

REPORT ON PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**REVIEW OF THE 2017-2018 ANNUAL REPORTS OF THE ICAC AND
INSPECTOR OF THE ICAC**

At Sydney on Monday 21 October 2019

The Committee met at 2.30 p.m.

PRESENT

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

The CHAIR: Good afternoon everyone. Thank you very much for attending this public hearing of the joint Committee on the Independent Commission Against Corruption. Today's hearing is to review the 2017-18 annual report of the Commission. Before we commence I acknowledge the Gadigal people, who are the traditional custodians of the lands upon which we meet here in Parliament House. I also pay my respects to Elders past, present and emerging of the Eora nation and extend that respect to any Aboriginal and Torres Strait Islander peoples who are either present or viewing the proceedings on the internet.

On Friday we heard evidence from the Inspector of ICAC, Mr Bruce McClintock, SC. Today we will hear from the witnesses representing the NSW Independent Commission Against Corruption. At the outset I thank the witnesses for making themselves available to appear here today. May I remind everyone, including those in the gallery, to please turn your phones to silent or switch them off as they can interfere with the Hansard recording equipment. For the benefit of the gallery, I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines for coverage of the proceedings are available. I now declare the hearing open.

The Hon. PETER HALL, QC, Chief Commissioner, Independent Commission Against Corruption, sworn and examined

STEPHEN RUSHTON, SC, Commissioner, Independent Commission Against Corruption, sworn and examined

PATRICIA MCDONALD, SC, Commissioner, Independent Commission Against Corruption, sworn and examined

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

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

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

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

Mr HALL: None from my point of view, thank you.

The CHAIR: Chief Commissioner, would you and anyone else like to make any brief opening statements before we commence with questions?

Mr HALL: I would like to make a statement, if I may proceed?

The CHAIR: Yes, thank you.

Mr HALL: This opening statement is made on behalf of the Commissioners of the Independent Commission Against Corruption: Commissioner McDonald, Commissioner Rushton and myself. In March of this year the Commission had its 30th anniversary as one of the longest operating anti-corruption commissions in Australia. Every State of Australia has of course now followed suit by establishing agencies with an anti-corruption jurisdiction. Most recently the Northern Territory has established an anti-corruption commission and the Australian Capital Territory has established an integrity commission. State and Territory governments, it may now be concluded, plainly recognise that trust and confidence in government and public administration is supported and is enhanced by the presence of a completely independent and effective agency such as the Independent Commission Against Corruption, the ICAC.

Over the past two years the three-Commissioner model has sought to build upon the experience, the skills and the methodologies in the investigation of corrupt conduct that have been built up over many years of the Commission's operations, whilst at the same time pursuing innovation and change considered necessary to meet emerging risks in the present-day operating environment. The nature of corrupt conduct, usually a secret crime to which there are no witnesses, has changed in a number of respects and may be transacted by sophisticated technology that is available today. In meeting those challenges the Commission has pursued a number of innovations. I will briefly summarise some of them.

Firstly, independent expert review: In the past two years the Commission, for the first time in its history, commissioned an extensive examination and review by external independent consultants of its processes, its staffing requirements and its resources. The Commission engaged independent consultants KPMG in 2017 to undertake this task and what we call a post performance review in 2018, which resulted in two detailed reports, both of which have been provided to Government—the first report, which came into existence in December 2017 and the second, dated 8 October 2018. I note that there has been no challenge made to the accuracy or the relevance of the recommendations of KPMG, including the recommendation for an increase in the Commission's resources in key areas.

The Commission proceeded in that time to a second innovation, namely its proactive approach to investigations. At the first Parliamentary Joint Committee meeting following the establishment of the three-Commissioner model for the ICAC, I informed the then members of the joint committee that in addition to the Commission's commitment to exercising its conventional reactive jurisdiction in relation to suspected corrupt conduct reported to the Commission would pursue a proactive approach to the investigation and prevention of corrupt conduct. For such a proactive approach, it was essential that the Commission had available to it a well-designed, well-equipped and sophisticated strategic intelligence capacity that was operated under the direction of specialist intelligence analysts.

The development of a proactive intelligence-based approach to the investigation of corruption led to the establishment within the Commission of the specialist unit known as the Strategic Intelligence Research Unit, which in everyday parlance is referred to in the Commission as SIRU. SIRU officially commenced operation in July 2018 and it is staffed by qualified intelligence analysts. The unit has two primary objectives or functions. The first is the provision of strategic intelligence products that identify emerging corruption risks and trends and what might be referred to as hotspots. Secondly, generating proactive lines of investigations through large-scale data collection and analysis, SIRU has developed its own strategic intelligence databases, which assist in the identification of trends, hotspots and activities that present proactive investigation opportunities of the Commission's own motion.

The program used for this purpose and other software was designed and developed by SIRU, and it remains the intellectual property of the Commission. In August this year, the Australian Institute of Professional Intelligence Officers, known as AIPIO, awarded the ICAC with its 2019 organisation award. AIPIO is the peak representative body of intelligence professionals. The Commission was recognised for its work through SIRU in developing new and novel intelligence capabilities and doctrine, building new partnerships and for having demonstrated a proactive approach to intelligence and investigative functions including the establishment of information-sharing pilots and the creation of a national anti-corruption intelligence network.

A third innovation concerned winning witness cooperation. ICAC developed what is now known as the Witness Cooperation Policy. There had previously been no official public policy to encourage persons of interest to cooperate with the Commission in its investigations. The absence of such a policy, I believe, always carried a risk that the persons who did have knowledge of or who had acted or failed to act to prevent corrupt conduct may well have been uncertain in approaching the Commission or hesitated in stepping forward to assist in its investigations.

After consultation with the Australian Securities and Investments Commission [ASIC] as to its approach on such matters, the Commission determined that it would develop and supplement its investigative methodologies with a policy that would encourage persons, including in particular those at particular levels of involvement in corrupt schemes, to cooperate and disclose their involvement and/or their knowledge of corrupt activities or of corrupt schemes and/or the way in which schemes operated. In doing so they are advised of the potential benefits in doing so.

The final draft of the proposed Witness Cooperation Policy was sent to the Inspector of the ICAC and to the Director of Public Prosecutions for their view and comments. Certain suggestions were made by the Inspector, Mr Bruce McClintock, Senior Counsel, whose recommendations were adopted. The DPP indicated in his letter to me that the final draft of the policy was acceptable from his point of view. Appropriate incentives for providing such cooperation are set out in the policy, which is published on the Commission's website. I have reason to believe, based in particular on recent experience, that the policy has already assisted the Commission in particular in its investigations and I believe it will continue to do so.

The fourth area is ICAC funding. In December 2018, the Commission proposed to Government that discussions take place with relevant stakeholders for the purpose of establishing an independent funding mechanism for the ICAC. Primary funding would, of course, remain by way of parliamentary appropriations. The Commission has been funded through a mix of appropriation funding and grant funding from the Department of Premier and Cabinet, who I will refer to as DPC.

In the past two years, DPC, for the first time, questioned the need for maintaining grant funding or providing any other form of supplementary funding for the Commission. This is reflected, amongst other matters, in the view of DPC which was expressed in a letter to the Commission dated 9 July, wherein it was stated "Grant funding is not sustainable or appropriate." In my reply to DPC I firmly—and, I trust respectfully—explained that the DPC assertion as to the appropriateness of grant funding was fundamentally flawed. It was a view that was completely inconsistent with supported observations that have been expressed by past Premiers and, indeed, inconsistent with observations of the present Premier.

DPC, I note, has yet to explain the basis for, firstly, the stated reluctance to see the Commission have the benefit of supplementary funding, and, secondly, its apparent reluctance to accept the fact that parliamentary appropriations do not and cannot have regard to the unpredictable demands on the Commission's resources in a given budget year. It is axiomatic that ICAC's independence must not be undermined in any way, whether directly or indirectly. The ICAC is not a Government agency. Given its legislative independence, its ultimate accountability is to Parliament and not to Government. In contrast to other independent agencies, its employees are not subject to public service legislation.

