

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**REVIEW OF THE 2013-14 ANNUAL REPORTS OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION AND
OF THE INSPECTOR OF THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

At Sydney on 7 August 2015

The Committee met at 10.15 a.m.

PRESENT

Mr D. F. Tudehope (Chair)

Legislative Council

The Hon. T. J. Khan
Reverend the Hon. F. J. Nile
The Hon. L. J. Voltz

Legislative Assembly

Mr A. J. Marshall (Deputy Chair)
Mr R. Hoenig
Ms T. Mihailuk
Mr C. S. Patterson
Ms K. Smith
Mr M. O. Taylor

CHAIR: Good morning and thank you for attending this public hearing of the Joint Committee on the Independent Commission Against Corruption for review of the 2013-14 annual reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption. My name is Damian Tudehope. I am the Chair of this Joint Committee and member for Epping. On my right is the Deputy Chair of the Committee, Mr Adam Marshall, the member for Northern Tablelands. Our colleagues from the Legislative Assembly are Mr Chris Patterson, the member for Camden; Mark Taylor, the member for Seven Hills; Tania Mihailuk, the member for Bankstown; Ms Kathy Smith, the member for Gosford; and Mr Ron Hoenig, the member for Heffron, who has arrived from London only this morning. Also joining the Joint Committee are members of the Legislative Council, the Hon. Trevor Khan, the Reverend the Hon. Fred Nile and the Hon. Lynda Voltz.

Today the Committee will hear first from witnesses from the Office of the Inspector of the Independent Commission Against Corruption. They are the Inspector himself, the Hon. David Levine, and Ms Susan Raice, Principal Legal Adviser. Following their evidence, we will hear from witnesses from the Independent Commission Against Corruption. They are the Hon. Megan Latham, Commissioner of the Independent Commission Against Corruption; Ms Theresa Hamilton, Deputy Commissioner; Mr Roy Waldon, Solicitor to the Commission and Executive Director, Legal Division; Mr Andrew Koureas, Executive Director, Corporate Services Division; Ms Sharon Loder, Executive Director, Investigation Division; and Dr Robert Waldersee, Executive Director, Corruption Prevention Division.

For the benefit of members of the public who are present, I note that prior to the commencement of these proceedings the Committee resolved to authorise the media to broadcast sound and video excerpts of the public proceedings. Copies of the guidelines governing the broadcasting of proceedings are available. I now declare the hearing open and welcome the first witness representing the Office of the Inspector of the Independent Commission Against Corruption, the Hon. David Levine and Ms Susan Raice.

DAVID DANIEL LEVINE, Inspector of the Independent Commission Against Corruption, Office of the Inspector of the Independent Commission Against Corruption, affirmed and examined:

SUSAN AUDREY RAICE, Principal Legal Adviser, Office of the Inspector of the Independent Commission Against Corruption, sworn and examined:

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

Mr LEVINE: No.

Ms RAICE: No.

CHAIR: Would you like to make an opening statement before the commencement of questions?

Mr LEVINE: No, Mr Chairman.

CHAIR: Inspector, in the report you made notes in relation to the Telecommunications (Interception and Access) Act 1979 on pages 9 and 10. What was the outcome of the Senate's inquiry into that Act on the issue you raised in your report? I also note that recently you made reference to that Act in your June 2015 report, furnished on 18 June, and arising out of the Independent Panel Review of the Jurisdiction of the Independent Commission Against Corruption [ICAC]. You stated that litigation may be needed to resolve the issues around that Act. Would you care to elaborate on what your concerns are and how that litigation perhaps ought to be pursued?

Mr LEVINE: Yes. As to the first part of your question, I do not think that there has been any outcome.

[Interruption]

The Hon. LYNDIA VOLTZ: Point of order: Mr Chair, I ask that you remind members of the public that they are not to interrupt speakers and they will be removed if they do so.

CHAIR: That is fair. The important thing is that members of the Committee can hear the Inspector and I am very relaxed that I can hear him clearly.

Mr LEVINE: As far as I know there has been no outcome from the Commonwealth select committee. The issue is this: The view is held by commissioners of ICAC, the Police Integrity Commission and indeed interstate that the product of telephone intercepts and indeed in some cases the application material that leads to the warrant that leads to the product is not available to a person in the position of the inspector except to the extent that I understand it in the excruciating terms of the Commonwealth legislation in some very obscure circumstances. The litigation to which reference has been made would arise on the occasion of a request for the product, a request for the material delivered to the issuing authority, a refusal and then seeking some order from some appropriate court that either the negative position is wrong or it is right. If the position presently taken is correct then the work of inspectors is profoundly compromised and there will be a necessity to amend the Commonwealth legislation.

Mr RON HOENIG: That effectively means you cannot discharge the investigation of maladministration under section 57B (4) of the ICAC Act because you cannot access the materials to enable you to make a judgement.

Mr LEVINE: It does not necessarily mean that I can never discharge the function. It compromises the extent to which I can discharge the function.

Mr RON HOENIG: If you cannot see the product, you cannot discharge the function, can you?

Mr LEVINE: Not necessarily. I would discharge the function to the extent that I can, with the rider in a report—if I make a report—that I have not had access to the product. And that might affect any conclusion to which I would come, having otherwise discharged my function.

Mr RON HOENIG: Because judgements in restricted products, as you would know—is it Commissioner Levine or Justice Levine?

CHAIR: Inspector.

Mr LEVINE: The safest way is to call me Inspector.

Mr RON HOENIG: You would know better than I would, Inspector. Judgements relating to product are invariably inferential judgements as to the ultimate use that is made of it. So if you do not see it how do you make an inferential assessment as to whether or not what you may be examining under the Act is correct?

Mr LEVINE: It depends where the product falls within the ambit of my inquiry. If the product of a telephone intercept initiates an action by the ICAC or some cognate body, it is difficult to determine the propriety or otherwise of the inquiry made by the ICAC if I do not know what kicked it off, as it were.

Reverend the Hon. FRED NILE: Inspector, has there been any action to change those procedures to give you the powers to have access to that material?

Mr LEVINE: Save for the submissions I made some years ago and save for this, I recently met with some inspectors or occupants of cognate offices from Western Australia, Queensland and Victoria, who all have the same problem, and we discussed it. Secondly, I shall be seeking counsel's advice in relation to the construction of the Commonwealth legislation. That will be my next action. What flows from that I cannot say. It depends what the advice is. It might have to be a Council of Australian Governments [COAG] matter; I do not know.

The Hon. TREVOR KHAN: Inspector, I take it that this is not an academic matter for you—this is a matter that is impacting on a present investigation you are undertaking.

Mr LEVINE: Yes.

The Hon. TREVOR KHAN: And that would be the matter of Cunneen, would it?

Mr LEVINE: Yes.

CHAIR: Thank you. Your report says that since 2013-14 no audits have been conducted of the commission's exercise of statutory authority. This contrasts with your predecessor, who published 11 audit reports during his time as inspector. Have you, since the issuing of your report, initiated any audits?

Mr LEVINE: Yes.

CHAIR: Can you tell me the matter in respect of which you have issued an audit?

Mr LEVINE: Operation Hale—the Cunneen matter.

CHAIR: Thank you. And what methodology are you using in respect of that audit?

Mr LEVINE: Asking for everything that I can have from the ICAC.

CHAIR: And that has been provided to you?

Mr LEVINE: And I add that it has been provided, save for the telephone intercepts—if they exist.

CHAIR: I take it in the course of that audit you have formed some preliminary views in respect of the manner in which that matter was conducted?

Mr LEVINE: Yes.

CHAIR: Are you able to share those with us?

Mr LEVINE: No, I would prefer not to.

CHAIR: Is it true to say that in your report in June 2015 you identified a series of issues that had been raised with you in relation to the manner in which the commission conducts its investigations? I think there are 14 specific areas where complaints have been raised.

Mr LEVINE: Yes.

CHAIR: Is one of those areas of complaint the manner in which the commission is seen to leak—to use the colloquial word—its information?

Mr LEVINE: Forgive me—I do not remember one of the 14 being expressly in those terms.

CHAIR: Well, let me ask you this: Does it give rise to concern to you that that is an issue that appears to trouble some members of the public in relation to the manner in which the commission conducts its affairs?

Mr LEVINE: Realistically, Mr Chairman and members of the Committee, the issue of leaks is intractable and at times risible, and is evidence in my mind—for me—of a blood feud between News Limited and Fairfax Media Limited. It is a futile task for me to embark upon trying to deal with any allegation by one side or another which has been publicly made or by any one individual to determine whether there has been a leak and, if so, by whom and to whom and of what. It is futile.

CHAIR: Well, except for the fact that there are serious criminal penalties, potentially, for someone who is leaking information, whether they are employees or witnesses who appear before the commission. That is a serious matter and it should be investigated, should it not, if there is an allegation that material is leaked?

Mr LEVINE: Well, it is capable of being investigated. I am not prepared to undertake it. It would be a waste of time for me to constitute myself as a quasi royal commission and invite journalists to come along and ask them, "Where did you get it?"—I know what the response would be—or to invite members of commission staff or officers of commissions to say, "Did you give X to Y?" But I think allegations of leaks is a fact of bureaucratic and political life in this State—allegations of leaks. The reality of it or the extent of it is something I do not know. From my own professional experience over the past 40-odd years, I have some acquaintance with what I have been calling the futility of trying to chase that hare.

CHAIR: Thank you.

The Hon. LYNDIA VOLTZ: Inspector, I note in your report there was the period between 1 October 2013 and 9 February 2014 when the office of Inspector General was vacant and that there were 16 complaints received during that time, some of which could not be assessed. Have you received any complaints with regards to interactions between the previous Premier, his staff or any other Ministers and the Independent Commission Against Corruption [ICAC] Commissioner acting in his independent role?

Mr LEVINE: The answer to that question is I have received communications which raised that issue. I have not assessed them as complaints yet falling within my jurisdiction, but certainly I have received communications.

The Hon. LYNDIA VOLTZ: How did it arise that there was a vacuum period from October 2013 to February 2014 when there was no inspector?

Mr LEVINE: My predecessor's term ended and there was no appointment made until I was appointed four months later.

The Hon. LYNDIA VOLTZ: As to the 16 complaints received during that period, in your submission you state that people were given impressions, because statements were taken, about what action would happen.

Mr LEVINE: Could you tell me from which report? My last annual report?

The Hon. LYNDIA VOLTZ: I have the 2013-14 report. During the vacuum period, "complaints were received and they were assessed by persons whose functions did not include taking such a step".

Mr LEVINE: Yes.

The Hon. LYNDIA VOLTZ: What happened to those complaints?

Mr LEVINE: They have been dealt with.

The Hon. LYNDIA VOLTZ: They have been dealt with?

Mr LEVINE: Yes.

The Hon. LYNDIA VOLTZ: And they have all been assessed?

Mr LEVINE: Yes.

The Hon. LYNDIA VOLTZ: And the impressions that people were given?

CHAIR: I do not know if he can answer that.

The Hon. LYNDIA VOLTZ: The report states, "Complainants were interviewed and statements were made to the complainants relating to whether or not the subject of their complaints fell within or without the jurisdiction of the Inspector"?

Mr LEVINE: If you are asking me the outcome of those complaints I cannot tell you because I do not have—

The Hon. LYNDIA VOLTZ: That is okay.

Mr LEVINE: Each complainant that was contactable, and I say that advisedly, received a communication from me and I think in each case the outcome was that my jurisdiction had not been activated by the complaint.

The Hon. LYNDIA VOLTZ: I think we ask you this question every year, but I will ask it again. Do you have sufficient resources to run an inquiry in line with your powers as defined by the Act?

Mr LEVINE: If you could remind me of every answer I have given each year—

The Hon. LYNDIA VOLTZ: I think you always say you would like more money.

Mr LEVINE: The answer is, presently, yes. That is the first part of the answer. Second, I have an assurance that further resources will be made available to me, if required. Third, the circumstances of "if required" is often very difficult to determine. The reporting year that ended on 30 June was extraordinary compared to every other year that preceded it. I have had some increases in resources that will accommodate my needs. There are outstanding matters beyond my control and indeed beyond the control of the commission that may or may not affect my need for resources.

The Hon. LYNDIA VOLTZ: You also now have two roles. You are combined Inspector for the Police Integrity Commission [PIC] as well?

Mr LEVINE: Yes.

The Hon. LYNDIA VOLTZ: How is that functioning in respect of your roles?

Mr LEVINE: Comfortably.

