

REPORT ON PROCEEDINGS BEFORE

**COMMITTEE ON THE OMBUDSMAN, THE LAW
ENFORCEMENT CONDUCT COMMISSION AND THE
CRIME COMMISSION**

**2020 REVIEW OF THE ANNUAL REPORTS OF OVERSIGHTED
BODIES**

At Macquarie Room, Parliament House, Sydney, on Monday 17 February 2020

The Committee met at 2:15 p.m.

PRESENT

Mr Dugald Saunders (Chair)

Legislative Council

The Hon. Lou Amato
The Hon. Trevor Khan
The Hon. Adam Searle

Legislative Assembly

Mr Mark Coure
Mr Paul Lynch
Dr Hugh McDermott

The CHAIR: I declare open the Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission hearing for the 2020 review of the annual and other reports of oversight bodies. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land on which we meet here at Parliament. I also pay my respect to Elders past and present of the Eora nation and extend that respect to other Aboriginal and Torres Strait Islander people who are either present or viewing the proceedings on the internet. I thank the witnesses who will appear before the Committee here today.

REGINALD OLIVER BLANCH, Acting Chief Commissioner, Law Enforcement Conduct Commission, sworn and examined

MICHELLE MARGARET O'BRIEN, Chief Executive Officer and General Counsel, Law Enforcement Conduct Commission, affirmed and examined

AARON JOHN BANTOFT, Director of Investigation and Oversight, Law Enforcement Conduct Commission, affirmed and examined

GARY JOHN KIRKPATRICK, Director of Investigations—Integrity, Law Enforcement Conduct Commission, sworn and examined

The CHAIR: Do you want to make an opening statement?

Mr BLANCH: I don't think so.

The CHAIR: The special report on the Law Enforcement Conduct Commission [LECC] that was tabled in Parliament in the first week of February was withdrawn almost immediately. Will you explain what happened and why that was necessary?

Mr BLANCH: It was a report put out by the Acting Inspector and it contained the names of people that should not have been released. The report was taken down simply to take out those names.

The CHAIR: How did it get to that stage where those names were left in there?

Mr BLANCH: I don't know. That is a question for the Acting Inspector.

The CHAIR: The commissioner for oversight role is currently vacant. What interim measures are in place to cover that?

Mr BLANCH: The other commissioner, Commissioner Drake, and myself are taking on the responsibility.

The CHAIR: What is the plan longer term around that position?

Mr BLANCH: I don't know. It is a matter for the Government I think. I am appointed for a period of six months and I do not know that I will be asked what the recommendation is to be. The Government will need to determine that. There are a number of alternatives, of course. The commission could proceed simply with two commissioners, it could proceed with two part-time commissioners or it could proceed with three commissioners as it has been.

The CHAIR: I know you are new in the acting role. There have also been roles around the Chief Executive Officer of LECC. That used to be a separate role to general counsel but it is now a combined role. Why is that?

Mr BLANCH: That was a decision made by Mr Adams. It was made, as I understand it, on the basis that it was seen that there was not enough work for a standalone chief executive officer to do. It carried a salary of something like \$300,000?

Ms O'BRIEN: Over \$300,000.

Mr BLANCH: Over \$300,000 and it was assessed at that stage that it was something that could be done or those functions could be done in another way. Michelle O'Brien took over as the chief executive officer and it has functioned normally since then. There is, in the inspector's report, a question raised as to whether the role of chief executive officer should be reinstated. There is an audit being done at the present time and I think that is an issue that is being looked at there. It is a bit early at this stage for me to express a view about it.

The CHAIR: If that were to be separated again, is it a reasonably simple process to do? How could that happen again?

Mr BLANCH: Some of the arrangements would have to be unpicked because it is part of Michelle's role at the present time. Of course it could be. As you probably know, I was at the ICAC for a period of time and exactly the same problem happened there and a chief executive officer was reintroduced there. Of course, that happened immediately after or some little time after I left there. It was introduced over the top of the existing structures. If that were done at LECC it would cause a problem insofar as the budget was concerned.

The CHAIR: You are in this role for the next six months? Have you come up with a list of priorities around what you see needs to be done or want to achieve in the next six months?