Transparency International, the global coalition against corruption, in 2015, in the publication *Anti-corruption Agencies Strengthening Initiative*, observed:

An important advantage of creating the ACA (*Anti-Corruption Agency*) is that it sends a powerful signal to citizens, officials and business persons in a country that the government is committed to fighting corruption. However, this initial advantage is eroded if the government does not demonstrate its commitment by providing the ACA with sufficient legal powers and adequate human and financial resources to perform its functions. Also, the government should provide the ACA with operational autonomy so that it can investigate anyone, regardless of his or her status, position or political affiliation. All of these operational advantages will count for nothing if the government fails to support the ACA by allowing it to operate independently and by providing it with adequate resources for performing its functions effectively.

That quotation comes from page 10 of the report.

In 2019-20, the Commission is due to receive appropriation and grant funding of \$27.399 million to fund its operations for the year. This sum of money is barely sufficient to fund the Commission's work for the year. The forward estimates for 2020-21 however, provide for appropriation funding of only \$24.814 million. Already the Commission has been advised that this funding will be reduced by \$673,000 in additional savings for that year alone. The Commission has estimated that the minimum core funding that it requires to maintain the tempo of its operations in 2020-21 is at least \$28.084 million—that is, \$3.943 million more than the projected funding for 2020-21.

The Commission has little flexibility to reduce variable costs as these have already been reduced as far as possible to meet previous savings imposed upon the Commission. The Commission, I should note, has a very small back office. The only area in which it can find the amount of savings required by this level of reduced funding is to reduce its staff members. It has very little, as I have said, by way of a back office so, accordingly, any staff reductions will have to be made to frontline staff, including investigators, lawyers and other key staff. To make savings of \$3.943 million for the year 2020-21, the Commission would need to reduce its full-time equivalent [FTE] staff from the currently funded number of 120. This would reduce the Commission's FTE staffing significantly. Such reductions would, of course, have an immediate and serious effect on the Commission's frontline services and, therefore, its ability to fight corruption.

That, however, would not be the end of the matter. To meet ongoing savings—measures embedded in the forward estimates—Commission FTE positions would need to be further considered for reduction in each of the following financial years, up to the year 2025-26. To overcome this problem, the Commission proposes that its appropriation for 2020-21 and subsequent years, be set at a core funding level that reflects its operational requirements and is not subject to government-imposed efficiency dividends or other cost-saving measures imposed from time to time.

By way of digression, it is noted that exempting a body such as the ICAC from efficiency dividends that apply to larger government departments, is not without precedent. In a review of administration expenditure by the Parliament of the Commonwealth of Australia, the Parliamentary Joint Committee on Intelligence and Security observed in October 2018, that the committee welcomed the Government's decision announcing the 2015-16 budget to exempt the Office of the Inspector-General of Intelligence and Security [IGIS] from the ongoing application of the efficiency dividend.

The review also recommended the removal of the efficiency dividend from the operational—that is, non-administrative—activities of ASIO, Australian Secret Intelligence Service [ASIS], Australian Federal Police and, in principle, operations of the former Australian Customs and Border Protection Service. It is plain that efficiency dividends on such agencies, as with the ICAC, achieves no purpose other than to rein in the operations of the organisation.

I digress from the general budget position to deal with matters of training and infrastructure, in particular, information technology [IT]. Training and IT are vital to the work of the Commission. I have indicated the secretive nature of the conduct and the need for strategic intelligence to get behind and reconstruct scenarios suggested to lie behind corrupt conduct.

Due to decreased budget allocations for current and forward years, the Commission has found it necessary to make significant budget reductions to expenditure on items considered discretionary training, such as training of staff. In the ensuing year allocated training, excluding information technology staff, amounts to just over \$200 spent for the employee, far below recognised best practice, which is estimated at \$2,400 per employee—or 1.5 per cent of the labour budget. This adversely impacts on staff morale and blunts the Commission's ability to retain entirely skilled staff and to continue to develop their capabilities to meet evolving organisation and technological changes. If there is one thing that can be said about anti-corruption work, it is that it does not stand still, either in the nature of the conduct or the skills required to detect it.

The other area is capital allocations. Capital spend underpins the Commission's long-term organisational performance and effectiveness. The rate of technological change impacting the Commission's operations is relentlessly ever-increasing. It is necessary for the Commission to maintain and keep abreast of information technology and communications. The KPMG second report identified several information technology projects to

improve network capability and digitise processes. The cost of these was estimated at \$825,000. The Commission, during 2017-18, submitted a capital funding request to annualise information technology and communications and historical budget allocations. The aim was to provide flexibility to meet organisational demand for technology. The Commission engaged IT consultants to assist it in developing a budget case request. The Commission's request to integrate its disparate corporate systems into a single application what is known as enterprise resource planning [ERP], however, was declined. The Expenditure Review Committee, however, approved half of the amount of the ICT request; namely, \$1 million.

It is plain, in my respectful submission to this Committee, that there must be a new funding model for the ICAC. The Commission now proposes that urgent consideration be given to a new funding model having the underlying principles of certainty, flexibility, transparency and accountability and ensuring absolutely the Commission's independence. Such a model would have two components: firstly, a fixed model or a fixed amount to meet the Commission's core funding needs to maintain its operational effectiveness, including costs associated with optimum staffing levels and the conduct of compulsory examinations and public inquiries; the second component would consist of supplementary funding that the Commission can draw upon to meet unforeseeable or unexpected operational expenses.

My attention has recently been drawn to the annual report for the period ended 30 June 2019 of the Inspector to the ICAC. In it, and I will not quote at length from it, the Inspector at page 3-4 states, "To ensure the ultimate statutory independence of the Commission, funding for it should be determined via a non-politicised process and one that is not subject to bureaucratic management or oversight. A reconsideration of the current funding model to one that takes into account the entirety of the Commission's ever-increasing workload, particularly following the introduction of the three-Commissioner model would ensure that the Commission can continue to expose and investigate serious corrupt conduct." It is fortuitous, in terms of timing, that the Inspector tabled his report last week. We, of course, wholeheartedly endorse and seek to rely upon the Inspector's observations as confirmation as to the proposition that we are now putting before this Committee.

The obvious question arises: What would an independent ICAC funding model look like? What would be its components? I note the following matters to seek to at least outline an answer to those questions. Firstly, consistent with the legislative intent and the provisions of the ICAC Act, Parliament alone has authority to determine and sanction the funding resources of the Commission. Next, the Parliament would be assisted by an independent eminent and well-qualified person in the community who would have the support of an assistant assessor, as required, to assess, to advise and to recommend to Parliament the necessary appropriations for funding of the ICAC. Thirdly, the eminent person's functions would include, so far as assessment is concerned, receiving the Commission's budget case and support material for the forthcoming financial year. It would receive material and submissions from relevant stakeholders including DPC and Treasury and, as necessary, the eminent person would seek further information from the Commission and/or stakeholders.

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

Members of the Committee, under the present system ICAC's current annual budget process is largely incremental and its baselines have not been assessed for several years. Funding arrangements for the ICAC were not updated for any implications, firstly, of the three-Commissioner model being established and operating, and secondly, the power of the Electoral Commission to refer matters for investigation by the ICAC, something that the Commission has been recently engaged in. Additionally, under the present system, firstly, ICAC does not have funding certainty to deliver its operations which may spread over more than one year. That can inhibit planning.

Next, grants from DPC depend on the New South Wales cluster system, as its called, or its approach to funding government agencies. It does carry the potential to compromise the Commission's independence and constrain or limit the Commission's operations. There, with great respect, appears to be a current misapprehension in the bureaucracy that the Commission should be restricted by a principle that is said to apply to government agencies and it should thereby be restricted and always act within its annual budget appropriation. This misapprehension to which I refer is that the ICAC is like any other government agency, except it is not a government agency. It is not like a government agency. It is in fact very different to a government agency in every material respect, including the following: First, the ICAC was created by Parliament as a unique anti-corruption agency; secondly, the ICAC is not responsible to or subject to in any way the executive government; and thirdly, it is of course answerable to the ICAC Inspector, as it is ultimately to Parliament, including through this Parliamentary Joint Committee.