CHAIR: You made an observation that you would benefit from having an assistant inspector.

Mr LEVINE: Yes.

CHAIR: Is that a position you would still advocate to?

Mr LEVINE: Strongly, yes.

The Hon. TREVOR KHAN: And you have a person in mind?

Mr LEVINE: Yes.

The Hon. LYNDIA VOLTZ: It is not you, Trevor.

CHAIR: In April this year, after the decision of the High Court in *Cunneen v the Independent Commission Against Corruption*, you were reported as describing the Commissioner as a sore loser.

Mr LEVINE: Yes.

CHAIR: Is that correct?

Mr LEVINE: The report was correct and that is what I thought at the time.

CHAIR: Elaborating on that, what did you mean by that? Did you think that she should not have issued the release that she did?

Mr LEVINE: Yes. I thought the whole approach by the commission to that piece of litigation was disdainful—another word I used—of the courts in this State and the highest court of the land. That is the view I held and still hold.

The Hon. TREVOR KHAN: What occurred was that a media release was issued after the High Court had delivered its decision and the commission's media release, in essence, said the High Court was wrong. That, in essence, is what this 622 word media release does, does it not?

Mr LEVINE: Which one?

The Hon. TREVOR KHAN: It was a media release, which is still on their website, of 20 April 2015. I think you were quoted in the paper on the following day and perhaps a week later where the concept of poor loser and disdainful are reported.

Mr LEVINE: Yes.

The Hon. Lynda Voltz: Point of order: The member would need to provide a copy of the press release to the Inspector.

The Hon. TREVOR KHAN: I am happy to do that. I have taken it off their website.

The Hon. LYNDIA VOLTZ: He just said to you he does not know which one you are talking about.

CHAIR: The question puts the context in which he made the comment. Inspector, do you need to see a copy of the press release?

Mr LEVINE: If it can be made available.

The Hon. TREVOR KHAN: It can.

Mr LEVINE: Yes.

The Hon. TREVOR KHAN: It is an extraordinary position, is it not, for what is a quasi-judicial body to reject, in effect, the decision of the High Court?

Mr LEVINE: Well, they are entitled to disagree with the decision of the High Court.

The Hon. TREVOR KHAN: But they go further than that, do they not?

Mr LEVINE: Yes, I agree, and they did so with remarkable promptitude.

Mr RON HOENIG: Inspector, you were a very eminent and highly regarded jurist. Using the word "disdainful", which means showing contempt or lack of respect, is a very significant expression by you?

Mr LEVINE: I used it quite advisedly. That was the impact that the media releases of ICAC made upon me, having been a former member of the judiciary. I do not resile from them.

Reverend the Hon. FRED NILE: As Inspector, did you follow it up with the commission or with the Commissioner?

Mr LEVINE: I think there have been communications between myself and the commission about press releases, yes.

The Hon. TREVOR KHAN: Do I take it also the press release has been referred to you—I withdraw that question. I will not put that question at this stage.

CHAIR: You were also reported in that same article as giving advice to the Government to avoid a kneejerk reaction that would turn the commission into a second Police Force or Crime Commission. Do you care to elaborate on that?

Mr LEVINE: I remember saying that as part and parcel of my reaction to ICAC's apparent reaction to the proceedings up the ladder of the courts. That remark was particularly affected by the nature of the Cunneen incident: a motor vehicle accident, an issue about breathalysing, and, indeed, an issue said to be an attempt to pervert the course of justice, all of which, to my mind, would normally and quite capably be dealt with by a law enforcement agency, which ICAC is not. The only factor to date, apparently, that has informed ICAC about all of this business is that one of the drivers involved in the collision was the girlfriend of the son of a senior Deputy Crown Prosecutor.

CHAIR: And you thought that was inappropriate material for ICAC to be investigating?

Mr LEVINE: And I was not alone in so thinking. The former commissioner himself was of that view.

Mr RON HOENIG: When you have an Act like the Independent Commission Against Corruption Act, which has such broad definitions of what constitutes corrupt conduct, the commission can go in any direction it wants, whether or not the conduct is criminal or a civil wrong or something of that nature. How does one criticise an organisation if the Parliament gives it that breadth of power or discretion?

Mr LEVINE: How can one criticise it?

Mr RON HOENIG: Yes.

Mr LEVINE: I can criticise it as Inspector in terms of how it administers its powers. I can criticise it from a perspective of a sense of proportion that I and I think the public would expect to be exercised by ICAC in relation to the matters with which it concerns itself. It must be remembered that until the motor vehicle accident on 31 May 2014—I think that was the date—ICAC had been concerned with major inquiries involving operations Jasper, Spicer and Credo involving politicians from the Premier down, the very areas in which, to my mind, the public has a legitimate interest in seeing ICAC exercise its jurisdiction. I cannot recall at the moment the number of politicians—I remember the Premier resigned his office and I think nine others.

The Hon. LYNDIA VOLTZ: It was 11, was it not?

The Hon. TREVOR KHAN: Too many to remember.

Mr LEVINE: It was a sufficient number to constitute what I perceived to be a disruption of the structure of parliamentary government, when nine or 11 members had to move from one side to the crossbenches or whatever. That was big-time stuff. Then out of left field comes the motor vehicle accident. That is the context of bearing a sense of proportion that I am talking about.

Mr RON HOENIG: If you look at the nature of the corruption complaints that the commission gets, a significant proportion, if not most of them, are allegations of criminal conduct, some of which involve serious criminal offences. At which point of serious criminal offences should those matters be investigated by criminal investigators who are skilled in obtaining admissible evidence? At which point should the commission continue its investigation of its statutory functions? Do they overlap? And, if I can add to that—and if I am on the right track—why then cannot a criminal investigation proceed, if there be insufficient evidence to actually bring charges and the commission then proceed to perform its statutory function? Quite similar, for example, to the use of inquests by a coroner when, after the inability of, say, police or the Crime Commission to get evidence to charge somebody, the coroner completes his or investigation and ultimately people are charged as a result of that investigation?

Mr LEVINE: That is the type of question that in America is called a "compound" question. Mr Hoenig, had you asked that question in my court say 20 years ago I would have disallowed it because by the time you have reached the end of it I have forgotten the beginning.

Mr RON HOENIG: I am trying to do it the quick way here, by consent.

Mr LEVINE: I think the nub of the issue is one that could well be dealt with by what I will call the panel—that is the Gleeson-McClintock panel—and it is whether there should be, by statute or some other means, a clear statement of the criteria by which ICAC determines it will investigate A, B, C but not D and E.

CHAIR: I appreciate that. We have not seen that report, nor have you.

Mr LEVINE: No.

CHAIR: I take the point that that is certainly an issue which the High Court has invited the Government to review.

Mr LEVINE: It is a fact of my life as Inspector that people communicate with my inspectorate saying, "How come ICAC did not investigate my complaint, which is this big, yet they have embarked upon Operation Hale?", which they say is the same size as theirs. That is an everyday event almost in my office.

Reverend the Hon. FRED NILE: Have you sought an explanation from ICAC as to why they pursued Operation Hale, the Cunneen matter, so vigorously and what resources and expenditure were involved in that particular matter?

Mr LEVINE: I would prefer not to answer that because I am still in the process of, firstly, examining the material that ICAC has been good enough to provide to me. Secondly, I propose to get counsel's advice on certain aspects, including the telecommunications one; and, thirdly, once I have put my material together I will be in a better position to approach ICAC and say, "What do you say about A, B, C and D?" But I have not worked out yet what precisely A, B, C and D are.

The Hon. TREVOR KHAN: Inspector, do you have a view about the time this would take? It has really been a matter of some hot interest.

Reverend the Hon. FRED NILE: Would that be an audit?

Mr LEVINE: That is another decision, as to whether it remains an audit or I go into full investigation mode. That would depend on the advice of counsel amongst other things. As to a time limit, I said a couple of weeks ago, in another context, that if I decide to deliver a special report it might take three months. If I need further resources simply for the mechanical process of generating the document, I will ask for them—and I am sure that I will get them.

The Hon. TREVOR KHAN: Does your current assessment include the propriety and legality of the media release that was issued by ICAC at the time that it referred material to the DPP?

Mr LEVINE: It will. I have received communications from various sources.

The Hon. TREVOR KHAN: Including the Director of Public Prosecutions—is that correct? Just so I am not seen to be asking you a surprise question, I think that is referred to in your report of June. I do not wish to mislead you but I believe in that report you referred to the referral by the DPP of that media release.

Mr LEVINE: I do.

The Hon. TREVOR KHAN: It is at page 11, point 14. You will be pleased to know people do read your reports.

Mr LEVINE: That is because I do not put any illustrations or photographs in it. All I am saying there is that I acknowledge that it had been an issue referred to in the media and that I have received communications saying, "Are you going to do anything about that?"

The Hon. TREVOR KHAN: Sure.

Mr LEVINE: I cannot answer that yet.

The Hon. TREVOR KHAN: One of the sources of referral was, in fact, the Director of Public Prosecutions.

Mr LEVINE: It is definitely part of the program. Yes.

Mr RON HOENIG: Going back to the difficulty you had in accessing prior to the Telecommunications (Interception and Access) Act, I think you will continue to have problems once you receive counsel's advice until there is an amendment to the Act. But you should not have any difficulties, for example, getting any product when it comes to listening devices.

Mr LEVINE: That is right.

Mr RON HOENIG: You can access without any difficulty.

Mr LEVINE: I have experienced no difficulty in relation to surveillance material, except in relation to telephone intercepts.

Mr RON HOENIG: Subject to the advice you get, in fairness to the commission, they are acting in accordance with the law in respect of their not handing material over to you.

Mr LEVINE: I am not critical of them for having a view of what the law is and acting in accordance with that view. All that is done in good faith, as far as I am concerned.

Mr RON HOENIG: The other question relates to your staffing structure. You have two part-time employees?

Mr LEVINE: Yes.

Mr RON HOENIG: That is it.

Mr LEVINE: Yes.

Mr RON HOENIG: That is an executive support officer and a senior legal project officer.

Mr LEVINE: She is now my principal legal advisor.

CHAIR: She is sitting at the table.

Mr RON HOENIG: When you say that they are part time, they are full-time employees and they are dividing their attention between the Independent Commission Against Corruption and the Police Integrity Commission, or are they part-time in both functions?

Mr LEVINE: I will just briefly explain how we work. The three of us are in the office three days a week. Two of us—myself and Ms Raice—are in the office four days a week doing work for both commissions. I can be in the office five days a week or I can work seven days a week.

Mr RON HOENIG: Bearing in mind the size of your responsibility for both organisations—I am only asking you about this one—do you have a view about the type of staffing structure ideally you would need to properly discharge your functions in a comprehensive and thorough fashion under the Act?

Mr LEVINE: "Comprehensive and thorough" is capable of meaning something I would try to avoid. If I was to exercise my functions and powers I would really almost have to be a mirror image of ICAC itself or piggy-back or be there every day, looking over their shoulders at everything. That is totally unrealistic and it is a course I would reject. At present, the answer is that I have sufficient flexibility vis-a-vis DPC and getting in further staff. One reality is that the volume of work spikes. For example, until Operation Hale it was at a fairly consistent level. I only came in as the Inspector of ICAC in February 2014. Operation Hale brought about this inundation of work that does require further staff, and may require for the resolution of the over 30 communications we have received since the High Court decision.

Reverend the Hon. FRED NILE: In view of your comments, strictly do we still have two inspectors for these two organisations—ICAC and the Police Integrity Commission.

Mr LEVINE: You are asking about two inspectors?

Reverend the Hon. FRED NILE: I am asking: Should we go back to the original proposition of having two inspectors?

Mr LEVINE: At present, my answer to that would be no. I thought you were asking me whether something should be done about PIC.

CHAIR: I think you said earlier that you were managing both functions well.

The Hon. LYNDIA VOLTZ: Comfortably.

CHAIR: Thank you, Inspector. You have been most helpful this morning. I thank you for making yourself available and for giving us the information that you have, which has been very comprehensive.