Mr BLANCH: Yes. We have, in fact, started. We are looking at the assessment process, whether it is effective. There is a committee that looks at the recommendations from the assessments. That committee was a committee of about 12 and I have reduced that to between four and six, depending on how many commissioners go to the meeting. The reason for that is the fact that it includes a whole lot of consideration of various assessments of cases. That takes me about half a day or more to go through the list and it struck me as a waste of people's time to have so many people sitting around a table having to go through that number of cases or the 50 cases that had to be considered. The people who are not sitting on the committee now but who did, I have asked them to look at the papers so that if anything comes up that they feel they could contribute they should mention that to the appropriate person. I have also introduced a time standard for them to report. They had got into trouble because of the problem—not of LECC's making, it was a problem caused by a police computer breakdown so that the information that we needed to look at what the police were doing was not available for six weeks.

Mr BANTOFT: I think it was about three months.

Mr BLANCH: Three months. The end result of that was that there was a significant backlog of cases created and it has taken a while to get on top of that. The situation is I have asked them now to report on these things within one month. They are at the stage now where the oldest case is one that came to LECC at the end of December, so they are very much getting up to date. The other matter that we are looking at is the critical incident oversight team on the basis that they have been going out in pairs to critical incidents. Because they go to critical incidents they are getting a 22 per cent increase on their salary. The reality of the situation is that probably they do not need to attend the critical incidents themselves.

We are an oversight body and we can oversight what the police have done in critical incidents after the critical incident is over. To have two people from LECC joining the number of police who are there and they themselves have an oversight person there, probably everyone is getting in each other's way I would think. The LECC representatives cannot tell the police what to do, they can only observe what the police are doing and, generally speaking, that can be done by review after the event. I would imagine that there will still be cases where it would be necessary for somebody from LECC to go and they can be identified when those special cases arise. That would make a significant change to the way that part of the system operates at the present time, together with a cost saving.

Mr PAUL LYNCH: Acting Chief Commissioner, I go back to the chief executive officer solicitor review. If the role of the chief executive officer were to be reinstated at \$380,000 per annum, inevitably that would have to be found from the LECC budget. What would be the implications of that? How many other sorts of positions would you then not be able to pursue if that position were reinstated?

Mr BLANCH: Can I pass that to the present chief executive officer?

Ms O'BRIEN: Three.

Mr PAUL LYNCH: Three investigators?

Mr BLANCH: Yes.

Mr PAUL LYNCH: I notice from Mr McClintock's report that both Commissioner Drake and Ms O'Brien made a submission on this point to Mr McClintock. Despite him having annexed a whole range of documents, those submissions were not annexed. Would it cause difficulties if LECC could provide to this Committee those submissions?

Ms O'BRIEN: No, they can be provided.

Mr PAUL LYNCH: I turn now to the report reviewing the police standard operating procedures for strip searches in custody that was recently tabled. My reading of that report is that it is largely the work of ex-chief commissioner Adams?

Mr BLANCH: It is shared between Mr Adams and Commissioner Drake.

Mr PAUL LYNCH: What is going to happen to that inquiry now?

Mr BLANCH: You refer to the last inquiry that Mr Adams himself was conducting?

Mr PAUL LYNCH: Perhaps I should be more specific—the commission's inquiry in relation to the conduct of strip searching?

Mr BLANCH: All the evidence in the cases was taken in 2019. Mr Adams indicated in respect of the last matter that he intended to call some psychiatric material as to the effect on juveniles who have been strip searched. I have reviewed all of that and what we have decided to do is this: not restrict that to that particular case but to get the reports out in all the strip-search cases—as I said, the evidence in all of those cases is finished—and then we will have a separate hearing with psychiatric evidence given in respect of all of those cases, not just one of those cases. Largely, I imagine, it will be pretty general evidence of the effect of strip searching on juveniles. Once we get around to doing that, it might also be appropriate to ask the police union whether it wants to have any input into it as to whether there is an effect on young police officers who are required to do it. But if it is done, there will be representatives from the Police Force there in any event.

Mr PAUL LYNCH: Is there anything that the inquiry might have been going to look at that it will now not look at because Chief Commissioner Adams is no longer there?

Mr BLANCH: No, I do not believe so.

Mr PAUL LYNCH: Will the inquiry deal with the most recent allegations in the media suggesting a quota system for personal searches?

Mr BLANCH: We have not considered that at this stage.