As I mentioned earlier ICAC staff members are not public servants under the Government Sector Employment Act 2003 being one feature that distinguishes it from any other independent agencies in this State. Next, the ICAC is legislated to be funded by parliamentary appropriation. The Commission is completely independent as an entity, as it must given its statutory charter. Finally, the Commission's jurisdiction is extensive and can be triggered and applied to government agencies, government authorities, and government officials from the most senior down. The Commission's jurisdiction requires it to investigate serious or systemic conduct, and that is what it does.

In general terms there are two categories of case. One involves cases which involve historical corrupt conduct and the other concerns cases where the corrupt conduct is happening now or it is continuing, as it were, in real time. We do have such current investigations at the moment. The Commission cannot park or not investigate matters, especially those in the second category where it is happening right now, on the basis that it might not have enough money in its budget and have to leave it to the next budget year. To do that would, of course, allow corrupt officials and those that deal with them to proceed on with their corrupt schemes and practices unaffected to the detriment of the State of New South Wales.

We do not produce X number of services per budget year. We do not, as it were, act like an agency that produces a certain quantum of widgets per year and then put up the shutters. Plainly, anticorruption work does not work like that. We reprioritise, so far as we are able to, and will always seek additional required funding if there is a case that warrants it in the public interest. Our funding should not be constrained as government agencies are restrained by the principle to which I have referred. It is perhaps ironical, but it is also of serious concern, that although the Commission is operating effectively—it has been now for some time—in exercising both its reactive and its proactive jurisdiction, there are funding clouds forming on the horizon.

Plainly, as to the existing funding system, together with efficiency dividends and other measures of that kind, as well as doubts now being created over the availability of future grant funding, something must be done. It must be done quickly. If the Commission's funding under the persuasion or influence of the Executive Government, or for any other reason, is reduced or constrained, that, of course, would inflict considerable damage to the Commission's capacity to function. Whilst it might brighten the day of the perpetrators of corrupt conduct to know that, it would be a sad day indeed for our community.

As I earlier indicated, I raised the issues of an independent funding mechanism back in December 2018. Whilst the Premier, I should note, has, as the occasion has required, supported the Commission with supplementary or grant funding on application by myself, I do not consider that that is the appropriate or what should become standard practice. It is appropriate, however, to note that the Premier has acted to support a strong ICAC in the interests of the State of New South Wales, and that is what we want. In October 2019 I had delivered to the Premier a detailed report. It is entitled *New South Wales Independent Commission Against Corruption Report to the Premier - The New ICAC at the Funding Crossroads*.

I determined that the report should not be published until the Premier has had an opportunity to read it and consider it. It addresses, amongst other matters, the call for an independent and comprehensive funding system for the ICAC. Specific forecasts, as set out in the report, contain calculations. In due course, of course, or at a time this Committee determines, it will need to have access to the report as the issues in it are serious and they are urgent and they must be resolved, as we see it, before the budgetary processes for 2020-21 get underway in February 2020.

I apologise for making an overly long opening statement, longer than is perhaps the custom. I conclude by noting, finally, that Mr John Hoytink, who is here today, Executive Director of the Commission's Investigations Division, will be leaving the Commission on 29 October to take up a position as CEO of the new ACT Integrity Commission. I do want to on this occasion record the Commissioners' and my personal thanks to Mr Hoytink. He has been a huge asset to the Commission, especially to the Investigations Division. He has been with the Commission for many years in different capacities and he will be greatly missed. We all wish him well in his new office. Thank you.

The CHAIR: Thank you very much Chief Commissioner for your introductory statement and for taking the opportunity to brief the Committee on the funding situation. You have done that amply well. I note that normally as Committee Chair I would commence with a number of questions myself, but given that the Hon. Adam Searle has another commitment I will hand over to him to begin questions.

The Hon. ADAM SEARLE: Thank you, Madam Chair, I appreciate that and apologise for having to slip away. You mentioned the report you have given to the Premier about funding and I understand your desire to give the Premier adequate opportunity to reflect on that. Could the Committee receive, as it were, a confidential copy, not for dissemination beyond the Committee members and secretariat?

Mr HALL: I think the answer must be "yes" to that. There is a provision in the Act—I should have brought it with me but I did not—whereby this Committee does have the power to call, as you would be aware, for papers and so on. Perhaps if I could suggest that if it can be done with the Premier's consent and I would—

The Hon. ADAM SEARLE: I will suggest we write to the Premier and if there are no objections—

Mr HALL: Yes, I would be supportive of that.

The Hon. ADAM SEARLE: Are you aware that the Legislative Council Public Accountability Committee a week ago commenced an inquiry into budget funding models, not just for the ICAC but for a number of the different independent oversight bodies?

Mr HALL: Yes, I was informed of that recently.

The Hon. ADAM SEARLE: Have they contacted you as yet?

Mr HALL: Not as yet that I am aware of.

The Hon. ADAM SEARLE: I am sure they will be seeking your input into those deliberations.

Mr HALL: But in principle of course we will participate in all that.

The Hon. ADAM SEARLE: Yes, that will be very useful. I might just park the issue of your global funding for now until we can maybe see a copy of that report. In your foreword to the annual report and in your opening submission, you talked about the proactive Strategic Intelligence and Research Unit [SIRU]. Are you able to tell us what level of resourcing, both in personnel and funding, it had initially for the 2017-18 year? What were the initial impressions that you and the other Commissioners have about its value and output?

Mr HALL: I will let the other Commissioners in a moment give their impressions but in summary there are two full-time specialist analysts who do the work of the Commission. I should have mentioned this. My idea for the establishment of SIRU came from research I had done on other commissions. Normally in a number of the commissions—Western Australia is one, as I recall, and perhaps Victoria—have a similar unit but it lives under the umbrella of corruption prevention. I determined that ours should sit in the middle of both corruption prevention and investigations. They do feed off and both feed into SIRU—it services both.

My impression of the Investigations Division is that it has been assisted by the immense capacity for, as it were, joining the dots, if I can use that expression. We have had an immense database in the Commission for many years but sometimes it was not altogether easy to draw the connections between companies, corporations and personnel and so on. That has been greatly facilitated. The corruption prevention side of it is important in identifying gaps in corruption control systems in agencies. We do provide, as it were, advisory services to agencies if we detect that sort of problem or if they ask for our assistance. Again, SIRU has benefited both investigations and corruption prevention.

There is being undertaken at the moment an operation I cannot, I regret, give any details about other than to say it is a very broad investigation by SIRU into New South Wales-wide government operations in a particular area. They have been working on that at least six months. It is approaching the stage where we will be considering the preliminary investigation in certain areas that SIRU has been over. We would never have detected this potential issue without having had SIRU pick up on it.

Ms McDONALD: SIRU's benefit is it works at a micro and macro level. The micro level, when they get, as the Chief Commissioner has described, the reactive complaints, it can feed into its database and establish links, which then assists whether we should proceed to preliminary investigations on the matters. But the really exciting work I think they are doing is the one that the Chief Commissioner just referred to, which we cannot really discuss, which is a particular area where I think eventually the potential savings to the State and to the taxpayers are going to be formidable. It is just such an important area that really has not been looked at before. It has tremendous potential and it has come about is through SIRU's excellent work.

The Hon. ADAM SEARLE: Have you been able to enhance the resourcing of that in future years? The resourcing of SIRU beyond the two analysts, has that been added to in the current year or is it just that you are seeing how that progresses over the few years?