(The witnesses withdrew)

(Short adjournment)

MEGAN FAY LATHAM, Commissioner, Independent Commission Against Corruption,

SHARON LEE LODER, Executive Director, Investigation Division, Independent Commission Against Corruption, and

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined:

THERESA JUNE HAMILTON, Deputy Commissioner, Independent Commission Against Corruption,

ROY ALFRED WALDON, Solicitor to the Commission and Executive Director, Legal Division, Independent Commission Against Corruption, and

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

CHAIR: I now welcome the Hon. Megan Lathan, Commissioner, Independent Commission Against Corruption, Ms Theresa Hamilton, Mr Andrew Koureas, Ms Sharon Loder, Dr Robert Waldersee and Mr Roy Waldon. Thank you for coming this morning. I note again that the Committee has resolved to authorise the media to broadcast sound and video excerpts of the public proceedings. Copies of the guidelines are available, if anyone requires them.

Commissioner, in the event that you or your staff require any of these proceedings to be held in camera it is open to you to make that application. I advise members of the public that if such an application is made they will be asked to step outside while the Committee determines whether the hearing should proceed in camera. The Commissioner has indicated that she would like to make an opening statement which may touch on matters that have already been raised this morning.

Ms LATHAM: Thank you, Mr Tudehope and the Committee members, for the opportunity to make an opening statement. The commission understands that these proceedings relate to part 7 of the Independent Commission Against Corruption Act, more specifically section 64, which sets out the functions of this Committee. The commission welcomes the opportunity to speak to the Committee about the commission's functions, the annual report, any trends in corrupt conduct and any policies that might contribute to its detection and prevention. However, as Committee members are no doubt aware, section 64 (2) does not allow the Committee to investigate any particular matter or reconsider any decision by the commission in relation to a particular complaint or investigation.

Since the commission's last appearance before the Committee, a number of new members have been appointed. In the interests of assisting the Committee to appreciate the wider context within which the commission carries out its work, the commission would like to summarise the processes and procedures by which complaints of allegedly corrupt conduct are received and assessed and, if appropriate, escalated to an investigation by the commission. It appears to the commission that these procedures are poorly understood and often misrepresented, although they are explained on the commission's website and in its annual reports. I would like to take this opportunity to summarise them.

The exercise of the commission's jurisdiction generally commences with the reception and registration of a complaint from any person or a notification from a public authority that corrupt conduct may have occurred or may be occurring. A very large number of complaints are received by the commission each year. In 2013 and 2014, which is the subject of these proceedings, 3,386 matters were received by the assessments section, of which 1,717 were section 10 and section 11 complaints. The remainder consisted of inquiries, requests for information and public interest disclosures. There were 410 matters which were outside the commission's jurisdiction.

The commission has developed very stringent procedures to ensure that only those complaints that warrant further investigation are progressed. Complaints and reports within the commission's jurisdiction are made the subject of reports to the assessment panel. The assessment panel comprises the Commissioner, Deputy Commissioner and the executive directors of the Investigation, Legal and Corruption Prevention divisions. The assessments section manager is the convenor of the assessment panel. The assessment panel considers reports twice a week.

Reports to the assessment panel are prepared by the relevant assessment officer in an approved form. They set out the allegations and relevant background information, provide an analysis of the information and recommend what action should be taken. In some circumstances, the officer preparing the report may make some additional inquiries to clarify issues before finalising the report. Each report is reviewed by a senior assessments section officer prior to submission to the assessment panel. The reviewing officer is required to ensure that the report is accurate, logical and complete and that it acknowledges any deficiencies or information gaps. The officer recommends what action the assessment panel might take.

The assessment panel is ultimately responsible for determining what action to take with respect to each matter. In relation to each report, the assessment panel considers the classification of each matter and whether it falls within the commission's jurisdiction, the adequacy of the report, including the summary and analysis of the matter and relevant background information, the adequacy of or need for inquiries in relation to each matter, including by way of referral under section 53 of the Independent Commission Against Corruption Act, assessment inquiries or preliminary investigation, the appropriateness of the recommendations made, whether a matter should be referred to another organisation or relevant authority for information or action, whether technical advice is required that may assist in the assessment of the matter, for example, legal advice or strategies to manage certain inquiries.

Assessment panel members can endorse the recommendation made in an assessment report or can recommend an alternative course of action. The assessment panel can decide to refer the matter to another agency or take no further action, or it can exercise the commission's power under sections 53 and 54 of the Independent Commission Against Corruption Act to refer a matter to another agency for investigation or other action and require that agency to submit a report on what action it takes. It also can require the assessment section to conduct assessment inquiries to ascertain additional information on which to base a further assessment of the matter. It can ask for the provision of corruption prevention advice and it can ask that further investigations be undertaken.

Only a small portion of matters are made the subject of a commission investigation. In 2013-14, 43 matters were retained by the commission for preliminary investigation. This represents 2.14 per cent of the 2012 section 10 and section 11 complaints and report and public interest disclosures received by the commission in that period. Most investigations commence as preliminary investigations. A preliminary investigation may be conducted for the purpose of discovering or identifying conduct that might be made the subject of a more complete investigation or deciding whether to make particular conduct the subject of a more complete investigation. If appropriate, a matter may then be escalated by the commission's strategic investigation group to a full investigation, which is then known as an operation.

Preliminary investigations are usually assigned to the preliminary investigation team. A lawyer is assigned to this team to provide legal services and ensure that powers are exercised appropriately. Once a matter becomes an operation it is assigned to an investigation team. One or more lawyers are assigned to each operation. If the matter involves potential system issues, a corruption prevention officer will also be assigned. A primary case manager is appointed for each commission investigation. This person is responsible for regularly reviewing the conduct of the investigation to ensure compliance with relevant procedures and investigation plans. The strategic investigation group is responsible for making and/or approving key decisions made in the course of a commission investigation.

The strategic investigation group consists of the commissioner, the deputy commissioner and all executive directors, except the executive director of corporate services. It oversees commission investigations, preparation of investigation reports, preparation of briefs of evidence for submission to the DPP and the progress of criminal prosecutions arising from commission investigations. The strategic investigation group usually meets monthly. The functions of the strategic investigation group include determining the appropriate level of reporting for and overseeing the progress of investigations, investigation reports, briefs of evidence and criminal prosecutions; providing direction and advice on proposed investigation strategies, deciding whether a preliminary investigation should be escalated to a full investigation, making and/or approving key decisions for an investigation, and endorsing and/or determining investigation priorities.

Investigations may focus on both historic and current activities. Methods of investigation will vary, depending on the nature of the conduct under investigation. Investigation plans are prepared for all matters and each investigation is regularly assessed to determine the most appropriate investigation strategy. Operational orders and tactical plans are required for any significant operational activity, such as the execution of a search

warrant or the conduct of a controlled operation, to ensure compliance with the commission's investigation and risk management precepts. A debrief is required following the execution of an operational order or tactical plan, with a view to assessing performance against objectives and identifying possible improvements to systems, procedure and methodology.

The primary purpose of a commission investigation is to determine whether any corrupt conduct or conduct connected with corrupt conduct, or conduct liable to allow, encourage or cause the occurrence of corrupt conduct has occurred, is occurring or is about to occur. It also determines whether the laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct. It is also able to determine whether methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct. Compulsory examinations or a public inquiry may be conducted as part of the investigation. However, not all investigations require compulsory examinations or involve a public inquiry.

The commission must be satisfied whether or not it is in the public interest to conduct a public inquiry, and in doing so section 31 (2) of the Act requires consideration of the benefit of exposing to the public and making it aware of corrupt conduct; the seriousness of the allegation or complaint being investigated; any risk of undue prejudice to a person's reputation, including prejudice that might arise from not holding an inquiry; and whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned. The considerations taken into account by the commission in applying the above criteria include whether public exposure would be likely to educate the public about serious corruption or systemic failures and issues, encourage others to come forward with information relevant to the investigation, and encourage public agencies to engage in reform and/or establish public understanding of why change is necessary.

The commission also considers the seriousness and nature of the conduct, for example, whether the conduct involves a criminal offence, the seniority or standing of the public official involved, the level of sophistication, organisation and planning, and the number of persons involved and whether the alleged conduct is systemic. The commission also considers whether the allegations are already in the public domain and whether the public inquiry would provide a transparent mechanism for public officials and others to be publicly accountable for their actions, or provide persons the subject of the allegations, including false accusations or innuendo, with an opportunity to provide an account. The commission also considers the desirability of enhancing public confidence in the operations of the commission by demonstrating openness and public accountability in the commission's conduct of investigations. The commission weighs these criteria carefully when deciding to hold a public inquiry.

The commission is acutely aware that a public inquiry exposes the details of the commission's investigation and that persons who are named as part of that investigation may be the subject of media attention. However, what is frequently misunderstood is that a public inquiry is but one part of the investigative process. It is the only part of the investigative process that is likely to encourage the reporting of other relevant information that was previously unknown to the commission. It also preforms a vital educative and deterrent function, and it provides the public with a window into the operations of the commission. Even during a public inquiry an investigation can take an unanticipated turn. It is quite wrong to assume that the commission is able to determine what findings it will make before an investigation has been completed.

It is a dynamic process that has proven most effective in exposing corrupt practices that are otherwise unlikely to be detected because they are, on the whole, immune to the investigative tools available to law enforcement agencies. The public inquiry is an inquisitorial process, not an adversarial one. It is consistent with the process undertaken by ad hoc royal commissions such as the Wood royal commission into police corruption and the Royal Commission into Trade Union Governance and Corruption. The effectiveness of the inquisitorial process lies in its ability to confront a witness with information that has been acquired during an investigation of which the witness is unaware, thereby increasing the likelihood that the truth will be exposed.

By way of contrast, the adversarial process traditionally utilised in courts of law is governed by the rules of evidence and is defined by the issues in dispute of which the witnesses have notice. It is a feature of adversarial proceedings that a witness is therefore able to prepare a response to an anticipated question. Much of the uninformed debate about the commission's public inquiry process suggests that the commission should provide witnesses with advance notice of the material upon which they will be questioned. That would significantly undermine the effectiveness of the commission's investigative process principally because it would

provide an incentive to persons who may be adversely affected by the inquiry to destroy or alter evidence of relevance to the inquiry or to conspire with others to give false evidence to the inquiry.

It is for these reasons that the commission refuses to discuss or respond to public speculation about the nature of the material that underlies an announcement to hold a public inquiry. The consequence is that the commission's silence in the face of that speculation is sometimes interpreted as tacit confirmation of what has been said or written. The commission would be undermining its own investigations were it to confirm or deny such reports. The commission's experience is that the public understands and supports the commission's public inquiry process. The detection and exposure of corrupt conduct is vital to the maintenance of public confidence in the integrity of public administration. The suggestion that the whole of the investigation should take place behind closed doors runs directly counter to its statutory purpose, namely, to investigate, expose and prevent corruption.

The conclusion of an investigation may result in no further action or a number of different actions. These may include referral to a public authority of information that is relevant to the exercise of its functions, such as information for consideration of disciplinary action or system changes to reduce the likelihood of corrupt conduct. It can also result in the dissemination of intelligence and other information or a brief of evidence for referral to the New South Wales Director of Public Prosecutions, or the furnishing of a report on the investigation for presiding officers of the Parliament.

This represents an overview of the commission's internal procedures and accountability mechanisms. They apply to every matter regardless of the origins of the complaint and the identity of the person or persons about whom the complaint is made. Any misconduct on the part of a commission officer, any abuse of the commission's powers or any breach of the ICAC Act may be the subject of a complaint to the Office of the Inspector. The Office of the Inspector and this Committee are the two main external accountability bodies for the commission. The commission is also externally accountable for its work through accounting to the NSW Treasury and the Auditor-General for the proper expenditure of funds; inspection by the NSW Ombudsman of records of telecommunications interceptions, controlled operations and the use of surveillance devices; reporting to the New South Wales Attorney General and the judge who issue the warrant for each surveillance device warrant; compliance with access to information and privacy laws, with exemptions for certain operational matters; and through the commission's annual reports.

There have been no adverse reports from any of the relevant agencies with respect to the exercise of the commission's powers. The commission's actions are also reviewable by the NSW Supreme Court in the exercise of its administrative law jurisdiction. If the commission has made a finding that cannot be supported on the evidence, if it has taken something into account that it was not entitled to take into account or failed to take into account something that it was obliged to take into account, or if it has denied procedural fairness to a person against whom an adverse finding has been made the findings may be overturned.

In its 25-year history the commission has made more than 1,200 findings of corrupt conduct in relation to more than 800 people. Not since the decisions in Greiner and Moore in 1992 and Woodham in 1993 has there been an occasion when a finding of corrupt conduct has been overturned. The setting aside of a finding of corrupt conduct against Mr Kinghorn is presently under appeal. Significantly, there has never been an occasion when a finding of corrupt conduct has been overturned on the basis that the commission denied procedural fairness.