Mr PAUL LYNCH: I assume it would be the same answer if I asked whether it is going to consider the other allegations that very few things are actually found in the searches that are carried out.

Mr BLANCH: I think we might address that in the reports of the individual cases because that is the fact in respect of the cases of the juveniles that we have looked at. I think the figure off the top of my head, the number that might have returned something—there is only a couple, isn't there?

Mr KIRKPATRICK: It is low, yes.

Mr PAUL LYNCH: The media today was reporting figures as low as 10 per cent.

Mr BLANCH: Yes, that is about right.

The Hon. TREVOR KHAN: There was 12 per cent, 88 per cent.

Mr PAUL LYNCH: There was another one of 90 per cent. The 88 per cent I think was in relation to Aboriginal kids.

The Hon. TREVOR KHAN: Fair enough, I stand corrected.

Mr PAUL LYNCH: When you were appointed as Acting Chief Commissioner, it was at the expiry of Adams's term. The Government had three years' notice of that, so to some of us it is a little surprising that they could not actually come up with a permanent appointment and go to an acting appointment. Do you have any insight as to why that was?

Mr BLANCH: None at all.

Mr PAUL LYNCH: It has been said that they just could not find anybody. Is that likely?

Mr BLANCH: I have no idea.

Mr PAUL LYNCH: One of the things the Government is suggesting is to widen the eligibility requirements of the person to be chief commissioner and make it comparable with the ICAC. Do you think that has got merit?

Mr BLANCH: I would prefer to see it kept at a higher level in the judiciary. But, of course, having been the Chief Judge of the District Court, I would not suggest that any District Court judge could not do it.

Mr PAUL LYNCH: One of the other propositions that has been put to me is that the chances of getting a permanent chief commissioner would be much greater if the pay were significantly higher, that is, comparable to the ICAC chief commissioner. Have you ever turned your mind to that?

Mr BLANCH: No.

The Hon. ADAM SEARLE: Acting Chief Commissioner, in the annual report of the LECC there is a detailing of the so-called efficiency dividend savings that the organisation has to give up each year and cumulatively it seems to come to a fairly large proportion of the overall annual budget. In the past couple of years it is a couple of million dollars per year. Do you have a sense of what practical impact those efficiency savings

are having and will have in future years on the operations of the LECC, given I think we have seen LECC's current resourcing really only enables it to look at 2 per cent of the complaints that are coming in the door?

Mr BLANCH: I would think that it would have a very significant impact. The reason for that is that in any organisation which consists largely of its staff there is no capacity to make the savings in any other way than reducing staff. I have come across this problem as the Director of Public Prosecutions, as Chief Judge of the District Court—they are all organisations that require people in order to carry out their functions. LECC is certainly in that situation in the same way that ICAC is. If you have to carry out something that will give you an efficiency dividend of 3 per cent or 5 per cent, then effectively it can only be by way of reducing staff levels.

The Hon. ADAM SEARLE: I do not know whether you are in a better position or Ms O'Brien, how many staff would have to be reduced to meet these efficiency dividends that we see at page 5 of the annual report?

Ms O'BRIEN: We have not really done a detailed analysis. I know that the ICAC has quoted figures. We have not done the same exercise. I can indicate that we are presently reviewing every position that becomes vacant and determining whether or not we should be filling vacant positions. We do not want to be in a situation of bringing new people on board and then having to make them redundant when these efficiency dividends start to bite. We have been able to find enough savings in order to meet the efficiency dividend so far. I think rough estimates we had in mind was probably five to 10 positions in the next 12 months. We are already carrying vacant positions because of the insurance, if you like, we are taking out to try to make sure we are ready for when these cuts start to bite.

The Hon. ADAM SEARLE: Which area of operations are those existing vacant positions located?

Ms O'BRIEN: Certainly in my area there are vacant positions in relation to security and media and community engagement.

Mr KIRKPATRICK: There is one in investigations with an officer going to another agency for six months. Should he decide to take a position elsewhere, or that position elsewhere, that will become a vacancy.

The Hon. ADAM SEARLE: In the current year the efficiency dividend is \$402,000, then it jumps to nearly \$1.25 million and then nearly \$2 million and then over \$2 million. That is a very large percentage of the annual budget, reaching something like 10 per cent of your annual budget in later years. That will be more than five or 10 positions, will it not? That is going to be close to 15 positions.