Mr HALL: It has really just been paid for out of the core budget. Depending upon whether the particular matter that was just referred to by Commissioner McDonald goes to a preliminary investigation or hearings, we will certainly need more resources. Just one aspect of resourcing in terms of SIRU-like work, the particular matter I have just referred to—I am being very Delphic about what it is but necessarily so—does seriously raise the question, which we are pursuing, as to whether, in terms of expenditure, the expenditure should be spread through setting up a task force whereby there is more than one agency involved in this matter. There should be teams from

different agencies working with ICAC. I think that would be an efficient way of spreading cost and we are looking at doing that.

The Hon. ADAM SEARLE: Just moving onto the issue of procedural fairness guidelines and exculpatory evidence, this has been an issue of some historical controversy in and around the operations of the ICAC. I know there were some new guidelines proposed last year. I just want to know whether they have been implemented in current operations. Mr Rushton, I think you are going to oversee a committee looking at more details around how that might work in practice, how you might identify—

Mr RUSHTON: I think it was Commissioner McDonald.

The Hon. ADAM SEARLE: Whoever it was, where is it up to and have you actually actioned that set of the guidelines?

Ms McDONALD: Look, with the guidelines, the guidelines are now published. They are on the website. Whenever we start a public inquiry the guidelines are on the bar table to remind everybody of their existence.

The Hon. ADAM SEARLE: Including counsel assisting?

Ms McDONALD: Yes. Of course, with counsel assisting, as you know, the Bar Rules have been changed. I know whenever I have a counsel assisting the first discussion with them is the guidelines and their responsibilities under the Bar Rules, just emphasising that again. The immediate change that I have seen is that when you are dealing with your investigation team—the way we have been functioning is each Commissioner gets particular investigations to overview—and during the lead up to a public inquiry or in any other time continually you are raising with your team members what information are we getting and is there anything exculpatory. The impression I have is that it is at the forefront of everybody's mind now.

For example, I am currently doing a public inquiry in Ember. Recently we were able to get some more data from the phone with some enhanced software. When we were going through the material my investigator would say to me, "We have some exculpatory material there, so that will have to go onto the restricted website," et cetera. At that level I think it is something that is at the forefront of the minds of the lawyers, the investigators and also our corruption prevention [CP] officers, the team who run an investigation. It is at the forefront of their mind and they are including it in the material to be included in the public inquiry. Then the next step is, if there are ultimately recommendations to seek the advice of the DPP, that material would obviously be part of the disclosure material to go to the DPP.

The Hon. ADAM SEARLE: To date, in terms of the private hearings and the gathering of information, the ICAC is now in the habit of identifying and providing to persons the exculpatory information that might relate to their evidence?

Mr RUSHTON: Most certainly, yes.

Ms McDONALD: Yes.

Mr RUSHTON: There can be a question of timing, though, of course. Forensically it may not be appropriate to make a compulsory examination transcript available up-front but by the end of the day that is certainly the case. We really do take steps to ensure these days that that happens.

The Hon. ADAM SEARLE: That is the case before it gets to the Commissioner level, Mr Waldon? Are you able to add anything to this? Is this something that you have any oversight of?

Mr WALDON: Yes. As you know, I run the Legal Division. So all the lawyers are very familiar with the requirements under the section 31B guidelines. I would also add that those guidelines form part of the pro forma brief that is sent to counsel. So apart from being given a verbal understanding by the relevant Commissioner, it is automatically part of their brief that they get those guidelines.

The Hon. ADAM SEARLE: We have reached the end of my time, unfortunately, but not the limit of my interest, but I will read the transcript and I might submit some questions on notice.

The CHAIR: Read the transcript with glee. Yes, you can submit your questions.

The Hon. ADAM SEARLE: If need be.

The CHAIR: I commend the ICAC Chief Commissioner and Commissioners and staff for how you conduct your operations, your attention to detail and your due diligence in your role to watch, investigate and do your very best to uphold public integrity in our public service operations to the betterment of our citizens. On page 10 of the annual report is a snapshot or a numerical summary of the achievements of the ICAC. I want to

highlight for the record that there has been quite a substantial increase in the output of the Commission in the years covered by the annual report that we are looking at.

You have overseen an increase of 262 in the number of matters that you received and managed from the previous year, bringing it to 2,751, which is a significant increase from the previous year. I note that you have commenced 41 new preliminary investigations compared with 27 in the previous year. You have also conducted four public hearings over 47 days compared with two public inquiries over 31 days. You also delivered 248 anti-corruption presentations and training workshops across our State, reaching approximately 7,100 people compared to 106 reaching 2,500 people. So from the previous year to this current year we are witnessing quite a substantial increase in activity and output from the Commission. As a brief summary could you perhaps inform the Committee as to what you think has enabled the Commission to generate such a heightened level of output compared to the previous years?

Mr HALL: Yes, I think it is related to the three Commissioner model and the ability to conduct overlapping, as it were, investigations—that is a principal reason. Each matter, of course, generates a great deal of work in terms of compulsory notices, the number of which climbed greatly in the period we are talking about. There were two lengthy investigations—public inquiries—going on. Commissioner McDonald conducted one; I did the other. In that period of time those two matters themselves generated a huge amount of work. The actual statistics which lie under these snapshots were analysed in the second KPMG report which, as I earlier said, was called a post-performance report. When I said "post-performance", the first was a predictive estimate of what resources we would require.

Once we were up and running as the three-Commissioner model and those two main inquiries I mentioned were more or less running as a tag team, the amount of work that was being done by staff at that time was huge. It did not become apparent to me until later in the piece that staff were complaining of the stress that they were under in terms of working weekends and so on to keep up this productivity. It was that which led me to have KPMG come back in to re-look at, in the light of experience, whether or not we could continue performing at that level. The answer was no, we could not. In fairness to the staff, it was putting their welfare under unreasonable strain.

We have reduced the use of Commissioners running overlapping or concurrent investigations simply because we do not have the resources to be able to continue to do it without running the staff into the ground, which we will not do. That has been made clear, I think, in our reports to Government, that we cannot maintain and sustain that level of activity with the current resources. The second KPMG report is a detailed report. If the Committee members would wish to have copies of that report, or both reports, we of course will supply them. Those reports will—the second report in particular—indicate that the heightened level of activity was unprecedented but not sustainable. I think that is my short way of answering your question, I hope.

The CHAIR: I want to proceed with a couple more questions I have prepared. If I can refer you to pages 30 and 31 of the annual report we are looking at—it is in relation to reporting on investigation outcomes. On page 30, "Investigation Outcomes", just before the dot points it says, "Outcomes that may result from a Commission investigation include" and then it goes through to list the dot points. Then on page 31 it says, in a summary:

It is important to acknowledge that not every investigation will produce findings of serious corrupt conduct. An investigation is designed to determine the truth or otherwise of the allegations raised. As such, an investigation may find that there was no corrupt conduct.

I also just want to read out an extract from the second reading speech of the then Premier, Nick Greiner, who introduced the Independent Commission Against Corruption Act 1988 to the New South Wales Parliament in May 1988. The extract reads:

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

The second reading speech is placing upon the ICAC's operations a requirement to be definite about the conclusions. In your annual report, the last sentence I read out on page 31 said that "an investigation may find that there was no corrupt conduct".

My question to you as the Chief Commissioner is in reporting on your investigation outcomes, do you as a matter of procedure, as a matter of process identify any individuals by name who may have come up in the investigation or the public hearings are examinations who may have had a slur or a suggestion of corruption? When you report on the final outcome of that investigation do you actually make it clear, where those people have therefore not been found to be corrupt, do you actually specify and make it very clear publicly that certain individuals—and naming them—are therefore cleared from the conclusion of your investigation? If it does not make it publicly clear, would the Commission seek to look at procedures or methods to in fact clarify those who

have not been found corrupt or seriously corrupt—that it actually also clarifies by certain named individuals that they have been cleared after this investigation?