The key achievements of the 2013-14 year are set out in the annual report at pages 6 and 7. The corruption prevention activities of the commission do not, in my opinion, receive the attention they deserve. Corruption prevention relies in no small part upon the information that emerges from the commission's investigations. That information assists in identifying organisational characteristics that are conducive to corruption and in formulating measures that are capable of reducing corrupt practices. This aspect of the commission's work results in long-term financial benefits to the State by reducing procurement fraud and fostering competitive tendering processes.

The commission is available to work cooperatively with any public agency that wishes to address the potential for corruption in its practices and procedures. The Committee will see from the annual report that the commission has accomplished a great deal in 2013-14. The investigations carried out in 2013-14 were complex and lengthy. One of them, namely, Operation Nickel, exposed systemic false certification of heavy vehicle licences and qualifications—a form of corruption that has the potential to significantly compromise public safety. The commission continues to be served by highly qualified and experienced staff whose professionalism

I have had the privilege to observe firsthand. I commend the annual report to the Committee and I and other members of the commission will be pleased to clarify any part of the report for the Committee's benefit. Thank you.

CHAIR: Commissioner, you appreciate that your opening statement has taken the best part of 40 minutes. Can I ask you this: If any members of the Committee still have questions outstanding after 1 o'clock are you available this afternoon?

Ms LATHAM: Yes, I am.

CHAIR: And are other members of the commission available?

Mr WALDON: I am.

CHAIR: Can I also put on record, Commissioner, that a lot of the material you have addressed is contained in your report and you can assume that the members of this Committee have read your report. To the extent that you felt it necessary to re-read parts of your report to us, you probably underestimate the ability of the Committee members to have read that report, and they appreciate, I have to say, the work that your organisation does.

I can also say this to you: The Premier is on record as supporting the manner in which your organisation goes about its work and the results that it achieves. You would be aware of the legislation that the New South Wales Parliament passed to seek to preserve the findings of the commission so as to ensure that the integrity of the commission is not undermined by having to spend the resources that might be more appropriately spent investigating corruption on undue legal process seeking to overturn previous decisions. You will also appreciate that Mr Duncan is currently challenging that legislation and that may put some further significant strain on the resources of the commission.

But in any event I want to assure you that to the extent that you felt it necessary to elaborate on the performance of the commission, there is no-one around this table, to the best of my knowledge, who would deprecate the work that you carry out. There may be issues that have been in the media that need exploring but you can rest assured that no-one will challenge the fact that your commission should exist.

Ms LATHAM: I did not by any means assume that anyone on this Committee had not read the report. However, this Committee is properly open to the public, these are public proceedings, and there are very few forums that the commission has to explain its work, and that was one of the functions that I thought was appropriate in the circumstances.

CHAIR: Thank you very much for taking the time to put that together. I want you to be absolutely confident that the commission has the support of this Committee.

The Hon. TREVOR KHAN: Commissioner, do you agree with the following proposition: The ICAC will ultimately be effective only if its performance justifies its extraordinary powers? If the commission is to justify those powers it must be scrupulously fair, value the rights of individuals and accept that persons should be convicted only after due process in the relevant court.

Ms LATHAM: Do I accept that proposition?

The Hon. TREVOR KHAN: Yes.

Ms LATHAM: Of course I accept that proposition against this background: that, as I indicated a short time ago, there are frequently misunderstandings that the commission operates in some way as a court, which it is not. Notions of fairness, of course, really have to be assessed against the background of the forum in which the rules of that forum operate. As I indicated in the opening statement, the inquisitorial process is deemed by many people to be inherently unfair, but Parliament saw fit to invest a body like ICAC with inquisitorial powers for the reason that there are some types of conduct—corruption being amongst them—that are so difficult to detect and expose that only the use of inquisitorial powers has proven effective to do so. But I do not cavil with any part of that statement as a general proposition.

The Hon. TREVOR KHAN: That statement was made by Peter McClelland, QC, in March 1991.

Ms LATHAM: Yes.

The Hon. TREVOR KHAN: It is contained in the inspector's report tabled on 18 June this year. Have you read his report?

Ms LATHAM: I am familiar with the statement made by Justice McClelland, yes.

The Hon. TREVOR KHAN: Have you read the inspector's report?

Ms LATHAM: Yes, I have read the inspector's report.

The Hon. TREVOR KHAN: You have referred to the inquisitorial nature of the process you undertake. Did you say the following in 2014 as a concluding note? "If any of you get tired of adversarial litigation, inquisitorial litigation is fantastic. You are not confined by the rules of evidence; you have a free kick. You can go anywhere you want to go and it is a lot of fun." Who do you get to have a free kick at?

Ms LATHAM: The first thing that I need to say in relation to that is that, like all those things—and I am sure people around this table and politicians would have had a great deal of experience of this phenomenon—there are remarks that are often taken out of context and they do not convey what people might think they convey taken out of that context.

The Hon. TREVOR KHAN: We are giving you the opportunity to explain it now. Who do you have the opportunity of a free kick at?

Ms LATHAM: The workshop on cross-examination, which took place in February 2014, was one I was invited to attend as a justice of the Supreme Court. I had that invitation extended to me before I had any inkling that I was to become the next ICAC Commissioner. Having been appointed some two or three weeks prior to that cross-examination workshop, I asked the Bar Association if they still wanted me to attend, and they said that they did.

The Hon. TREVOR KHAN: With respect—

Ms LATHAM: I am explaining—

Mr RON HOENIG: Let the Commissioner finish.

The Hon. TREVOR KHAN: —the question is clearly directed—

Mr RON HOENIG: Point of order—

Ms LATHAM: I am explaining the context.

Mr RON HOENIG: —can the Commissioner conclude her answer?

Ms LATHAM: If I cannot explain the context then I am afraid I cannot answer the question.

The Hon. TREVOR KHAN: You have taken a long time for your opening address.

The Hon. LYNDIA VOLTZ: Maybe the member should stop interrupting the Commissioner.

Mr RON HOENIG: Can the Commissioner answer the question without being interrupted? She is giving some context.

CHAIR: I accept what you are saying. Commissioner, you can answer the question? Mr Khan, you might let the Commissioner finish her explanation.

Ms LATHAM: At the end of an hour's discussion primarily to do with the operation of the rules of evidence in an adversarial setting, I said, as a concluding note to a roomful of reasonably young advocates, that if they wished to experience something other than adversarial litigation, where they were confined by the rules

of evidence and they could only ask questions that were dictated by the issues in dispute, then inquisitorial processes offered an alternative experience. That was the context of the remarks. The free kick is simply a reference to the fact that you are not constrained by rules of evidence and you are not constrained by the issues in dispute. The inquisitorial process allows an advocate to follow any line of inquiry and to question a witness in any way that might elicit information that is relevant for the purposes of the inquiry. That was the reference. In conclusion, the inspector publicly stated, when the series of remarks was repeated to him, that there was nothing wrong or inaccurate in what I said. It was simply a reflection of the extensive powers that are available for somebody who is operating within the context of an ICAC inquiry.

The Hon. TREVOR KHAN: Do you not think that even members of the public might think that reference to a "free kick" is an indication of not even the extent of rules of fairness applying to witnesses being questioned?

Ms LATHAM: It has nothing to do with rules of fairness. I was not talking to members of the public; I was talking to members of the Bar and I was talking to members of the Bar in the context where I was told that the recording of that workshop could only be accessed by log-in by a member of the Bar Association and that it was not available for public download.

The Hon. TREVOR KHAN: So a degree of hubris was allowed in the context of a private chat with members of the profession? Is that what you are saying?

Ms LATHAM: I do not know what you mean by that, Mr Khan. I was simply talking to a group of advocates who were interested in expanding their professional experience. Indeed, immediately after I made that comment and sat down, a member of the audience asked me a specific question about how the experience of counsel assisting in an ICAC inquiry differs from the experience of counsel instructed by a client in a civil or criminal matter. The whole of the discussion was really about contrasting those two areas of legal practice.

The Hon. TREVOR KHAN: Sure. You know where I am going, because you answered the question—

Ms LATHAM: No, I do not think I know where you are going.

The Hon. TREVOR KHAN: —with regard to counsel assisting. You said the following, did you not? "Well, you don't. You actually know where you are heading. The thing about the role of counsel assisting in ICAC is that you are actually part of a team and there's been a long inquiry"—and you have spoken about that—"and you've actually worked out um what you want to get out of the witness and so it is basically, by the time you get to it, it's just um, you know, like pulling the wings off butterflies." I take it this was a considered response that you gave to these young members of the profession. Would you like to tell me how counsel assisting's role is like "pulling the wings off butterflies"?

Ms LATHAM: I am not in a position to tell you that, because it was a reflection of what had been said to me about the role of counsel assisting. I do not act as counsel assisting; I appear as the Commissioner and I do not—

The Hon. TREVOR KHAN: Sure, with counsel assisting in front of you and controlled by you.

Ms LATHAM: Yes, but you see, Mr Khan—no, I preside over the inquiry and if counsel assisting asks a series of questions, which are entirely proper within the confines of the scope and purpose of the inquiry, then counsel assisting is permitted to run. Might I say, there are other counsel who appear regularly in the jurisdiction for various witnesses, who also get to have that free kick, as you indicated previously. They get to have that free kick as well; that is a feature of advocacy in the jurisdiction that anybody at the Bar will confirm.

The Hon. TREVOR KHAN: Commissioner, tell me again how you perceive the role of counsel assisting as being akin to a person pulling the wings off butterflies.

Ms LATHAM: I am sorry; I just do not regard it as a relevant question. I have already explained—

The Hon. TREVOR KHAN: The rules do not apply here either. I have asked the question; tell me how it is like pulling the wings off butterflies.

Ms LATHAM: I have explained the context. I do not think you have a complete transcript of what was said because—

The Hon. TREVOR KHAN: If you are suggesting I am being inaccurate, we can get the *YouTube* recording. You used the words "like pulling the wings off butterflies", Commissioner. I am asking for an explanation of what that means.

Ms LATHAM: I am not suggesting I did not use those words. As I said a short time ago, I was reflecting what other counsel assisting and other counsel appearing in the jurisdiction had said from time to time about the difference of the experience. The difference lies in the fact that what you have in front of you are the results of sometimes a very broad-ranging and very detailed inquiry.

Sometimes an investigation has gone on for six to nine months and you have a wealth of information in front of you. You have a wealth of material, including evidence from other witnesses which might be directly counter to the evidence that the witness in front of you has just given. So you, in fact, know exactly where the witness who has just responded to a series of questions has tried to mislead the commission, has lied to the commission or has said something which can be proved to the contrary by objective evidence. In that context where you are in possession of all the material it allows you to, in effect, draw that witness into a trap. That was the context within which the remark was made. That is the only way I can answer your question.

Mr ADAM MARSHALL: Commissioner, I take you to the issues in relation to secrecy of the commission. You are aware of secrecy provisions contained in section 111 of the Independent Commission Against Corruption Act?

Ms LATHAM: Yes.

Mr ADAM MARSHALL: Are you aware of the potential punishment under section 111 for officers of the Independent Commission Against Corruption?

Ms LATHAM: For anyone who discloses information that they have obtained in the course of an investigation, yes.

Mr ADAM MARSHALL: Do you think they are sufficient punishments?

Ms LATHAM: I think the punishment is sufficient in the sense that it is modelled on similar provisions where there is a penalty for disclosing information that is otherwise meant to be confidential. The difficulty, of course, is being able to prove that someone has deliberately disclosed information that they only acquired in the course of carrying out functions under the Act. I say that because the general impression that seems to be abroad that ICAC is responsible for certain information finding its way into the public domain is one that even the Inspector does not necessarily support. His view is that it is the product of some kind of media feud, and I am not going to comment on that one way or the other.

The difficulties from the commission's perspective is that when we commence an investigation—and as I said investigations might take quite some period of time, six to nine months or something in that order—we will speak to a lot of witnesses who will speak to us voluntarily. We have a lot of witnesses who will provide information to us without having to bring them into a compulsory examination. We have people who come into compulsory examinations and provide us with a lot of information. We can, of course, make those people aware—and we do make those people aware—that they are not permitted to discuss any aspect of their evidence with anyone else. But at the end of a long inquiry when you have potentially interviewed or spoken to as many as 300, 400 or 500 people there is simply no way of knowing which of those people may be responsible for discussing the fact that they were interviewed by the ICAC, what they were interviewed about and where they think the interview was heading. It is really a problem to do with trying to contain that information and trying to ensure that everybody abides by those obligations.

