)

## Appendix Three – Witnesses

**Monday 2 May 2022, Jubilee Room, Parliament House, Sydney**

<b>Witness and position</b>	<b>Organisation</b>
The Hon. Peter Hall KC Chief Commissioner	
Mr Stephen Rushton SC Commissioner	
Ms Patricia McDonald SC Commissioner	
Mr Philip Reed Chief Executive Officer	
Mr Roy Waldon Executive Director, Legal Division and Solicitor to the Commission	Independent Commission Against Corruption
Mr Lewis Rangott Executive Director, Corruption Prevention	
Ms Bernadette Dubois Executive Director, Investigations Division	
Mr Andrew Koureas Executive Director, Corporate Services Division	
Mr Bruce McClintock SC Inspector	Office of the Inspector of the Independent Commission Against Corruption
Ms Chelsea Delahunty Acting Principal Legal Advisor	



## Appendix Four – Extracts from minutes

### **MINUTES OF MEETING NO. 19**

Monday, 15 November 2021

10.00 am

Room 814/815 and WebEx

#### **Members present**

In person: Mrs Tanya Davies (Chair), The Hon. Trevor Khan MLC, Mr Jamie Parker MP, The Hon. Rod Roberts MLC, Mr Dugald Saunders MP, The Hon. Adam Searle MLC.

Via WebEx: Mrs Wendy Tuckerman MP (Deputy Chair), Mr Justin Clancy MP, Mr Mark Coure MP, Ms Tania Mihailuk MP, Mr Ron Hoenig MP.

#### **Officers present**

In person: Clara Hawker, Leon Last, Frances Arguelles, Amy Pond, Rima Dabliz, Abegail Turingan.

The Chair opened the meeting at 10.00 am.

#### **1. Apologies**

There were no apologies.

#### **2. Recording of proceedings**

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

That the committee record the meeting for the purposes of the Secretariat preparing the minutes and that the recording be deleted once the minutes are settled.

#### **3. Confirmation of minutes**

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

That the minutes of meeting no. 18, held on Monday 9 August 2021, be confirmed.

4. \*\*\*

5. \*\*\*

6. \*\*\*

7. \*\*\*

8. \*\*\*

9. \*\*\*

#### **10. Review of the 2020-2021 annual reports of the ICAC and the Inspector of the ICAC**

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

- That the Committee reviews the 2020-2021 annual reports of the ICAC and the Inspector of the ICAC, and that the review be reported to Parliament and published on the Committee's website.
- That the Committee holds a public hearing or hearings for the review in 2022 on a date or dates to be determined, and invites the Chief Commissioner, Commissioners and senior staff of the ICAC, and the Inspector of the ICAC, to appear to give evidence.
- That the Chair circulates draft questions to members out-of-session.

11. \*\*\*

12. \*\*\*

**13. Next meeting**

The Committee adjourned at 12.30 pm until a date to be determined.

**MINUTES OF MEETING NO. 20**

Monday, 7 April 2022

11.33 am

Room 1043 and Webex

**Members present**

Via Webex videoconference: The Hon. Leslie Williams MP, Mr Lee Evans MP, Mr Ron Hoenig MP, Ms Wendy Lindsay MP, Ms Tania Mihailuk MP, Mrs Nichole Overall MP, Mr Jamie Parker MP, The Hon. Rodney Roberts MLC, The Hon. Adam Searle MLC, Mr Raymond Williams MP.

In person: Mr Christopher Rath MLC.

**Officers present**

In person: Helen Minnican (Clerk of the Legislative Assembly), Clara Hawker, Rima Dabliz, Abegail Turingan.

1. \*\*\*

2. \*\*\*

3. \*\*\*

4. \*\*\*

5. \*\*\*

**6. 2022 Review of the annual reports of the ICAC and the Inspector**

The Committee noted that in November 2021, the Committee resolved to commence its 2022 review of the annual reports of the ICAC and the Inspector. A public hearing with the ICAC and the Inspector is scheduled to take place on Monday 2 May 2022.

The Committee secretariat will be in touch with new Members of the Committee to confirm their availability for this date.

7. \*\*\*

**8. Next Meeting**

The meeting adjourned at 11.39 am until 2 May 2022 at a time to be confirmed.