Mr HALL: Yes. If, I could firstly state, we do not have, as in other proceedings, criminal or civil, formulated allegations which we bring against a particular person and nobody is, as it were, raising an issue, but it is an investigation—a public inquiry is an investigation process—plainly we would not take it to an inquiry unless we had cogent evidence that would warrant a public inquiry. We are, in fact, under the provisions of the Act, not to have a public inquiry unless there is evidence that meets the tests. Although in many matters we have a fairly good idea of who did what, there is never any certainty of it until it gets to a public inquiry when all the issues are out on the table. There may well be one or more persons who could be regarded as persons of interest who would be really the targets of the investigation.

If, at the end of the day, the evidence does not meet the standard of proof required—and it must, in my view, always be by cogent evidence, even though the test is said to be the balance of probabilities—there is much case law on how that test is applied in the case where criminal conduct or serious imputation to reputation is involved. If the evidence does not come up to the standard, the Commission would always explain and state why it does not make a corrupt conduct finding against an individual, simply because the evidence does not meet the required standard and that by reason of, perhaps, a number of discrete matters that have arisen in the course of the inquiry. There is in that way a finding and an explanation as to why no corrupt finding was made against a particular individual. More often than not they are legally represented and their case, as it were, has been properly put before the Commission.

There are cases where witnesses might be called and they are subject to some allegations made in the course of the hearing. They might not be, however, our targets. They might not be the person whose conduct we are really investigating, and yet they may be the subject of some outrageous piece of evidence by a witness against them, which is either not germane to what we are investigating or is so serious, based on hearsay, that you would not take any notice of it. There are always casualties, unfortunately, in legal proceedings of witnesses' reputations being wrongly besmirched by something a witness says. It does happen in the Commission too—I cannot think of a case that readily comes to mind, but sometimes a witness who is the one who is the subject of the inquiries seeks to spread the blame or cast the blame away from him onto someone else, so that allegations are made against that person. Usually the fact-finding makes it fairly clear as to whether or not there was any substance to an outrageous allegation one witness made against another.

The last point you made is, in effect, whether there should be—and I am not sure if I am restating this properly—something put on our website to say that Mr Brown was a person of interest in this investigation and the Commission found no evidence of corrupt conduct against him. I know that has been mooted by other Commissions around the country—one or more but I cannot remember which one now. I am not sure if it has ever been done. It may be that the person concerned says, "I don't want my name to go up in lights anymore on the ICAC website", which we normally take down after a period of time. But some perhaps could be asked, "Do you want us to put something on the website to say that, although you were the subject of an investigation by us, there was no evidence of corrupt conduct by you". We do not do that, but I would be open to considering doing it. At the end of the day, there must be substantive and procedural fairness to everyone who comes before ICAC because the findings we make, and even some of the evidence that comes out in a public inquiry, can be very damaging indeed.

Mr RUSHTON: We are now required, if an affected person asks us to do so, to include as part of the report, at least the substance of what their submissions are as to why a finding should not be made, so there is that degree of transparency as well. In the past that was not necessary. I think it was an amendment that was made not so long ago that requires that to be done. I have to say, from my own experience, that I have not come across too many witnesses who want that done. There may be a host of reasons for that, but there have been a couple of occasions where it has, a couple where it is has not. But certainly it is another way in which, perhaps, the problem that you have identified—or a possible problem that you have identified—is managed: that is, readers can form their own view as to whether somebody is or is not involved in corrupt conduct, not only because of the findings that have been made but including the substance of what was put against that finding. Have I made myself clear? I think I have.

The CHAIR: Yes.

Mr HALL: On this general topic of corrupt findings or no, there is provision under our Act now—it used not to be there until a few years ago—whereby even if there is evidence of corrupt conduct the Commission has a statutory discretion not to make a finding of corrupt conduct. Many years ago now I recall when I was an Assistant Commissioner at ICAC, there was a case in which a ministerial adviser is said to have leant on a woman who worked somewhere in public administration. She was leant on to falsify a report which detrimentally affected

the then Director General of the particular department in question. She was placed in a position—the proverbial position between a rock and a hard place. From what I could determine she had been an outstanding public servant. The provision which now exists to not make a corrupt conduct finding did not exist but fortunately there was an authority that Ron Sackville—he is now Justice Sackville—had suggested there was a discretion. I decided that I would not make a corrupt conduct finding against her even though she actually did the deed in terms of falsifying the information. She had been to hell and back through this public inquiry—shamed in public almost. I thought it was not appropriate in that case that a corrupt conduct finding be made.

So there is a discretion but there have been other cases where a number of people have been involved in a corrupt scheme but where one or more cooperated with the Commission to tell the Commission what the scheme was about, and that if they did not go along with it they would lose their contract. In that case Commissioner Ipp then did not make any corrupt conduct findings against them on the basis that they had cooperated with the Commission and people should be encouraged to do so. So there are situations where, even when there is evidence against the person, they would not be made subject of a corrupt conduct finding. I think, at the end of the day, it is driven by an innate sense of what is just, if you like, or fairness. Some people get caught in a situation where they are, in effect, trapped.

The CHAIR: Thank you. I have two more quick questions before I hand to the other Committee members for their questions. On page 43 of your annual report you mentioned a little bit about internal investigations of Commission officers based on allegations or suggestions that officers of the Commission may have done something not quite correct. I just wondered if you are in a position to inform the Committee about the safeguards or how, as a Commission, you structure your policies, your checks and your vetting of your own staff to ensure that the staff within the Commission are adhering correctly and honestly and transparently with, I guess, the procedural fairness and all of the policies that are there in place to govern the operations of your Commission.

Mr HALL: We do have a number of protocols, which are updated and that staff are instructed in. There are vetting procedures, of course, which are rigorous in determining who will become an ICAC officer, even if on a temporary basis or secondment from another agency. Mr Waldon has been associated with ICAC longer than any of us in this room and he is diligent in ensuring that those protocols are kept up-to-date and staff are instructed. Could I, with your leave, ask Mr Waldon if he would, perhaps, shed more light on the question?

The CHAIR: Certainly.

Mr WALDON: Thank you. We have a number of policies and procedures that apply to the conduct of staff. All new staff who are brought onto the Commission are taken through those policies, so they know where they are and what they need to do in order to comply with them. They are on our intranet at work, so they are available to anyone who needs to look at them at any time, simply by going onto the computer and looking at our internal website. On occasions there are workshops or staff programs to remind people of those policies and the requirements under those policies. Ultimately, as set out in this report, if a member of staff feels that another member of staff or other members of staff are not complying with those policies then they can make an internal complaint about that and that can be looked at and, if necessary, investigated.

The CHAIR: Thank you.

Mr HALL: Does that answer your question?

The CHAIR: That's good, thank you. One final question before I hand over—I'll stop hogging the microphone. On page 112, where you presented some data around the statistics of the number of women versus men in senior leadership roles, I noted that Table 48 had a decreasing number of women in executive staffing levels at the Commission and I wanted to ask the question: What is the Commission doing to not only attract women to senior leadership roles but also provide a pathway internally for women to be successful in merit selection opportunities in the Commission for their career progression?

Mr HALL: Again, could I throw the ball to Mr Waldon?

The CHAIR: Yes, of course.

Mr WALDON: Could I throw the ball down to Mr Koureas, because that is his—

The CHAIR: It's a hot potato, is it!

Mr KOUREAS: The Commission employs similar policies to the general public sector and it supports female executives et cetera, but I think the numbers there are more historical in nature. In 2014-15 we had a female Deputy Commissioner and a female Commissioner and an Executive female Director of Investigations at the same time. Through promotions, et cetera, that was reduced to two and in 2015-16, with the restructure of ICAC et cetera, the previous Commissioner departed and we now have a new structure, so it is not directly related to—

that was more historical in nature by coincidence, if you like, than anything else. The Commission, as I said before, adopts very similar practices promulgated by the Premier's department for the encouragement of women to senior leadership roles. In fact, at the next level down of senior management—level 8, administrative officers—there are a number of women who are leaders.

For example, the surveillance team is made up of a female person, a communications media manager, who is also a female person, and there is also another investigations team leader who is a female as well—that is one level down the Executive Director level. So these are supporting, the Commission does have their support, but at the end of the day promotion is based on merit selection. That is all I can say at this point.