Mr ADAM MARSHALL: I take it from your answer that you are aware of the many allegations that have been ventilated publicly that ICAC, or officers of ICAC, do leak information to the media?

Ms LATHAM: I am aware of the allegations.

Mr ADAM MARSHALL: What actions have you taken to investigate those allegations?

Ms LATHAM: They are not for me to investigate. The thing is that is for the Inspector to investigate because a leak from an officer of the commission constitutes misconduct under the Act and that is within the Inspector's jurisdiction, not my jurisdiction. If I receive any information or any complaint from anyone that a named ICAC officer has been responsible for that kind of conduct then I forward that information to the Inspector. I make him aware of the fact that the allegation has been made and then it is a matter for him.

Mr RON HOENIG: As the Commissioner would know better than anyone else in the room, sometimes in an investigation by the police they might release some information publicly that generates some product as part of the investigations.

Ms LATHAM: We do not do that.

Mr ADAM MARSHALL: The Committee heard the Inspector comment earlier on his views about issues that come forward to him, complaints of that nature about leaking and the possible investigation of those being futile. He said he did not like the idea of bringing in journalists and asking them where they got their sources from. To paraphrase him, essentially he thought it was not an efficient use of his office or his time. What actions do you take as Commissioner to ensure that no information is leaked from your officers to members of the media prior to raids on premises or inquiries being announced publicly by the ICAC?

Ms LATHAM: As I said a moment ago, I have complete confidence in the professionalism of my staff. I know that when we start these investigations with teams of investigators all of them understand the importance of maintaining confidentiality. I do not have any concrete information from anyone that could point to a named commission officer who is said to have spoken to anybody and passed on information that they have acquired in the course of their duties. If someone wants to bring information of that nature forward to me then, as I said, I am happy to make it available to the Inspector.

The only instance where, as I understand it, the Inspector did directly ask a journalist where the information came from—because the accusation was that it had come from an ICAC officer—the journalist confirmed that it had not come from an ICAC officer; that she had obtained it elsewhere. So all I can say is it is very difficult for me to say to the Inspector, "People out there are complaining that ICAC leaked information". That is not information that he can realistically investigate. There has to be a reference to what was said, by whom and on what occasion. I would think that would provide the basis for a proper investigation.

The Hon. TREVOR KHAN: Do you think you could be discomforted at the very least if reports are in the paper—indeed, in the *Australian* today—that Mr Geoffrey Watson is attending social functions with journalists?

Ms LATHAM: I do not speak to Mr Watson. He is a private member of the bar. I am sorry, but in my time as Commissioner I have not engaged Geoffrey Watson as counsel assisting an inquiry. You need to address that question to him.

The Hon. TREVOR KHAN: Does it cause you any discomfort?

The Hon. LYNDIA VOLTZ: She has already answered the question.

Mr ADAM MARSHALL: Following the same line, are you concerned when you read media reports that ICAC officials are raiding premises and the media just happen to be there at the same time? Are you concerned about how the media gets that information? Who retains that information in the first place? How does the media amazingly turn up at the very time ICAC officers are raiding a premises?

Ms LATHAM: You will appreciate that during my time as Commissioner that has not occurred so I cannot speak to what happened necessarily during the reign of the previous Commissioner. But I can say that there is only one occasion of which my staff is aware where the media did attend on the execution of a search warrant. We ascertained that the person's neighbour had rung the media as soon as the commission officers turned up to execute the warrant, and the media were there almost within minutes.

The Hon. TREVOR KHAN: Was that Torbay?

Ms LATHAM: That is the only occasion upon which we were able to ascertain why it was that the media attended on the execution of the search warrant.

Mr ADAM MARSHALL: Will you tell the Committee about that?

The Hon. TREVOR KHAN: If it was Torbay, you have got a problem with that explanation—

Ms LATHAM: Excuse me—

The Hon. LYNDA VOLTZ: Point of order: The constant badgering of the witness when giving answers—

The Hon. TREVOR KHAN: Come on—

The Hon. LYNDA VOLTZ: Not "come on". You guys are pretty much having a free shot. We have not asked any questions on this side yet. Let the Commissioner answer the questions and maybe other members might have questions to ask. She has answered the same question three or four times; just let her answer.

Ms LATHAM: I am going on instructions from the directors who were working in the commission at that particular time. As I understand it, that was on the occasion of the execution of a search warrant on Mr Torbay's home, and that was the explanation we were given.

Mr ADAM MARSHALL: You may not be able to answer this question; you may need to take advice. How do you explain the presence of television news crews that had to drive for at least an hour and a half to get to Mr Torbay's residence to film the execution of the raid?

Ms LATHAM: I do not know how long the search took. You are talking about matters that occurred before my time. If you want me to provide an answer, I am happy to do so on notice.

Mr ADAM MARSHALL: If you wish take the question on notice that is fine.

Ms LATHAM: I will take it on notice and provide an account in relation to that raid.

Mr ADAM MARSHALL: Given the article on page 27 of today's *Australian* under the headline "Watson rejects claims of leaking", I must ask this question. The article claims that as part of what ended up being Operation Credo and Operation Spicer a search warrant was executed on 4 December 2013 at Mr Chris Hartcher's office. An article in the *Sydney Morning Herald* of 6 December announced that Mr Hartcher would be the subject of two ICAC inquiries. However, it was not until 18 February 2014 that the commission publicly announced the two inquiries—Operation Credo and Operation Spicer. Again you may need to take this question on notice. How does a media outlet find out and publish that the commission is undertaking two inquiries months before they are announced by the commission?

Ms LATHAM: I cannot give you an answer.

Mr ADAM MARSHALL: You can take the question on notice.

Ms LATHAM: It would be pure speculation on my part. Frankly, many things published in the media are not accurate. As I said in my opening statement—

Mr ADAM MARSHALL: On this occasion the report in the *Sydney Morning Herald* was accurate.

Ms LATHAM: All I can say is that they obviously have their own sources. I am not in a position to tell you any more about it. All I can say is that I am confident to the extent that that information was generally abroad because the investigation had been going for some considerable time. I cannot rule out the possibility that there are a number of people to whom the commission spoke who had already worked out for themselves that there was going to be an inquiry.

Mr ADAM MARSHALL: As you have stated, you believe it is not your role to investigate or to be discomforted by any potential leaks anyway.

Ms LATHAM: It is my role to pass onto the Inspector any information I receive that suggests that any officer of the commission is guilty of misconduct.

Reverend the Hon. FRED NILE: In your introduction you outline the very careful procedures you follow in moving through the various stages to determine if something is so serious that it will become an operation. How was the Cunneen matter established as being so serious that it should become an operation rather than be referred to the police as a perversion of justice or something else?

Ms LATHAM: I appreciate that a certain amount of time was spent with the Inspector discussing that matter. However, as I have indicated, questions relating to the reasons the commission did anything in particular in regard to any investigation or complaint are not within the remit of this Committee. Section 64 of our Act makes that perfectly clear. We do not appear before this Committee in effect to go through individual decisions we have made and justify them in each and every case. I do not mean to be disrespectful, but I do not regard those questions as being within the confines of the Committee's function.

Reverend the Hon. FRED NILE: I want you to clarify the criteria for determining that a matter will become an operation.

Ms LATHAM: I went through the criteria in my opening statement. There is a series of criteria and they are applied to each and every matter we examine. That is all I can tell you.

The Hon. LYNDIA VOLTZ: I refer back to the term "free kick". That is not a legal term, is it? It is a sporting term.

Ms LATHAM: Yes, it is.

The Hon. LYNDIA VOLTZ: It is a sporting term that means the unobstructed kick of a stationary ball.

Ms LATHAM: Yes.

The Hon. LYNDIA VOLTZ: Would you agree that most police agencies around the world would see the ability to use hearsay evidence from people compelled to give answers as an unobstructed shot at a stationary target?

Ms LATHAM: Yes, I would have thought so.

The Hon. LYNDIA VOLTZ: I was surprised that my lawyer friends opposite were using it as a legal term. I come from a sporting background and I was surprised that it was being used in that context. I will ask some questions about the High Court decision in *Jason Lee v The Queen*. The High Court ordered the retrial of offences where transcripts of evidence given by a defendant during a compulsory examination in a hearing before the commission were given to the prosecution to aid in its preparation for trial. The decision was based on the principle that proof offered by the prosecution unaided by the accused is fundamental to the criminal justice system. Does this ruling have any impact on ICAC's role if it is prosecuting a matter itself?

Ms LATHAM: It does not have any impact on us. It impacts much more directly on the Director of Public Prosecutions. A recent decision in the Court of Criminal Appeal considered the effect of Lee in circumstances where the compulsory examination occurred at a time long before criminal charges were laid. The circumstance in Lee was that the compulsory examination was of itself on the same topic, which was already the subject of criminal charges at the time that the compulsory examination took place. It was in a somewhat different category. However, the Court of Criminal Appeal has recently said that even where someone is compulsorily examined before criminal charges are laid and the question arises whether or not that person can have a fair trial, the responsibility lies on the Director of Public Prosecutions to appropriately quarantine anyone who has had any access to material that would otherwise be inadmissible. It is something that affects the practice of the Director of Public Prosecutions, not the commission.

The Hon. LYNDIA VOLTZ: I note your answer to Reverend the Hon. Fred Nile in regard to individual cases and how they are decided. I am not sure you can answer this question. Are you aware whether any charges have been laid as a result of Operation Jasper? If so, which department or agency approved them?

Ms LATHAM: The only information we have in relation to that is that the Director of Public Prosecutions sent that matter for consideration to senior counsel. I think that question should be asked of the Director of Public Prosecutions. Whilst we accept that there is a genuine public interest in whether or not prosecutions emerge from our investigations, I think I should indicate that, as I said, the commission's activities are focused on exposing corruption and doing something by way of addressing policies and procedures that prevent its furtherance in the public sector. We generally do not consider the number of successful prosecutions that arise from inquiries as any relevant indicator of our success. However, we accept that there is a public interest in it.

Mr MARK TAYLOR: One of the commission's activities is issuing press releases from time to time. I refer you to the press release concerning Ms Cunneen dated 27 May 2015. I assume you are aware of that press release.

Ms LATHAM: I am aware of a number of press releases. However, this again seems to be traversing operational decisions that we made in respect of a particular matter.

CHAIR: With respect, I disagree.

Ms LATHAM: All I can say is that I will not comment on decisions taken in relation to individual matters. What I can tell the Committee is that from time to time the commission takes the step of making public statements to inform the public about the outcome of an investigation, the reasons an investigation might not be pursued, or why it might be delayed. It depends on the level of public interest in the investigation. It depends on whether or not there has been speculation about what the commission is doing. Sometimes those public statements are necessary in order to fulfil our accountability function to inform the public of what it is that we are doing, and that is the function that we undertake from time to time by undertaking those public statements.

Mr MARK TAYLOR: In regard to your initial statement concerning operational matters, it is certainly not the case that the press release of 27 May 2015 had anything to do with an investigation at that time. It was post investigation or certainly post decision of the High Court, was it not? So you can talk about the mechanisms inside the commission that come about for the release. Do you understand the question?

Ms LATHAM: Yes.

Mr MARK TAYLOR: Perhaps I will ask it again. Did you authorise the press release dated 27 May 2015 headed "Decision to provide evidence in Operation Hale to the DPP"?

Ms LATHAM: I am the commissioner and the buck stops with me, but I really do not understand entirely what the controversy is about.

Mr MARK TAYLOR: Is there a process within the commission that you authorise a press release prior to it being released?

Ms LATHAM: Yes, there is a process whereby in every matter if we take the view that the public needs to be informed or that there needs to be a response to something that grossly misrepresents the position of the commission or that is in the public interest to publish, I will consult with the members of the executive and we will make a decision as to whether or not such a statement is necessary and then we will probably make a decision about the form of that statement.

Mr MARK TAYLOR: Specifically in relation to the press release of 27 May 2015, did you read that press release and authorise that prior to it going out?

Ms LATHAM: I am sorry, you just need to explain it to me. The press release of 27 May was the release that informed the public that we were referring the matter to the Director of Public Prosecutions [DPP].

Mr MARK TAYLOR: Yes.

The Hon. TREVOR KHAN: It did a good deal more than that.

CHAIR: Mr Taylor will show the press release to the commissioner.

Ms LATHAM: Yes. Well, again, it is a decision that we took in relation to a particular matter. It is a decision that we took in relation to a particular matter.