Mr BLANCH: Yes.

The Hon. ADAM SEARLE: Again, in what area of your operations are those vacancies going to have to be found?

Mr BLANCH: I don't think I can answer. It would have to be spread across the board, I would think. But it would certainly have a significant impact on the capacity of LECC to carry out its functions.

The Hon. ADAM SEARLE: If it is only able to do 2 per cent now, presumably it is going to be less than 2 per cent in the future.

Mr BLANCH: Yes.

Ms O'BRIEN: The other thing I might add, if I may, is to repeat the evidence given by former Chief Commissioner Adams which was that the back office is already down to as lean as it can be. When the chief executive officer role was merged with the general counsel role we also undertook some other rationalisation in the corporate services area. We got rid of positions that I recommended to the commissioner we could do without by way of efficiencies. So there is really no more fat to trim in the corporate services area, so that means frontline positions, that means investigations or oversight.

The Hon. ADAM SEARLE: Which is really what the body was set up to do?

Ms O'BRIEN: Correct.

Dr HUGH McDERMOTT: I follow on from what my friend the Hon. Adam Searle said. Obviously the dividends of 2022-23, \$2.1 million, are a massive amount and a massive impact on such a small agency, the 5 per cent. This question is to the Chief Executive Officer or the Acting Chief Commissioner. Will you describe to me what you think the impact will be as far as investigations go? I will go through other examples in the annual report. It seems even at this level it is having a significant impact on the amount of investigations or the success of your investigations. Would you agree with that? What long-term impact do you think it will have?

Mr BLANCH: Mr Kirkpatrick is the right person to answer that.

Mr KIRKPATRICK: I don't know that I would agree that it has affected the success of investigations. It has affected the volume or the number of investigations that can be undertaken at any given time. Obviously if there is a decrease in funding, that equals a decrease in staffing and therefore a decrease in capacity to conduct the volume of investigations. The quality of the investigations will remain the same.

Dr HUGH McDERMOTT: If you look at the previous body, the Police Integrity Commission [PIC], compared to LECC, what is the difference in volume as far as investigations and moving forward investigations and prosecutions between the two? I imagine the budget is definitely different, the number of staff is significantly different. Has there been a massive decrease? Has it had an impact?

Mr KIRKPATRICK: There have been more investigations undertaken by LECC. There have been to date less prosecutions but prosecutions is not a great measure of the work of the oversight body.

Dr HUGH McDERMOTT: Ms O'Brien, you were obviously with PIC and you have a long history of what has gone on. What have you found is the difference between the PIC and the LECC as it stands now when it comes to things like management and investigations?

Ms O'BRIEN: In terms of the core business of the organisation there are two features that distinguish the agencies and that is that the LECC took over the oversight work from the Ombudsman's office. What the LECC has been trying to do since operations commenced in July 2017 is to assess all of the complaints that come through the door not only directly but also via the police complaints database. There is not another organisation looking at those as well as the integrity body, so police complaints that go onto the police database which we access remotely represent roughly 50 per cent of the complaints that we have access to. As a corollary of that, the oversight responsibility of the agency is to ensure that where the police keep the investigations—and that, of course, is the majority of police complaints that go onto that police database—it is the LECC's responsibility to try to ensure the quality of those investigations and to ensure that they are being done properly.

One of the things that the LECC has been coming to grips with in the past 2½ years is how we can do the volume of work we would like to do in assuring that police are making the right decisions about the investigations that stay with the police and the police are doing a thorough and fair job in relation to those matters that run through to finality. That is a big area of work that the PIC did not have to grapple with and that is why we have got an entire division called the oversight division that is primarily responsible for those two areas of work and the new role of critical incident monitoring.

The investigation side of the ledger is not that different. Gary was involved in investigations at the PIC and the work is very similar. The work is subject to the vicissitudes that all investigative agencies are experiencing and that is problems with gathering evidence electronically when you have got platforms that are encrypted now whereas previously we could use telephone interception and encryption was not a problem for us. Police, of course, are more surveillance aware than perhaps your run-of-the-mill public servant that the ICAC might investigate. Those problems have always been present for investigative agencies. So the two main differences are the volume of the assessment and oversight work that the commission has been trying to do and the new role of critical incident monitoring.