**MINUTES OF MEETING NO. 21**

Monday, 2 May 2022

10.49 am

Jubilee Room and Webex

**Members present**

In person: The Hon. Leslie Williams MP (Chair); Mr Ron Hoenig MP (Deputy Chair, from 11.05 am); Mr Jamie Parker MP; The Hon. Rodney Roberts MLC and The Hon. Mr Adam Searle MLC.

Webex: The Hon. Christopher Rath MLC (until 1.00 pm); Ms Nichole Overall MP; Ms Wendy Lindsay MP; Ms Tania Mihailuk MP (from 11.00 am); Mr Lee Evans MP (from 12.15 pm).

### **Officers present**

In person: Clara Hawker, Stephanie Mulvey, Abegail Turingan.

Webex: Rima Dabliz.

### **Apologies**

Mr Ray Williams MP.

#### **1. Confirmation of minutes**

Resolved, on the motion of Mr Parker: That the minutes of the meeting of 15 November 2021 and 7 April 2022 be confirmed.

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

#### **3. Review of the 2020-21 annual reports of the ICAC and the Inspector of the ICAC**

Resolved, *in globo*, on the motion of Mr Searle:

**3.1** That the Committee takes evidence from witnesses from the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption at the public hearing on 2 May 2022.

**3.2** That the Committee permits audio-visual recording, photography and broadcasting of the public hearing on 2 May 2022.

**3.3** That the Chair sends any questions taken on notice and supplementary questions to the Independent Commission Against Corruption and the Inspector following the public hearing if required and that answers be requested to be returned within two weeks of being forwarded.

The pre-hearing deliberative concluded at 10.54 am.

The Chair declared the public hearing open at 11.00 am.

The Chair welcomed the following witnesses from the Independent Commission Against Corruption:

- The Hon. Peter Hall QC Chief Commissioner, sworn and examined.
- Mr Stephen Rushton SC, Commissioner, sworn and examined.
- Ms Patricia McDonald SC, Commissioner, sworn and examined.
- Mr Philip Reed, Chief Executive Officer, affirmed.
- Ms Bernadette Dubois, Executive Director, Investigations Division, sworn.
- Mr Andrew Koureas, Executive Director, Corporate Services Division, sworn.
- Mr Lewis Rangott, Executive Director, Corruption Prevention, affirmed.
- Mr Roy Waldon, Executive Director, Legal Division and Solicitor to the Commission, sworn.

Mr Hoenig, the Deputy Chair, joined the public hearing at 11.05 am.

Mr Evans joined the public hearing at 12.15 pm.

Evidence concluded and the witnesses withdrew.

The hearing adjourned at 1.07 pm and resumed at 2.03 pm.

The Chair welcomed the following witness from the Office of the Inspector of the Independent Commission Against Corruption:

- Mr Bruce McClintock SC, Inspector, affirmed and examined.

Evidence concluded and the witness withdrew.

The Chair closed the public hearing at 3.10 pm.

#### ***Deliberative meeting***

#### **4. Publication Orders**

Resolved, on the motion of Mr Searle:

- That the Committee publishes the transcript of evidence taken at the public hearing, after correction, and the answers to questions on notice, on the Committee's webpage.

5. \*\*\*

6. \*\*\*

7. \*\*\*

8. \*\*\*

#### **9. Next Meeting**

Committee discussed best times for meetings generally. Secretariat will canvas members' availability for a Monday afternoon or Friday morning meeting. The meeting adjourned at 3.17 pm until a date to be determined.

### **MINUTES OF MEETING NO. 22**

Monday 6 June 2022

3.41 pm

Room 1254 and Webex

#### **Members present**

In person: The Hon. Leslie Williams MP (Chair), Ms Tania Mihailuk MP, Mrs Nichole Overall MP, Ms Wendy Lindsay MP, The Hon. Christopher Rath MLC, The Hon. Rodney Roberts MLC.

Via Webex: Mr Lee Evans MP, Mr Jamie Parker MP, Mr Raymond Williams MP.

Via Phone: The Hon. Mr Adam Searle MLC.

#### **Officers present**

In person: Clara Hawker, Amy Pond, Rima Dabliz, Abegail Turingan.