Mr MARK TAYLOR: I understand that but my question is: Did you read the press release and is it a function of yours to authorise a press release? I am trying to establish whether you had personal knowledge of the content of that press release.

Ms LATHAM: Of course I read the press release.

Mr MARK TAYLOR: Is there a process where you say yes or no and you okay or authorise that press release to go out from the commission? Is that how the function of the commission works?

Ms LATHAM: As I said before, the buck stops with me. I am the commissioner. Nothing would be released into the public domain unless as the commissioner I approved it.

Mr MARK TAYLOR: With all respect, I still have not had an answer. Specifically do you recall authorising that particular press release? That is the question.

Ms LATHAM: Again, this is a question you are asking me about a decision in relation to a particular matter.

The Hon. TREVOR KHAN: Is that a refusal to answer it? Is that what it is?

Ms LATHAM: Section 64 (2) of the Act states:

Nothing in this Part authorises the Joint Committee:

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

All of these questions—

The Hon. TREVOR KHAN: So that is, "Yes, I am refusing to answer that question"?

Ms LATHAM: Mr Khan, what that is is an explanation of what section 64 says that limits the type of questions that this Committee can ask of the commission.

The Hon. TREVOR KHAN: That is, "Yes, I am refusing to answer." Is that right, Commissioner?

The Hon. LYNDIA VOLTZ: Point of order: Mr Chair, I ask you to bring the Hon. Trevor Khan to order.

CHAIR: Order! I am not sure a question which asks you whether you issued a press release is within section 64 (2).

Ms LATHAM: I have already said we issued the press release.

CHAIR: And do you recall doing it?

Ms LATHAM: Of course I recall doing it.

Mr MARK TAYLOR: You would have been aware at the time that Ms Cunneen obviously appeared on behalf of the Crown in certain murder indictments at the time?

Ms LATHAM: I am sorry, I am not trying to be rude; I am simply trying to point out that section 64 does not allow this Committee to ask those questions.

CHAIR: With respect, I disagree. I think it is an entirely relevant question.

Ms LATHAM: We will have to agree to disagree, I am sorry.

CHAIR: Perhaps you can put the question again, Mr Taylor.

Mr MARK TAYLOR: My question was at the time that you authorised that press release was it the case that you were aware that Ms Cunneen appeared on behalf of the Crown in certain murder trials in this State?

The Hon. LYNDIA VOLTZ: Point of order: The rules under which this Committee operates have been read out a number of times to members opposite. The commissioner has already said that she will not deal with operational matters in a specific area. The member is now asking a very specific question in regard to an investigation and the actions of the commissioner. It is out of order, as the commissioner has already pointed out a number of times.

CHAIR: Order! In my respectful submission the commissioner's knowledge of the occupation of Ms Cunneen is not an operational matter.

Ms LATHAM: I have been aware for many years that Ms Cunneen operates as a Senior Crown Prosecutor.

Mr MARK TAYLOR: Is it the case that at the time you would have been aware that the press release would have an effect on the appearance or otherwise of Ms Cunneen in upcoming trials?

Ms LATHAM: No, I simply do not have any remit to determine one way or the other what Ms Cunneen's duties might have been at that time. It was simply not a question that came within my jurisdiction.

CHAIR: That is a bit unresponsive, quite frankly. You have been a Senior Crown Prosecutor yourself. You would know that if in the event while you were acting in that position you were charged in the manner that you were advocating or the DPP was suggesting should occur in relation to Ms Cunneen you would have to stand aside. Is that not the case?

Ms LATHAM: I am sorry, no, I do not know that that is the case. All that information did was convey to the public that the matter was being referred elsewhere. The decision whether or not to stand Ms Cunneen down from any of her then duties was not one for me; it was one for the Director of Public Prosecutions.

CHAIR: But you will recall that it was issued at a time when she was conducting a murder trial.

Ms LATHAM: I frankly did not have any information on whether or not she was conducting a murder trial.

CHAIR: Did it occur to you that that might be important?

Ms LATHAM: I simply do not understand where these questions are going.

CHAIR: It goes to the role of issuing a media release in relation to the delivery of or request to the DPP to charge Ms Cunneen. It was not an insubstantial press release.

The Hon. TREVOR KHAN: It was 622 words.

CHAIR: The press release could have said, "Matter referred to the DPP" full stop.

Ms LATHAM: Again, I just do not understand where these questions are going and why it is that they come within the remit of the Committee. But can I just say this: When the commission makes a decision that something is in the public interest to convey publicly we make that decision regardless of the effect that it might have on that individual. If it is in the public interest it is in the public interest. Unfortunately from time to time we make public announcements, including announcements that we are about to hold a public inquiry, that name individual persons as the subject of allegations of corrupt conduct and those press releases have effects on

people. They have effects in the sense that members of Parliament might have to stand down or people occupying offices might have to step aside.

CHAIR: That is right.

Ms LATHAM: All I can say is there is nothing inconsistent about the commission deciding to make a public announcement that is in the public interest. Whether or not it has an effect on somebody's position, from our perspective, is secondary to our functions. Our function is to make sure that information that is in the public interest is released, that our activities and our investigations are transparent, that they are open to scrutiny and that we inform everybody of what it is we are doing and why. That is the general practice that we adopt. We could be just as rightly criticised if we withhold information and do not release it until some later time when it has even more of an impact, so we cannot really pick and choose about the timing of our public announcements.

Mr MARK TAYLOR: Perhaps I could ask one last question on that, Commissioner. From your answers can I infer that you did not at any stage communicate with the Director of Public Prosecutions [DPP] prior to the issuing of that press release? Sorry—I will rephrase that so I can tie that down for you: You did not communicate with the DPP about the shortly to be released press release?

Ms LATHAM: I do not think you can infer any such thing. But once again that is really within the confines of the decisions that the commission makes about who it communicates with, when, where and why.

Mr MARK TAYLOR: Sorry, I am confused by the answer.

The Hon. LYNDIA VOLTZ: Point of order: The member cannot keep asking the same question three or four times because he thinks he should get an answer that is different to the answer he has just been given.

Mr MARK TAYLOR: No-one has asked the same question three or four times.

The Hon. LYNDIA VOLTZ: Well, you have just asked her if you can infer something. She has told you that you cannot infer it and that it is part of their operation on how they deal with people.

CHAIR: I understand. Thanks. Let us move onto the next question.

Mr CHRIS PATTERSON: For the year ending 30 June 2014, ICAC's total revenue was \$26.85 million. Is that correct, to your knowledge?

Ms LATHAM: The \$26 million includes, as I understand it, some capital expenditure. I think our actual income from the Treasury was \$21 million.

Mr CHRIS PATTERSON: That is correct—\$21.15 million with a government grant of just over \$2.5 million supplementing it.

Ms LATHAM: Yes.

Mr CHRIS PATTERSON: So it is safe to say that the bulk of the resources are from the government—taxpayer resources?

Ms LATHAM: I would hope so.

Mr CHRIS PATTERSON: We know so. Thank you.

CHAIR: You do raise some income by educational programs and things that you run.

Ms LATHAM: We do not raise a lot of income that way. Our view is that we should not be charging public sector agencies because of the statutory purpose for which we were set up.

CHAIR: I think there is a reference in the accounts to \$350,000-odd of income that you receive from that. I might be wrong. It is of little consequence.

Ms LATHAM: That income arises out of a shared service that we provide to the Health Care Complaints Commission.

CHAIR: Thank you.

Mr CHRIS PATTERSON: Obviously not pertaining to the operational part but, as we have just established, clearly ICAC is government funded. Would you say that the pursuit of the Margaret Cunneen by ICAC was a good use of government resources or ICAC's resources?

Ms LATHAM: Once again, I do not regard that as a question that is within the Committee's remit.

Mr CHRIS PATTERSON: Without putting words in the Inspector's mouth, he certainly did not seem to. If that is not within the—

The Hon. LYNDIA VOLTZ: That is not putting words in the Inspector's mouth?

Mr CHRIS PATTERSON: Well, go back to *Hansard*.

CHAIR: That is what he said.

The Hon. TREVOR KHAN: Straight out verbal.

Mr CHRIS PATTERSON: Okay, so in relation to Cunneen—but not for you to comment, because you have made it abundantly clear you won't—

The Hon. LYNDIA VOLTZ: Point of order—

CHAIR: Well, she may comment. Just put the—

The Hon. LYNDIA VOLTZ: He cannot say, "Not for you to comment, because you've already said you won't." The member should not ask a question and—

Mr CHRIS PATTERSON: It will then go to my question, if I may.

The Hon. LYNDIA VOLTZ: Are you going to ask her a question she can comment on or not?

CHAIR: Put the proposition to her.

Mr CHRIS PATTERSON: The ICAC was ordered to pay the costs of Cunneen in three hearings—one in the Supreme Court, one in the Court of Appeal and one in the High Court—and obviously your own legal costs. Has this happened with any other operation that you are aware of?

Ms LATHAM: I can take that question on notice, but that just follows the usual rules that apply in any litigation: the loser pays the costs. That is the rule that applies in any litigation.

Mr CHRIS PATTERSON: Absolutely. I am not questioning that. So you will take on notice the question: Has that occurred with any other operation?

Ms LATHAM: Yes, I can take that on notice. I do not know.

Mr CHRIS PATTERSON: Thank you. I appreciate that. Again on notice, do we know the estimate of those costs or is that something you cannot answer?

Ms LATHAM: Well, we do not know, because that is something that is usually referred elsewhere.

Mr CHRIS PATTERSON: Thank you.

Reverend the Hon. FRED NILE: Where is the elsewhere?

Ms LATHAM: My legal director tells me that there has been no estimate of legal costs. It has been forwarded to the Crown Solicitor's Office, so we do not know what they are.

The Hon. TREVOR KHAN: Will those costs come out of your budget when they are eventually taxed or assessed?

Ms LATHAM: There is a Treasury Management Fund that we are able to access if they agree to cover us in litigation that arises out of the performance of our functions.

The Hon. TREVOR KHAN: Has that discussion occurred to date?

Ms LATHAM: It occurs on many occasions. We have got a number of litigations—

The Hon. TREVOR KHAN: With respect, we are talking about the Cunneen matter. Has the discussion about who is going to bear the costs been had?

Ms LATHAM: As I said, the Treasury management fund has accepted liability for any of those matters, including the Cunneen matter.

The Hon. TREVOR KHAN: Well, you had not said, so thank you.

Mr CHRIS PATTERSON: This week the Duncan case was heard in the High Court. ICAC was represented by two silks, Bret Walker SC and Geoffrey Watson, another two junior barristers appearing for it, the Solicitor General, who is a silk, and another junior appearing for the Attorney General making similar arguments for ICAC. Mr Duncan was only represented by one silk and one junior barrister. Commissioner, do you consider it excessive of ICAC to brief two silks and two juniors?

Ms LATHAM: That matter raised a constitutional point which required the intervention of every State with the exception of Tasmania. So that had nothing to do with us. That was simply a desire on the part of other States to contribute to the argument. No, I do not regard it as excessive.

Mr CHRIS PATTERSON: Thank you. I am just trying to get to the use of the resources by ICAC.

Mr RON HOENIG: The inquisitorial process seems not to be widely understood by a number of commentators, particularly in the media. You made reference to the fact that at times the inquisitorial process can be seen to be unfair. The Act requires you to perform something different as part of the inquisitorial process because you are not simply conducting public inquiries in relation to corrupt conduct or making recommendations like a royal commission. The Act requires you to make determinations against individuals.

Ms LATHAM: Yes.

Mr RON HOENIG: And that sets ICAC apart from, say, the inquisitorial process in an inquest or a royal commission that makes recommendations or an ombudsman that makes recommendations. That is the case, is it not?

Ms LATHAM: Well, royal commissions make findings. Our findings of corrupt conduct are equivalent to findings made by royal commissions. But, yes, that is true.

Mr RON HOENIG: Royal commissions do not make findings against individual people—

The Hon. TREVOR KHAN: Wood did.

The Hon. LYNDIA VOLTZ: Yes, they do. There is one at the moment in Melbourne.

Mr RON HOENIG: I want to put to you a question that I put to the Inspector probably in a convoluted way. A significant proportion of matters relating to corrupt conduct involve allegations of criminal offences, some quite serious criminal offences. Do you make a determination during your investigative process as to when another agency should perhaps collect admissible evidence for the purposes of seeing whether somebody should be charged as distinct from just continuing your statutory function in the way you do?