One of the things that I think Acting Chief Commissioner Blanch is able to see with fresh eyes is how realistic have the projections of the past two years been in terms of trying to assess all of the complaints that are on the police database as well as the complaints that come directly through the door and trying to assess the quality of all the police investigations that we leave the police to undertake. It is just a huge volume of material for people to get across and every case is different. I am sure you have heard that before but it is true.

Former Chief Commissioner Adams decided that one way of filtering that role could be to focus on just the police investigations where everything has been found not sustained. If the police are finding adverse allegations sustained, then that would give you a level of comfort or confidence, but what about all the ones where nothing is sustained. So those sorts of fairly brutal filtering measures have been looked at and they are now being introduced. That gives you an idea of the range of tasks that these organisations are expected to undertake but the difficulty is doing it, particularly in an environment where the number of police is increasing and the number of our staff must decrease if we are going to be able to meet the efficiency dividend.

Dr HUGH McDERMOTT: The number of complaints is increasing at the same time?

Ms O'BRIEN: We certainly expect it to. I don't think the increase in police numbers has fully hit the ground yet. Mr Bantoft might clarify that for me.

Mr BANTOFT: It is difficult to say because we have had a little backlog in some of the assessments of the police complaints particularly. We have prioritised complaints direct to us. I think we are on track to have

assessed if we maintain our current stats at about 17 per cent more complaints this year than what we would have done last year but a lot can change in the next five months as well.

Dr HUGH McDERMOTT: So you have an increase of 17 per cent of complaints and then you have got budget cuts going up 5 per cent every year. So you have got more complaints, more work, less staff and less budget. Is that correct?

Mr BANTOFT: Yes.

Dr HUGH McDERMOTT: What is your relationship with the NSW Police Force like now compared to say what it was—

The Hon. TREVOR KHAN: I am sorry. Is it 17 per cent more complaints that are being received overall, that is, by the LECC and the police, or is it 17 per cent more complaints by the LECC?

Mr BANTOFT: This is where the difficulty arises. Because we had that backlog and some of them would have carried on from the last financial year, I cannot exactly say the amount that came through the door has increased by 17 per cent but we have assessed 17 per cent more than what we did on average last year.

The Hon. TREVOR KHAN: That is a different criteria, is it not?

Mr BANTOFT: Yes.

The Hon. TREVOR KHAN: I am not being critical. It just seems to me if the public is becoming trained to go directly to LECC as opposed to put in a complaint with COPS, then that may just be a shifting of the burden as opposed to any overall increase in complaints.

Dr HUGH McDERMOTT: I agree with you but I was trying to illustrate that what is happening is that burden has now been moved over to the LECC.

The Hon. TREVOR KHAN: That may well be.

Dr HUGH McDERMOTT: And whilst police numbers are rising and its budget is rising, at the same time the LECC is having the opposite.

Mr BANTOFT: We have also got two assessments that are required to occur on that. If a complaint comes direct to us, we need to assess whether we are going to investigate it or conduct some sort of work. We send it to police and we still need to assess that again to ensure that it conducts the correct actions—they are going to investigate it and so forth as well. Sometimes we need to assess the same complaint twice at different levels.

The CHAIR: How happy are you with the adequacy of its internal investigations?

Dr HUGH McDERMOTT: The NSW Police Force investigation, do you mean?

The CHAIR: As in the internal handling of those complaints.

Mr BANTOFT: I think overall it is pretty good. The police do have a pretty robust system in place but it is what they call a decentralised model. So each command is responsible for its own investigations essentially, so it does differ from area to area. But as an overall system it is pretty good. But there are obviously matters that do slip through the cracks or are not up to what we would consider are an appropriate standard.

The Hon. ADAM SEARLE: I noted during the text of the annual report a number of case studies are outlined and a couple really leapt off the page. For example, case study 9 on pages 35 and 36 is about the conduct of a particular police officer which appears not to have been pursued by police on the basis that the conduct, if it occurred now, would be governed by a criminal statute which was not in place at the time. But there did not seem to be any cognisance by the Professional Standards Command about whether or not the conduct of the officer was the conduct we would want police in New South Wales to be adhering to. It was around, it seems to be, the unauthorised dissemination of intimate images. Where do complaints rest when your commission has a view about whether a matter should be investigated and the police simply do not investigate matters in that situation? Does the matter just sort of fizzle out?