Ms McDONALD: Can I just comment on two aspects? The first aspect is, as Mr Koureas has just noted, within the Commission we are attracting wonderful staff and, in particular, wonderful female staff—in particular, our lawyers and our investigative staff. Indeed, one of the chief investigators commented to me recently that the future is female, and we are getting terrific forensic accountants, analysts and investigators from all different areas—for example, Fair Trading, the Australian Competition and Consumer Commission [ACCC]—all with a different background and bringing terrific skills to the Commission. Where my concern is, is that they come in, they are absolutely tremendous—and this is for all staff—but we do not have a great promotion progression; it seems a lot of people just hit a ceiling and there is limited opportunity for progression and we have seen that we are losing people.

I also have a concern, following on from the Chief Commissioner's comments, that a lot of promotion is based on developing further skills and, unfortunately, we have had to cut back on our training. I am sorry, I get quite caught up with training; I think it is so important, and we are cutting back, I think, to a quite disgraceful level and I think that is going to have an impact in the future on the quality of people that we can keep and maintain within the organisation.

The second aspect that I would like to comment upon is even though, as the Chief Commissioner has emphasised, the Commission is separate and we are not subject to the usual regulations of the public sector, internally we have introduced an equitable briefing policy where we look at when we select a counsel assisting role we turn our mind to in this particular area, this public inquiry in this area, what female counsel at the New South Wales bar would satisfy our requirements of expertise. It does not necessarily mean that a female counsel assisting will be appointed, but at least it requires us to turn our mind to what is the expertise out there at the New South Wales bar, and if there is a woman barrister with the expertise and who deserves it on merit, then, as we have seen recently, they may be appointed counsel assisting.

The CHAIR: Thank you.

The Hon. TAYLOR MARTIN: This might be best directed to Mr Waldon or Mr Hoitink. Would it be unethical for an ICAC investigator to go around the State seeking witness statements for a criminal prosecution purporting to be working under the auspices of the DPP when they were not, in fact, working for the DPP? If that were to happen what would be the consequences of such behaviour?

Mr HOITINK: First of all, I would be very disappointed if any of the staff members decided to go and basically pass themselves off as members of the DPP when they are working for this Commission. Certainly I would expect them more to uphold the code of conduct that we have within the Commission and would operate and continue to operate in that fashion.

The Hon. TAYLOR MARTIN: What might be the consequences if that was found to be happening or to have happened in the past?

Mr HOITINK: The consequences could be an internal investigation in relation to the actions that were undertaken. There are a number of things within our policies in relation to the actions—misbehaviour, misconduct with a possible termination.

The Hon. TAYLOR MARTIN: Does anyone else have anything to add on this issue?

Mr HALL: It depends on the circumstances. Sometimes the DPP comes back to us and asks us to carry out further investigations. I am not sure if this is fitting the factual scenario that you have in mind but sometimes the DPP will ask us to go back and investigate further to obtain maybe statements or some other evidence that might be germane to proving an aspect of a potential prosecution.

The Hon. TAYLOR MARTIN: It could be lost in translation, so to speak, miscommunication at the point of interview, perhaps?

Mr HALL: Or it could be the statement that a witness has given needs to be supplemented because something has changed along the way. It is hard in the general to be able to envisage exactly the circumstance in which there might be an ICAC officer interviewing a witness relevant to a DPP prosecution.

Mr RUSHTON: In the circumstances that the Chief Commissioner has just outlined it may be, it is possible, I suppose, that an officer indicates that they are there to obtain a statement for the DPP rather than representing that they are an officer of the Commission.

The Hon. TAYLOR MARTIN: Understandable, I appreciate that.

Mr JAMIE PARKER: The report highlights how the new structure has influenced the performance of ICAC. I note when we met with the Inspector, the Inspector made some comments about that and said words to the effect of, "In my own personal view, and it is a personal view that there may be a review next year or the year after that. It would not be a bad thing at all. Specifically focusing on how the most recent legislative changes are operating". Do you have a view on that, whether it has merit for this Committee to do a review addressing how the new structure is performing and whether there is any need for changes and anything related to that structure? It was an off the cuff comment the Inspector made. I do not think he was identifying any systemic problem. Do you think that is something this Committee should consider?

Mr HALL: I think it would be totally in order for that to take place. Whether it would be useful, I think potentially it might be useful. One matter is that the three-Commissioner model, when it was established by amending legislation, to my knowledge there does not appear to have been much consideration given to what practically that would involve in terms of funding and in terms of who would do what. We have, as it were, made up the rules as we have gone because there are no rules. There was no explanation in terms of what it would mean in terms of funding or needing to have additional resources and staffing, such as we discussed a moment ago. We have a heightened level of activity which clearly could not be maintained unless the resources were increased. That would be the sort of matter that would warrant another look at. Indeed, it needs it now. I can foresee that a review from time to time would be perhaps useful.

Mr JAMIE PARKER: My other question is in regard to the opening statement you made. The issues you raised are important and timely. It has been an issue which has interested me. In February 2018 I asked the Premier a question without notice in the House on this issue of the budget for ICAC and she said, amongst other things, "Indeed, when the two new ICAC Commissioners were appointed I made it very clear to them that if at any time they needed additional resources they should approach the Department of Premier and Cabinet and the Government would provide additional resources. I assure the member for Balmain that that is ongoing."

You indicated in your opening statement that something seems to have changed inside DPC for the 2020-21 budget. The Premier assured me in the House that funding would be made available. What do you think has changed? Has there been feedback you have received from the 2017 KPMG report or the October 2018 report? Is there something that we should be aware of why the situation has changed?

Mr HALL: I think I have made it clear that the Premier has been supportive of ICAC and made that position clear to me at the very outset that she believed in a strong ICAC and did indicate to me that it was open to me to contact her. I met with the Premier in May of this year with our CEO. The secretary of the Department of Premier and Cabinet was present with the Premier and I recall two other members of staff of the Premier's office. The objective was to provide an opportunity to discuss matters. I cannot go into those matters other than saying the Premier again indicated a willingness to be abreast of issues. There has been no change so far as my perception is concerned of the Premier at all. Indeed, the Premier has responded to the request I made.

It was in March this year, it was in the middle of the election campaign, because we needed to have an answer to an application that we had sent to DPC in February and marked it as urgent, and sent a follow up letter because we were concerned that there was a part heard inquiry which Commissioner McDonald was dealing with, as I recall, at that time, and there was another matter, the current matter, Ember, was due to start soon after. There may have been other matters on the drawing board but time was moving on and we had no response from DPC. I could not delay it any longer so I contacted the Chief of Staff of the Premier, who spoke to the Premier I understand about the matter of the funding request. It was the following Monday or Tuesday that she got back to me, the Chief of Staff, to indicate the Premier had, without hesitation, authorised the grant we had sought. We are indebted to the Premier for having done that and for remaining supportive.

I have indicated that there seems to be a different approach or attitude taken now by DPC. The history of DPC funding is summarised by me in a letter to the secretary of DPC in July of this year, as I recall it. It was a lengthy letter. It set out the history of grant funding. It has been the means of providing funding as needed by ICAC for quite a number of years now, something of the order of at least 10 or 11 years, and before that there was some other process that was used. In the letter I quoted from the comments of the then Premier O'Farrell and from

other past Premiers who, in unqualified terms, said that if ICAC needs more money they'll get it. It has been the case that under all administrations, whichever political party has been in power, that convention, as I call it—it is a convention—that grant funding will be provided to ICAC. We, of course, have to make out a case and fully justify our requests.

I am told, Mr Waldon is in a better position than I to deal with the past history, but my recollection is that every grant funding request in the past has been granted. There may have been one or two where the amount was reduced to below what had been sought. Something has changed and perhaps I will leave it to the Committee. I do not think I am really in a position to assist. I am reminded by Commissioner Rushton just to add to what we have been talking about that there is the cluster system, which Department of Premier and Cabinet oversights.