Ms LATHAM: As I said in the opening statement, there are occasions when we commence an investigation and at some point we determine that it may not be appropriate to continue to a full public inquiry, and we would refer the information that we had then acquired to another agency for their purposes. That might be a number of different agencies, not just the Director of Public Prosecutions [DPP] or the police. It could be a number of different agencies. As I said, there might be a public agency that was able to take disciplinary proceedings based on the information that we have acquired. But those decisions are made on an operational basis, on a case-by-case basis, and it is very difficult to apply some overarching rule. It really just depends on the progress of the investigation and whether or not we think that we have acquired sufficient information to make that referral a constructive one.

Mr RON HOENIG: I am particularly interested in what is the greatest public interest, and that is bringing people to justice who have committed criminal offences. As you know—others probably do not—the DPP is at the end of the process. They just get handed the material following an investigative process. There is conduct of people that constitutes very serious criminal offences. I do not want to single anyone out hypothetically because it might relate to people who are currently before the court, but they are very significant criminal offences. At some point is a determination made as to whether or not the commission should proceed to investigate whether or not those persons are guilty of corrupt conduct or whether or not the police or the Crime Commission ought to take over the investigation for the purposes of having charges against the people if they can obtain admissible evidence to bring those charges?

CHAIR: That is a loaded question.

Ms LATHAM: That is something that can occur but, as I said, it depends on the individual case.

Mr RON HOENIG: I understand that.

Ms LATHAM: All I can say is that the focus of the commission's investigations is on corrupt conduct. As you would be aware, corrupt conduct has a definition under the Act. In order to ground jurisdiction, we have to be satisfied that there is an indication that corrupt conduct has occurred or is about to occur. That is what we are permitted to investigate. When we get to the end of an investigation, after a full public inquiry, sometimes it is only then that we have all of the information that we need to determine whether any of that information might justify referral for the consideration of prosecution.

It is sometimes very difficult to make that assessment when you are only halfway through an investigation. As I have attempted to stress on a number of occasions, it is the public inquiry that most often produces the most unexpected and the most startling information. Sometimes a public inquiry process really gives us a lot more material which might found a referral to the DPP. We have to make a judgement call in each case as to whether or not we need to go further than a preliminary investigation, whether we have enough at that stage that we could refer or whether we need to go further.

Mr RON HOENIG: You only have limited resources.

Ms LATHAM: That is right.

Mr RON HOENIG: There is only a certain amount of thorough investigations that you can undertake. That would be right, would it not?

Ms LATHAM: Yes, but the powers of the commission go far beyond the powers that are normally available to conventional law enforcement agencies such as the police. The distinguishing feature, I suppose, is that we can uncover material and we can investigate conduct in a way that conventional law enforcement agencies cannot. At the end of the process, we potentially will have more information than that law enforcement agency could ever have acquired, even if we had referred it at an earlier time.

Mr RON HOENIG: As the commission conducts its investigations of serious conduct that could involve serious criminal offences, are the commission investigators conscious of the need to collect admissible evidence along the way?

Ms LATHAM: They collect as much evidence as they can, admissible or otherwise, but they are conscious of the fact—we are all conscious of the fact that referral to the DPP can only be done on the basis of admissible evidence. We refer the material—ultimately, the question is for the DPP to determine whether there

is sufficient admissible evidence to warrant the proceedings, but we are conscious of the fact that they can only act on admissible evidence.

Mr RON HOENIG: I note your report states that 41 per cent of the complaints that the commission receives are from local government.

Ms LATHAM: Yes.

Mr RON HOENIG: You make various suggestions as to why that is the case. It is usual in local governments and communities across the State that when someone is dissatisfied with a complaint that the first port of call is to say they are referring the matter to ICAC. Then stories appear in local papers to say that they have and, of course, the commission quite properly does not comment. You must be inundated by those sorts of complaints?

Ms LATHAM: They represent a significant proportion of complaints because, as we indicated in the report, it is that level of government with which most people have direct contact. I do not think it is an indication of that level of government being more or less corrupt than any other. I think that is just the level of government with which people are most affected in their daily lives.

CHAIR: In fact, I think the greatest increase in corruption appears to be in the education sector.

Ms LATHAM: Interestingly, it depends on whichever sector we are looking at. It tends to promote disclosure of other corrupt conduct within a sector. As soon as we start investigating a given sector, we find that that tends to produce further complaints, so it has a snowballing effect.

CHAIR: I have to congratulate you. I read one of the reports you issued in relation to corruption in the IT industry and the delivery of IT services to an education institution. I must say the recommendations are excellent.

Reverend the Hon. FRED NILE: I am following up a question regarding the work of the assessment panel.

Ms LATHAM: Yes.

Reverend the Hon. FRED NILE: I note in the reports there has been an increase in the number of decisions made by the assessment panel to close matters without referral. In the 2013-14 reporting period, in fact, 84 per cent of matters closed without referral. There seems to be a significant drop in the number of matters retained for preliminary investigation—only 43 in 2013-14. What factors led to the increase in matters closed without referral and the decrease in matters retained for preliminary investigations? Has there been a change of policy with regard to methodology used by the assessment panel in determining what action should be taken on matters received by ICAC?

CHAIR: That is a long question.

Ms LATHAM: There has not been any change in methodology. From time to time the volume of complaints goes up and goes down. It fluctuates from time to time and also from time to time the nature of the complaints vary as well. There has been no change in policy. That is just a reflection of the assessment process working in order to weed out matters that on their face and even after some preliminary inquiries do not actually raise any allegation of corrupt conduct that warrants further investigation.

A lot of people make complaints to ICAC—this will not come as any surprise—because we are a complaints body. Any complaints body will tell you—the Ombudsman and other bodies will tell you—that when people are dissatisfied with a decision that has been made that affects them, they will complain to everybody, even if it does not involve corrupt conduct. It is a general, "I am going to make a complaint", and it goes out to all of those organisations and they often do not come within jurisdiction.

Reverend the Hon. FRED NILE: I understand that, but the figures do not seem to add up. It is as if there has been a change in policy.

Ms LATHAM: I can look at that more closely. I will supply some further information to you at a later time.

The Hon. TREVOR KHAN: Is it common practice for counsel assisting to provide letters of comfort to witnesses with regards to the use of their evidence?

Ms LATHAM: I would not say it was common, but I can only speak for the period of time during which I have been commissioner.

The Hon. TREVOR KHAN: Sure.

Ms LATHAM: I would not say it was common, no.

CHAIR: Would you accept it as good practice? Is it something you condone?

Ms LATHAM: I think there is a great deal of misunderstanding about what so-called letters of comfort are. The only occasion of which I am aware during my tenure was a very specific written undertaking, which was expressed in very specific terms and was premised upon—and this is something that every undertaking in the legal setting also is premised upon—the person who receives the benefit of the undertaking giving the commission a full, complete and truthful account. So that if the person who receives the benefit of the undertaking does not give a full, complete and truthful account the undertaking is worth nothing.

The Hon. TREVOR KHAN: Let us assume that that is not where I am going. Let us assume that on at least one occasion counsel assisting has provided one. It is the case, is it not, that the one you are aware of is one where you, in a sense, provided a mirroring letter of comfort some week or thereabouts later.

Ms LATHAM: It was not a mirroring letter of comfort. I provided what was a strictly worded undertaking.

The Hon. TREVOR KHAN: What is the legislative basis upon which you provided and on which counsel provided such a letter of comfort?

Ms LATHAM: There is no need for a legislative basis in circumstances where such undertakings—as Mr Hoenig would know—are routinely given in a range of law enforcement contexts. They do not have a legislative basis at all. It has been a policy that is applied, and has applied for many years, where people are conducting investigations and someone suggests that they will cooperate with the investigation in return for being treated—

The Hon. TREVOR KHAN: Not pursued.

Ms LATHAM: —with some discretion in terms of the ultimate findings that would be made against them, but always subject to the requirement that they tell the complete truth.

The Hon. TREVOR KHAN: As you have raised Mr Hoenig, you would be aware, would you not, that where those letters of comfort have been given, the Director of Public Prosecutions will disclose the existence of such a letter of comfort to a person impacted by the evidence that may be given. Is that not right? That is, you let the other side in on the news.

Ms LATHAM: Yes. That is the current practice as I understand it.

The Hon. TREVOR KHAN: In the context of ICAC, what is your procedure for advising persons who may be impacted by the evidence given by a witness holding a letter of comfort? How does the other side know that this bloke is on a promise?

Ms LATHAM: All I can say is that we are not obliged to disclose any decision that we take in the course of an operation. The point about an inquisitorial process is that you do not in fact tell the subject of the investigation what information you hold and how you obtained it.

The Hon. TREVOR KHAN: In the context of hearings before the commission, a witness may be in receipt of a letter of comfort and none of the persons who may be impacted by that evidence will be told that the witness is in receipt of a letter of comfort.

Ms LATHAM: That is quite possible.

The Hon. TREVOR KHAN: That is the fact, is not?

Ms LATHAM: As said, it is quite possible that that is what occurs. There may be circumstances where we do disclose it but we are not obliged to.

The Hon. TREVOR KHAN: Would you like to check back and see in your time as commissioner when you have disclosed to the other side during a hearing—

Ms LATHAM: I am happy to take that on notice but, as I said, your question was premised on there being some obligation to disclose it or on some legislative basis for the undertaking.

The Hon. TREVOR KHAN: No, I was asking whether you had a procedure with regards to disclosure.

Ms LATHAM: And I told you that there is no recognised procedure that we have to comply with by way of making decisions to provide such an undertaking or by way of informing other people that we have done so.

The Hon. TREVOR KHAN: Do you think as a matter of general fairness, ignoring the rules of evidence, that a person potentially impacted by a witness who may be, in a sense, subject to a letter of comfort and may be only telling part of the story, that it might be appropriate for the other side to have some knowledge of that?

Ms LATHAM: I do not think that is a relevant notion of fairness that operates within the way in which the inquisitorial process works, and there is a very simple reason for that. The fact is that nobody appearing in an inquiry knows all of the information that the commission has at its disposal—nobody does. And nobody does know until we either provide a report—and even in those circumstances where we provide a report there will still be information in possession of the commission that we have not released and that we will not release because it is not in the public interest to do so.

The Hon. TREVOR KHAN: Would it not be in the public interest for people to know that you are doing deals with witnesses?

Ms LATHAM: I do not think that is the case, frankly, that it is necessarily in the public interest for them to know that.

Mr RON HOENIG: Well, there is no other side in an inquisitorial process. And I do find it amazing that members of Parliament give a statutory organisation powers and then they complain that the organisation uses them.

The Hon. TREVOR KHAN: Is that a speech?

Mr RON HOENIG: Over the last decade or so the response to advice to various statutory organisations for corruption prevention has been that codes of conduct have been adopted. Those codes of conduct are sometimes given legislative force by some regulation which says that they shall apply. The codes have now become so convoluted and complex that even experienced members of the bar have trouble reading them, let alone some punter who is working for a public authority. I have had my trouble getting my head around even the Parliament's one, and I might be a struggling member of the bar. There must be a better way to simplify a process that communicates to average people what is expected of them in an organisation rather than these complex codes.

Ms LATHAM: It is always difficult to be prescriptive about something like what constitutes a conflict of interest because they are notions or concepts that shift according to the circumstances in which an individual finds themselves, but I think the best person to answer that question is probably Dr Waldersee. He has done a lot

of work in this area and he is regarded within the Asia-Pacific as a leader in this field. Robert, would you like to reply?

Dr WALDERSEE: I fully agree with your issue, which is that they are extraordinarily complex. In Operation Jarek, about the people who worked in warehouses and were taking gift vouchers and so on, in a couple of cases they argued that the gift policy was so complex that they did not understand that they were not allowed to take gifts. And when we looked at it they actually were that complex. Now, the trouble with codes of conduct as a single control is that they can be aspirational and say, "This is what we expect of you," but—

Mr RON HOENIG: Like "Thou shalt not kill, thou shalt not steal."

Dr WALDERSEE: Yes, that sort of thing. But if people want to use them as a disciplinary tool they stop being codes of conduct and become specific sets of rules. It has become quite problematic. The other problem is that in the cluster arrangements there are multiple layers that are each setting up codes of conduct. So there is one at the cluster level and then the individual department will have one. People are now facing two document sets. It is something we find unsatisfactory and we communicate that, where possible, they should be simplified.