Mr BANTOFT: There are various options. We can still take over an investigation if it is of a serious misconduct standard. That is one option. Another option is we can furnish a report on the matter to Parliament as well. There would be other options available as well. But there are different levels. Sometimes we might need to agree to disagree—two minds may come to a different opinion based on the evidence.

The Hon. ADAM SEARLE: I am very conscious of the limited resources that the LECC currently has but will you take on notice and inform the Committee where the matter which is case study 9 ended up? What ended up happening to that matter?

Mr BANTOFT: I will take that on notice.

Dr HUGH McDERMOTT: The question I was asking about is the relationship with the NSW Police Force compared to what it was with the PIC, obviously where there were a lot of complaints, especially from the Police Association and others. How is that relationship going at the moment, in your opinion?

Mr KIRKPATRICK: Perhaps I can answer that. I can say that at PIC with Mr James, I know that he said in this room that he had a professional and courteous relationship with the police commissioner at the time, and I observed that and that was true. I also had a professional and cooperative relationship with the Professional Standards Command there. I can say from my perspective that I have that ongoing cooperative and professional relationship with the Professional Standards Command.

Dr HUGH McDERMOTT: Ms O'Brien, do you have an opinion on that? There has been quite a bit of criticism from the Police Association especially over the past few months which, in some ways, is kind of expected for some of the investigations you are doing. Do you have a view?

Ms O'BRIEN: I get kept in the back office.

Dr HUGH McDERMOTT: I am a backbencher, so I understand that.

Ms O'BRIEN: I do not have direct dealings with the senior people in the Police Force but I can say from my close observation and from what I pick up in the corridor that former Chief Commissioner Adams and Commissioner Drake put a lot of effort into having a consultative and open relationship with the senior members of the Police Force from Commissioner Fuller and, in particular, his professional standards people. I can also say that that was the case at the PIC. I think probably stories have been exaggerated and extrapolated to cover the entire relationship of the PIC with the entire NSW Police Force as being "toxic" and various other adjectives that have been used to describe that relationship.

In both the case of the PIC and the LECC I thought the relationships were very good at the commissioner and the professional standards level. I have also observed a lot of cooperation between operational police commanders and the senior people at this commission. I think it is natural to expect in an investigative agency where you are going to conduct public inquiries and you are going to have commissioners make public statements that from time to time a union organisation will be displeased by the results of investigations or particular comments that are made. It is probably trite to say but you are probably not doing your job if you are not getting that sort of commentary from time to time. The commissioners that I have always worked for have taken the view that the role they have to perform is that set out in the legislation and they have gone about that in a conscientious way. But I also would stress that they have gone about it in a way that it is important that they have a line of communication with the senior people at the NSW Police Force and there is exchange of views and exchange of information about what the commission is doing.

Mr BLANCH: Can I say that I have only had one meeting with the police commissioner but he seemed to be quite appreciative of the work of LECC because part of it is an education function? We have got an education section so when reports are put out, even if they are critical, we follow up with the education teams and they work with the police in order to change policing methods or introduce various things. I am probably not the best person to be able to give you detailed information about it but, for example, there has been a real question with strip searching. There has been ongoing coordination between the education people at LECC and the police with the result that the number of strip searches has very significantly decreased. Significantly one of the things that was found was that there were a whole range of different advices available for different sections of the police about various things and it was necessary to put in place a common guidance which was done, and that has resulted in a lot less of those searches.

I am also aware that in relation to the child abuse register there is a complete mishmash of misunderstanding amongst the police. What we are finding or have found is that there are people who are put on the register who should not be. There are people who should be and who have not been. The education section of LECC is working with the police in order to see whether some sort of common system cannot be worked out. For example, they were talking to me about it and I suggested that there was no reason why judicial officers could not make the order in the same way as they make orders for schedule matters in criminal cases. What happens is that the judge or magistrate says, "Yes, you acknowledge your guilt in respect of these other 10 matters on the schedule", and you sign it.

With the child abuse register there is an automatic aspect to it but it does allow for a discretion to be exercised and how long the person is going to be under supervision and so forth, so there seems to be no reason why the prosecution cannot prepare that document and fill in the detail on the day and hand it to the judicial officer so that there is some rigour about how the orders are made. That is an ongoing conversation and that is the sort of thing that has been going on. In respect of those sorts of matters the police are very grateful for the assistance that they get from people who have some knowledge of the things that they do not know. To some extent, surprisingly to me, the relationship between LECC and the police is very good.