The delayed response in March of this year to the request for funding—there was an email sent, I think it was to our CEO, in effect saying, "You are invited to attend the cluster meeting" on whatever date—it was late March. Time-wise that would have been too late in any event to have our request processed as we saw it. But we do not consider that the cluster system is the way to deal with these special funding grants or any supplementary form of revenue for the ICAC. All the other people in the room, as I understand—I have never been to a cluster meeting—might be from different departments or agencies of government and share nothing in common with us at all. But apparently, you sit around a room and I think money is taken from an agency and given to another. I will not call it a marketplace but it is a cluster, which is a world away from the convention of grant funding.

Mr JUSTIN CLANCY: Thank you to the Commission for being here today.

Mr HALL: Thank you.

Mr JUSTIN CLANCY: Chief Commissioner, in your opening statement you made reference to the letter to the Premier around the concept for funding. My question is: How is that concept arrived at? Was that through considerations internally or is that through scanning what other jurisdictions are doing and best practice? More broadly, I suppose is there a formal process in terms of scanning the horizon and other jurisdictions in terms of best practice?

Mr HALL: Yes. Thank you for that question. Independent Broad-based Anti-corruption Commission [IBAC] has adopted a different model of independent funding. My understanding of it—it is only recently established and not yet operative, I do not think, but due to become operative soon—is that the parliamentary committee has now been tasked with the function of approving IBAC's funding. Just how the committee is informed and how it goes about doing that I do not know. We have, however, before then discussed the concept of a funding model. We did commission KPMG to provide a provisional advice on the approach to be taken in what would be the matters that had to be considered in establishing an independent funding model.

That was of assistance to help us formulate together something along the lines, I have indicated, which is not too far distant from the salaried officers concept whereby the remuneration of senior statutory officers, as you would be aware, is determined independently by the person who is the tribunal. The tribunal is totally independent of government, et cetera. The Parliament, as I understand, acts on the recommendation of the Salaried Officers Tribunal. That is another form of a model that has been used. So, in answering your question, it is really something that has been developed in-house, as it were, by us but with some consideration of those sorts of concepts—the Salaried Officers Tribunal-type concept, IBAC and the matters KPMG had given us advice on.

Mr DUGALD SAUNDERS: Thanks for being here this afternoon. It is nice to see you. I wanted to play the devil's advocate, if I could, for a moment. We are talking a lot about finance and how you are going fund things for the future. The devil's advocate question is: Is there too much being referred to ICAC? You talked about staffing levels and the fact that you have had huge output over a certain period but stress levels are very high for staff. Does there need to be a look at other agency involvement at certain levels? Do you think there is too much that is coming to you?

Mr HALL: That is a particularly relevant question. We do have our referral powers. We can refer a matter back to an agency rather than undertake an investigation ourselves. They are often asked or required to provide a report back on the outcome. There is a current matter which we determined we would have sent back to the agency, it is a large department of government, to commission independent consultants to do an analysis of finances in a particular matter is really getting them to do a complicated number-crunching exercise which would have taken our staff months to do. That exercise was done, the matter has been sent back to us from the agency and we have looked at the report, which is helpful. That is one way of sharing the workload, if you like. Indeed, the cost as well is borne by the agency.

Most of the matters that come through our assessments section—we get two bundles of assessment panel reports per week, on a Tuesday and a Thursday—we do not investigate. Either they do not warrant investigation, they are not matters that raise serious or systemic corrupt conduct, they are not in jurisdiction or, in essence, they

have already been examined or investigated by the agency themselves and there is no point in us doing any further work on it. So being selective in what we investigate. Referring matters out is one way of sharing the workload. We really only investigate a very small percentage of the total matters that come in the door, as it were. We do refer matters where we can but I do not think we can really refer any more just for expediency purposes.

Sometimes an agency does not have the requisite investigation skill base to be able to investigate a matter properly and it could, as it were, muddy the water if we left it to them to do it. We have to be selective and careful of how much we refer back. It really comes back to dollars and cents. If we are going to have all three Commissioners working at full pace, we need more dollars, we need more funding, because the funding to date has essentially been the funding that was always in place for one Commissioner, the sole-Commissioner model.

Ms McDONALD: Sorry, can I just say something on that. I do not think we are being referred too much. I think what we have to do and what we have started to do is, when we started you had—and still do have—three very enthusiastic Commissioners. But what we were doing with public inquiries is sometimes we were using the large hearing room at ICAC and also using the hearing room at the Law Enforcement Conduct Commission [LECC]. We had concurrent public inquiries and then back to back.

Of course, if you are using the LECC premises you have to move your folders and other material up there. It was a very stressful period, as the Chief Commissioner has indicated, for our staff. I think now we are at the level where everybody is very enthusiastic about the work we are doing. It is a matter of looking at where we decide we are going to hold a public inquiry, making sure that we are doing it efficiently and looking at ways to try and keep public inquiries within a certain time period.

Mr DUGALD SAUNDERS: One of the other things you are doing, and it has been mentioned by the Chair, is a bit of outreach. You briefed us a while ago about the regional stuff you do particularly. Do you see that being a way of reducing corruption into the future or is it more just educating? I guess if we are trying to reduce it by that outreach, hopefully there will be less need for hearings into the future, or is that not really what you are trying to do?

Ms McDONALD: Look, outreach is a combination of programs. Our corruption prevention people will go out and conduct workshops in combination with lawyer and an investigator. Part of that program of outreach is obviously educative and also part of corruption prevention. And then we also usually have the public forum on the last day where again we meet members of the local communities and inform them about ICAC's work. I think it meets both purposes. It is educative but education is essential to corruption prevention. Our corruption prevention section, as you can see just from the figures in this report—the Chair referred to the snapshot, the phenomenal number of programs, lectures, going out and giving advice to different government agencies that our corruption prevention section undertakes is a phenomenal amount of work and it is such an important part of our work. But outreach—I just think the two go hand in hand.

Mr DUGALD SAUNDERS: Will we see a reduction in the future then, given the outreach?

Ms McDONALD: It would be lovely to think so.

Mr HALL: We might also see an increase.

Mr RUSHTON: When we do assessments there is a category that comes in where assessments look at it and say, "The recommendation is that no further action is required because the relevant authority has dealt with it themselves." That is very pleasing when you see that they have done a bit of the legwork. They still refer it but they have solved the problem by removing somebody or addressing a particular problem. And we get a lot of those where the local authority's public administration has addressed what our concerns would have been if they had not.

Mr HALL: The other side of the coin is that it may increase work. ICAC has been very Sydney-centric over the years. It always has been. I have always operated on the basis that corruption does not only exist in Sydney. I remember reading a report of, I think, the West Australian Commission which involved a fraud scam—some motor registry office and a car dealer working hand in glove. There were no proper examinations of motor vehicles at all there. They just kept writing the ticket and he kept charging for the so-called inspection. This became a complete racket. It was in a fairly large regional area of Western Australia. It required a full-blown investigation which was very well conducted.

It indicates to me that regional areas need to be on the alert, firstly, to keep an eye out as to when there are signs of corrupt conduct and, secondly, to examine their systems to see if their corruption controls are up to standard. People can get into lazy ways of doing things and people take advantage of that. So I have always been concerned that there could well be a lot of corrupt conduct going on in regional areas but we are limited in our resources and being able to do more than we are doing with the outreach program to make people aware of the

fact that we do exist—we are willing to talk to you on the phone and give advice and so on. So it could work either way, I am afraid.

Mr DUGALD SAUNDERS: Thank you.

The CHAIR: Just a couple more questions to give some people some more time if they have something else bubbling away in their mind. In 2018 SIRU, the strategic intelligence research unit, was established in terms of improving your proactive approach to investigation. Has the establishment of that unit improved the identification of high risk corruption within the public sector and how has it done that? How has that unit assisted your investigations unit and public inquiries et cetera?