Mr RON HOENIG: What is the solution, because every public authority, including various parliaments and Ministers, have all these detailed codes in response to a variety of advice, recommendations or previous findings. What is the solution? Do they all need to be rewritten? Do we all have to go back to basic standards? As I said in my question to the commissioner, these complex codes—I do not know whether it was by design or inadvertently—are now given statutory force. So there is a regulation that says that you shall comply with a code. Normally a law that binds somebody is enacted by the parliament or by regulation. Now, at some administrative level these detailed documents are produced by some middle-ranking bureaucrat and those documents become the law. They are just written by an HR department or they are incredibly complex. Then those documents are used, not as a tool for corruption prevention but generally used as a sword. You are the world expert, so having gone down this track for the last decade, what do the public sector organisations now do about it?

Dr WALDERSEE: The thrust of what the commission is doing now is to say that the control that is likely to be obtained from the code, and further tightening of the code, has probably reached a point of diminishing returns. The risk control in a broader sense should be looking at the whole operational arrangements and the waste in the system. But to continue to add more and more rules when people do not even know the existing rules is unlikely to achieve enormous gains. That said, you would not go to no code of conduct. There is an optimum point where people understand that you do not take gifts, you do not own your own business and contract back to government. There are basic things that people need to understand.

Mr RON HOENIG: So the conflict of interest provisions the commissioner says are difficult and then you apply the code. With respect to the local government code, if a councillor is a very religious person and goes to church on Sunday, the minister of religion may say to him, "We have a big traffic problem out the front. Our parishioners risk being killed. Something needs to happen with the pedestrian crossing or some lights." If you look at the wording of the model code of conduct you see that that religious person who goes to church all the time has a conflict of interest because of his relationship with the church and the minister and therefore should not raise the traffic problem out the front and should leave it to somebody else to do. But the very reason that that person is in local government is that he has come from that sector of that local community and has that knowledge and relationship to cause something to occur. If you use that as an immediate example—

The Hon. TREVOR KHAN: This is even longer than my questions.

CHAIR: I think we understand the point.

Dr WALDERSEE: The point is that a conflict of interest should not necessarily exclude someone from the decision but it needs to be known that the person has an interest. There needs to be a decision on how it is going to be managed. The short of it is that if the policies and procedures are extraordinarily complex, people do not know or understand them, or they greatly restrict people's ability to carry out their functions. While the rest of the operations are loose and there is waste and opportunity throughout, there is no point focusing any more on those policies and procedures. The policies and procedures need to be brought back so that they have an effect on people's behaviour and the focus is then put more broadly across how the organisation controls itself.

Mr RON HOENIG: There is one other thing I want to ask the commissioner or whoever is appropriate. Sometimes, to minimise or avoid as much as corruption as possible, it costs an organisation more to do that than the loss which may well be either through corruption or inefficiency or simple error. Is that a legitimate thing for an organisation to take into consideration when determining what level of corruption prevention, error prevention or audit prevention it should put in place?

Dr WALDERSEE: There has been considerable research that has shown the fact about the cost, but it relates to what has been termed the "law and order model". You write complex regulations or codes of conduct—as you have described—and then put a lot of money into enforcing them. That does not deal with the opportunity and incentives that come from money just lying around the organisation or poorly controlled procurement.

Many years ago we looked at fire brigades. There was a \$4 million facilities job and they had \$6 million budgeted. If you can get that \$2 million off the table then you prevent corruption and, at the same time, you make the operation more effective and efficient. So our focus is increasingly on how you tighten up the functioning of government to take out opportunities and incentives for corruption. And that does not have the negative cost that a law enforcement approach has.

Mr RON HOENIG: A private sector organisation would make that cost-benefit decision every time. You would decide how much corruption or inefficiency you are prepared to tolerate depending on the cost of closing it up.

Dr WALDERSEE: Yes.

Mr RON HOENIG: Is the public sector in a different position, in your view?

Dr WALDERSEE: It is. We talk about this in our workshops. In the private sector, as you said, you reach an equilibrium where you are not going to spend any more preventing corruption because it is going to cost you more to prevent than you save. But in government the other issue is that it is not just a purely financial consideration. There is the reputation of government and confidence in the system. So while there is no natural equilibrium, the factors are different too. So it is a slightly different issue. When people see government money being wasted or going to the wrong person, that matters more than just a dollar value.

CHAIR: It is like shoplifting in a sense, isn't it? You are prepared to spend so much to try and prevent shoplifting but there is a point in private practice where you say, "I'll tolerate it."

Dr WALDERSEE: There is.

Ms TANIA MIHAILUK: I am very interested in prevention of corruption policies in general. It does not matter who is in government, there is a general view that we now provide a lot of public money to private organisations and to the not-for-profit sector as well by way of grants. And that is at a local government level and at State and Federal levels. I have a real interest in how we can prevent corruption in that kind of space and I am interested in your view on who should be monitoring this type of corruption. Should it be the government that is providing the grant to a particular organisation or should it be that organisation itself? And what takes place, in reality?

Dr WALDERSEE: A couple of years ago we put out a report on the funding of non-government organisations [NGOs] to deliver human services for Government because we had concerns that the central control of small grants to thousands of NGOs was very difficult and it was not clear what benefits were being achieved. We made a series of recommendations. They included having multiple departments funding consortia so that there was an outcome you could hold the consortia to. At the moment, with small grants you cannot hold anyone to an outcome because they are only partial contributors. So you do not know if they have delivered and you do not know if it is value for money. They are seeking funds from multiple departments and the departments do not know who is funding what.

Our view was that if you can have an outcome that you can hold a person accountable to—that is, a performance-based outcome for a person or consortium—and you know which department is funding it, ultimately you will have a system where the departments oversight each other. You can then hold the group accountable for the delivery of the outcome. That would remove a lot of the opportunities.

Ms TANIA MIHAILUK: Was that a recommendation in that paper?

Dr WALDERSEE: Yes.

Ms TANIA MIHAILUK: I do not think that has happened.

Dr WALDERSEE: It is a major undertaking to make it happen. They have started looking at the data on who is funding what. Just working that out has been a big challenge. Work is going ahead on that.

Ms TANIA MIHAILUK: You raise a very good point. I have noticed the overlap of grants that organisations apply for. They are the same types of grant. Nobody is monitoring that. I will read your paper, Dr Waldersee. This Committee and Parliament in general should look at how to assist that type of monitoring.

CHAIR: I agree with that.

Mr CHRIS PATTERSON: Commissioner, from memory, in your opening address you said that only 43 cases out of nearly 4,000 go from the complaints stage to the determination of an operation. What are the steps and the checks and balances involved in going from receipt of one of those 4,000 complaints to the 43 that the team decides to investigate?

Ms LATHAM: The checks and balances are all the processes that I described: the Assessment Panel evaluation, the report going to the Assessment Panel with recommendations, the Assessment Panel's decision, and then the decision by the strategic investigation group whether to conduct a preliminary investigation. Then there is a further decision whether to escalate from preliminary to full investigation. All those decisions are regularly reviewed by the strategic investigation group. That was the procedure that I described in the opening statement.

Mr CHRIS PATTERSON: That was thorough.

Ms LATHAM: That is the process they all go through.

Mr CHRIS PATTERSON: You are obviously very confident that there are a number of checks and balances in place to ensure that those that should be investigated are and become operations.

Ms LATHAM: Yes.

Mr CHRIS PATTERSON: You are clearly very confident in the team you have doing that job.

Ms LATHAM: Yes.

Mr CHRIS PATTERSON: You have said today that, as Commissioner, as the boss, the buck stops with you. Do you have any concern that, with all those checks and balances in place, the decision to proceed with the Cunneen case occurred, taking into account the High Court ruling?

The Hon. LYNDIA VOLTZ: You are going straight back there again.

Mr CHRIS PATTERSON: I am going back because I am interested. I was ignorant of all those checks and balances. I am interested to hear how they could get it so wrong.

Ms LATHAM: I will take that as a comment, not a question. I am not answering any questions that seek to in any way canvass the decisions that we made on any individual matter.

Mr CHRIS PATTERSON: You have said you are extremely confident of all the checks and balances in place before going from a complaint to an operation.

Ms LATHAM: Yes. As I said in my opening statement, I have absolute faith in the professionalism of my staff, all of whom have worked for the commission for a lot longer than I have and all of whom, from my observation, display complete professionalism and dedication to the task at hand.

CHAIR: Commissioner, a discussion paper issued by this Committee in November 2014 recommended codification of some additional offences. Are you aware of that paper and do you agree with the recommendations on codification of those additional offences?

Ms LATHAM: Yes. That paper, which was not advanced, arose from a submission that we made to the Committee. We still have copies of that submission, which I can make available. We made certain recommendations to the Committee about the codification of offences such as misconduct in public office that would allow greater certainty in the criminal law in relation to that offence. It would also allow for the prescription of maximum penalties, which would serve the function of marking the gravity of those offences.

CHAIR: The Committee may progress that discussion paper.

Ms LATHAM: That would be constructive, from our point of view.

CHAIR: The discussion paper also makes some observations about the seconding of people from the Director of Public Prosecutions [DPP] to your commission during the public hearing process. Is that occurring and has it been fruitful?

Ms LATHAM: It is not occurring, for the reasons that were given by the High Court in *Lee v The Queen*. It is not occurring because the current Director of Public Prosecutions sees that kind of relationship as potentially damaging to the prospects of any future prosecution because it would raise a complaint from the prospective accused that there had been some contamination—

CHAIR: Contamination of the material that the DPP had become aware of.

Ms LATHAM: Yes.

CHAIR: When you were acting as a justice, if someone appeared before you whom you knew, would you disqualify yourself?

Ms LATHAM: Absolutely. It is a cardinal rule of apprehended bias that if you have an association or a relationship with a person over whom you exercise some power you disqualify yourself. But that would arise only in circumstances where it was more than just a passing acquaintance. In many circumstances you might know of the person but you do not have any existing relationship with them.

CHAIR: That would have occurred to you in relation to the investigation of Margaret Cunneen?

Ms LATHAM: I do not know what you mean by "that would have occurred". I was not presiding over the investigation, if that is what you mean.

CHAIR: That is where my question was going.

Ms LATHAM: An acting commissioner was appointed from Queensland, a very senior practitioner at the Queensland Bar.

CHAIR: For the purposes of the public inquiry that is correct, is it not?

Ms LATHAM: It was for the purposes of the investigation.

CHAIR: In its totality?

Ms LATHAM: That person was appointed as soon as it became an investigation. That person is presently Commissioner of the Queensland Crime and Corruption Commission.

CHAIR: So when you elected to issue a press release after the High Court decision, and when you elected to refer the matter to the DPP, that was your decision, was it not?

Ms LATHAM: It was the decision of the commission, bearing in mind that the commission no longer had jurisdiction to investigate the matter. The public knew that we had previously announced that we were in possession of material that warranted a public inquiry. Therefore, there were legitimate public concerns about

what was occurring in relation to that information. The Government had passed legislation which preserved the lawfulness of the possession of that information and only allowed us to refer it. Short of asking for the information to disappear into the ether, the only thing that we could do was refer it elsewhere under the legislation.

The Hon. TREVOR KHAN: And issue a 622-word media release.

CHAIR: In hindsight, would it have been better if someone else had issued that, rather than you being perceived to have?

Ms LATHAM: It was a press release of the commission. It was not a personal press release. It was a release of the commission, and it appears on the website as a press release of the commission, as do all our press releases.

CHAIR: But it was not shown to the investigator, who was the independent investigator. It was shown to you.

Ms LATHAM: I am sorry but there is a fundamental misunderstanding here. At the stage at which that press release was issued there was no longer an investigation because the High Court had determined that we did not have jurisdiction.

CHAIR: But there was still potentially a perception of conflict.

Ms LATHAM: I am sorry, I do not accept that.

CHAIR: Thank you for coming today. I know some of the material has traversed a lot of areas and potentially been difficult. You have been very frank with us, and I thank you for that and I am grateful for you making yourself available today. I simply indicate this to you. There is potential for us to reconvene after the Government has received and released the report of the expert panel. We may like to have a further discussion with you after we have seen this report so that we can get your views in relation to some of the material for the purposes of any report we would issue following that release. If you would be so good—

Ms LATHAM: We anticipated that that would be in the Committee's interest and we would like to have a further discussion in relation to the proposals that are going forward into legislation. We are keen to have a further discussion about that.

CHAIR: Thank you.

(The witnesses withdrew)

(Committee adjourned at 1.22 p.m.)