Webex: Stephanie Mulvey

#### **Apologies**

Mr Ron Hoenig MP (Deputy Chair)

**1. Confirmation of minutes**

Resolved, on the motion of Mr Roberts: That the minutes of the meeting of 2 May 2022 be confirmed.

2. \*\*\*

3. \*\*\*

4. \*\*\*

**5. Review of the 2020-21 annual reports of the ICAC and the Inspector of the ICAC – answers to questions**

Resolved, on the motion of Ms Mihailuk, seconded by Ms Lindsay: That the Committee publish on its website the answers to questions on notice and additional questions on notice received from the ICAC, as well as the letter from the ICAC dated 3 March 2022 and the letter from the Premier dated 14 February 2022.

**6. Review of the 2020-21 annual reports of the ICAC and the Inspector of the ICAC – documents from the ICAC**

The Committee noted the following correspondence:

- Email from ICAC to secretariat dated 5 May 2022 regarding confidentiality status of document tendered at the hearing, Managing risks to the health and safety of those involved in investigations.

7. \*\*\*

8. \*\*\*

9. \*\*\*

10. \*\*\*

**11. Next meeting**

The Committee adjourned at 4.07 pm until 9.00 am, Thursday 9 June 2022.

**MINUTES OF MEETING NO. 27**

Wednesday 12 October 2022

9.02 am

Room 814/815 and Webex

**Members present**

In person: Mrs Leslie Williams MP (Chair), Mr Ron Hoenig MP (Deputy Chair), Mr Lee Evans MP, Mr Jamie Parker MP, The Hon. Adam Searle MLC, The Hon. Rodney Roberts MLC, The Hon. Chris Rath MLC, Ms Nichole Overall MP, and Ms Wendy Lindsay MP.

By Webex: Ms Tania Mihailuk MP.

**Officers present**

Stephanie Mulvey, Amy Pond, Imogen Wurf, Abegail Turingan.

**Apologies**

Mr Ray Williams MP

**1. Confirmation of minutes**

Resolved, on the motion of Mr Searle: That the minutes of the meeting of Friday 19 August 2022 be confirmed.

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

**3. General Business**

The Committee noted the following dates for upcoming Committee business:

- Monday 17 October, 2.00 pm – 4.00 pm – Report deliberative (Annual Review) and subsequent site visit to the ICAC.
- \*\*\*
- \*\*\*

**4. Next Meeting**

The meeting adjourned at 9.18 am. The Committee to next meet at 2.00 pm, Monday 17 October in Room 814/815.

**UNCONFIRMED MINUTES OF MEETING NO. 28**

Monday 17 October 2022

2:02 pm

room 814/815 and Webex

**Members present**

Mrs Leslie Williams MP (Chair), Mr Lee Evans MP, Mr Jamie Parker MP, The Hon. Adam Searle MLC, The Hon. Rodney Roberts MLC, The Hon. Chris Rath MLC, Mrs Nichole Overall MP, Ms Wendy Lindsay MP, Ms Tania Mihailuk MP and Mr Ray Williams MP (by WebEx).

**Officers present**

Stephanie Mulvey, Amy Pond, Imogen Wurf, Blake Garcia and Mohini Mehta.

**Apologies**

Mr Ron Hoenig MP (Deputy Chair).

**1. Confirmation of minutes**

Resolved, on the motion of Mr Parker: That the minutes of the meeting of Wednesday 12 October 2022 be confirmed.

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

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

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

**5. Report deliberative**

The Committee discussed whether to consider the report chapter by chapter or in globo. The Committee agreed to consider the Chair's draft report in globo, which was previously distributed to the Committee.

Resolved, on the motion of Mr Evans: That paragraph 2.13 be amended by omitting the words '*While no audits under s 57B were conducted during the 2020-21 reporting year, the Committee notes that the former Inspector tabled two special reports*' and inserting the words '*In the 2020-21 reporting year, the Committee notes that former Inspector tabled two special reports*'.

Resolved, on the motion of Mr Searle:

- That the Committee adopt the draft report as amended, and that it be signed by the Chair and presented to the House.
- 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 website.

6. \*\*\*

7. **Next Meeting**

The meeting adjourned at 2:18pm until 9am, Friday 4 November in Room 814/815.