Mr HALL: It has sharpened the ability to use the information we have already got. As we have indicated before, we do have a vast database. But I think until SIRU was established it was never used to its full capacity—that is to say connections and links with people. SIRU can work its magic by putting in a number of key search terms and so on and a unbelievable range of connections come up as a result. The names of many people whose names we have seen over and over again—we suspect they are regular performers in the corrupt conduct area but there has never been enough evidence in any one of them to launch a full investigation.

It is very frustrating. You know they are up to no good. But with the SIRU capacity there are now ways and means of tracking some of their activities. We are doing that with two particular investigations at the moment, two people who have been in different areas making a lot of money, unexplained wealth. I think the investigation focus has now enabled us to piece together a lot of information which we could not otherwise and provide the basis for an investigation. I might ask Mr Hoitink to give you his perception. He oversees the whole of the investigations area and I know he has regular contact with SIRU.

Mr HOITINK: Thank you, Chief Commissioner. Just in relation to that, one of the main things is data analysis. Obviously, as the Chief Commissioner mentioned, we have a vast database of information. They have actually developed in-house a particular system which draws that particular database. It also looks at a lot of open-source information and then matches the two together. Without going too much into the methodologies, part of that is also cooperation with other agencies. We have got a couple of pilot programs running with some major government departments. We obtain their information and we basically data match that information, which will then present outliers in relation to particular individuals, corporations or councils or whatever the case may be. It also gives us a much clearer identification of evidence sources once we move across to an investigation. Rather than the investigators having to do much more work, this more targeted approach with SIRU actually truncates part of that investigation process.

The CHAIR: Chief Commissioner, you mentioned in your introductory statement that every State and Territory in Australia now has some sort of ICAC organisation functioning.

Mr HALL: Yes.

The CHAIR: Is New South Wales the only jurisdiction that has this type of unit, the Strategic Intelligence Research Unit, operating within it in the way that it is operating in our State?

Mr HALL: No, it is not the only one. I know Queensland, Western Australia and IBAC have such units. Queensland is different because it has got its crime and corruption jurisdiction. The CCC in Queensland spends a good deal of its time investigating what is called "major crime" under its Act. To a large extent its intelligence is directed on criminal activity, usually involving drug trafficking or cold-case fraud cases and so on. To my knowledge IBAC and Western Australia do have research units, but as I earlier indicated they are not really used directly as a tool for investigations. They are used in the corruption prevention area to develop their trends, patterns and that sort of thing where the risk lies. However, they do not feed into, by my understanding, their investigation wings.

That is why we decided to design it specifically so SIRU would service both the corruption prevention and the investigation areas. So far that has proven to be looking very successful. I would think Queensland's systems would interface with investigations, as I say, because of their crime function. I am unsure as to whether it uses it for its corruption investigations. I think one could say SIRU is fairly unique. That may have been what lay behind that award which the Association made: That it was novel, it was new, it was a different approach and different techniques and so on.

I think it has great promise. The two full-time analysts are terrifically keen. They tend to be on the younger side, from where I look. They are mid-career, as it were, and they are doing a fantastic job in terms of enthusiasm in the work they do. I think it will facilitate the investigation space as well as corruption prevention.

Ms McDONALD: Can I just say that the award was also for our analysts and our Investigations Division. We have SIRU and then we have three terrific analysts within ID. The award was actually for all our intelligence analysts.

Mr HALL: Yes, I am pleased you made that point.

The CHAIR: Congratulations on the award, for certain. You mentioned that analysts have developed a unique database that is quite special. Has any other State or Territory across Australia sought information, coaching or cross-pollination of ideas in terms of what you are doing in New South Wales and how could what you are doing, which has received an award, benefit other States and Territories? Could they purchase the intellectual property for the database?

Mr HALL: Mr Hoitink might be in a better position than I am on that. There are two major systems, are there not?

Mr HOITINK: There are two major systems.

Mr HALL: One is called Frontier.

Mr HOITINK: Frontier is a database that was developed in-house. There is another one, which is commercially available. Yes, in relation to your question about other agencies, SIRU has established now a national strategic intelligence subcommittee for all Australian jurisdictions, which only two months ago held its inaugural meeting. All of those agencies are not talking about how best to utilise strategic intelligence. A lot of them are probably leveraging a little off our experience, but by the same token, when we were looking at putting SIRU together, we went out to all those other agencies and looked at how they were doing business. We came back to look at how we can build on what we had from those other agencies. Now the shoe is on the other foot, I suppose, and they are looking at the way we do business. We have proved it to be successful thus far.

Mr JAMIE PARKER: My question is in regard to the very tragic news about the suicide of a witness in Operation Aero. I am sure it was very shocking for everyone the impact investigations have on witnesses and people associated with public hearings is something that we always need to be aware of. What steps has ICAC taken to review the way that it interacted with that witness to see whether there could be any role that ICAC could have played to improve the welfare of witnesses? I am sure that a lot of witnesses are distressed, but we must avoid any situation like this happening again in the future.

Mr HALL: That was an extremely tragic case, as any suicide is, of course. To answer your question directly, we did look at it internally. Mr Waldon has produced a report, as I recall, and found that there was no untoward contact by our investigators. I will ask him to address you on that in a moment. We know that Mr Liao had been to see his solicitor and had had a conference with the solicitor and barrister, I think the week before he was due to come in for a compulsory examination. We have endeavoured to obtain information from the solicitors acting for the deceased's estate to obtain any information that might reflect on the circumstances in which he took his own life and, indeed, what his involvement may have been in the matter we were investigating. They declined to provide that information, which was within their right because it was arguably the subject of legal professional privilege.

I am very confident, from the investigations that we have conducted, that there was nothing done, said or implemented by our investigators that might have triggered him to do what he did. There was some evidence suggesting he might have had a mental illness. I do not believe that was the case. I do not think there was any evidence of that at all. He was obviously—well, Chinese culture is something I cannot comment on in terms of the pride a man might have in his family and the shame he feels he might bring to the family. So there may be a cultural element to that, I suspect. I am only inferring from notes he left that that might be the case.

It is difficult to know exactly what we could do in a case like this to, as it were, foresee that somebody might over-react unless we had some information suggesting they did have some mental illness or instability, in which case we would obviously have to take that on board in determining how we approach a case like that—how we would serve compulsory process on a person. Usually you do not have much to go on other than what the investigators have come up with as to whether they have any personal issues. I might ask Mr Waldon to—

Mr RUSHTON: Could I just add something to that. More generally, in relation to our assessment section if an assessment officer forms a view that somebody making a complaint is displaying behaviour that is worrying they will report it to the police, as I understand it, and the police will go and do a welfare check.

Mr WALDON: It was rather extraordinary what happened. It came as something of a surprise to us. This is not a gentleman with whom we had had really much interaction at all. In these particular circumstances we wanted him to come in, basically, and tell us his version of what had happened. To do that we decided to serve him with a summons so that he would come in to a compulsory examination rather than approaching him for an

interview. So, really the only direct contact we had with him was when two of our officers introduced themselves and served him with a summons.

So there had not been any historical contact with him, and certainly nothing at the time that he was served with the summons indicated that he was any more upset than a normal person would be when they received a summons from the ICAC. Having said that, though, I think that this is an area that we do need to look at and I understand the Inspector is also going to be doing some work in this area. There was a recent report by the IBAC Inspectorate which also looked at this issue. There had been some incidents that occurred at IBAC. We are interested at looking at—and have made with contact with IBAC—what they have done as a result of the recommendations which were made in that Inspectorate report, with a view to seeing whether they might be something that we could also do.

The CHAIR: That concludes our questions. Thank you very much for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. The replies to those questions will form part of your evidence and may be made public. Would you be happy to provide a written reply within five business days to any further questions? The Inspector did ask for 10 so we are happy to give you 10 as well, just to keep it all fair and square.

Mr HALL: We had better err on that side. We will take advantage of your generosity and say 10 days.

The CHAIR: Thank you very much for your attendance today. We really appreciate your time.

(The witnesses withdrew.)

The Committee adjourned at 16:30.