Dr HUGH McDERMOTT: You have mentioned how you have met with the Commissioner of Police and other senior police officers. Have you met with the Police Association about a number of these issues, like strip searching, for example?

Mr BLANCH: No, we have not. But as I indicated, once we get around to the next phase of that and if we look at psychiatric evidence as to the psychological effect, we will be talking to the police union about that and invite them to be part of the conversation.

Dr HUGH McDERMOTT: It would seem sensible to me that, seeing that they represent the majority of the Police Force, and front-line officers especially, it would make sense to talk to them rather than just the hierarchy of the NSW Police Force.

Mr BLANCH: Yes.

Dr HUGH McDERMOTT: My next question, once again, is that there has been quite a bit of instability in the past few months in the leadership and management in the LECC for various reasons. What do you think needs to happen to provide more stability to the LECC? I am talking about regarding funding, governance maybe across agencies, and appointments or morale?

Mr BLANCH: It is difficult to say. There has been a perfect storm of problems, with the funding problem and then the non-extension of Mr Adams' term and the other matters that have been looked at by the inspector. I think things are calm at the present time, basically. All the problems have gone away and everyone seems happy and getting on with their work. What is to happen in the future probably needs to be sorted out sooner rather than later because, clearly, there are a number of issues that have been raised, as there were at ICAC, about commissioners; about how many other commissioners there should be. To my mind it is working perfectly well at the present time with myself and Commissioner Drake.

It may be that there is a need for some clarification in the Act about the respective roles. Coming in from outside and looking at what has happened it seems to me that the problems arose because there is no clearly defined difference in the role between the Chief Commissioner and the other commissioners. Part of the problem arose because, if you did have three people who all wanted to run the place, then obviously you are going to get problems. To some extent that is what happened, I think. There needs to be a degree of clarity about that. But the fundamentals of the organisation are really quite good. There are good people in it. There are some very able people and they just need to get the structure right.

Dr HUGH McDERMOTT: If we go once again to the annual report at 7.3, reference is made to a review of amendments to the consorting powers. Are you able to give me an update of where you are with that review of the operation?

Ms O'BRIEN: The work has commenced. I will just have a look to see how much information we put in the report. An application has been submitted to Treasury for funding for two positions in order to complete that review. I think the legislation that gave us responsibility for that review did give us a couple of years to complete it, so the information gathering has commenced. We have asked for two extra positions to be funded.

Dr HUGH McDERMOTT: Do you think that is optimistic to add two more positions?

Ms O'BRIEN: Yes.

Dr HUGH McDERMOTT: Yes, okay. If they are not funded, what impact will that then have?

Ms O'BRIEN: Obviously a reordering of priorities. That is a legislative requirement. That is something that the commission does not have any choice about. The other priorities that the prevention team had come up with will need to be reviewed in consultation with the Chief Commissioner.

Dr HUGH McDERMOTT: So we are talking, as we mentioned before in evidence, 10 to 15 positions potentially being lost because of the budget cuts. Now you say that you need two more people so you would have to take two existing people to go and do this job; otherwise, it will not get done.

Ms O'BRIEN: Yes.

Dr HUGH McDERMOTT: Right. That is not very optimistic, is it. There has been a restructure and that is also in appendix 1 of the report. It is an organisational restructure and we have talked about the potential loss of positions and the budgetary cuts, et cetera. I am just wondering what impact this is all having on morale in the LECC.

Ms O'BRIEN: Unfortunately, people who are not sitting at the head of an organisation and receiving what little news there is directly tend to sometimes let their imaginations run away with them and that can be very destructive to people's morale because they fear about the security of their employment. They have concerns about the longevity of the organisation and so it is actually quite corrosive to morale, in my observation.

Dr HUGH McDERMOTT: Are you finding people are basically leaving, jumping ship, because they do not see a future for the LECC?

Ms O'BRIEN: I could not say that I am aware that people are leaving because of a fear for the future of the LECC but that is not to say people are not applying for jobs because of that uncertainty, and that is just not coming up on my radar or their managers' radar.

Dr HUGH McDERMOTT: In appendix 5, Prosecutions conducted by the DPP in 2018-19 arising from the Commission investigations, there is a number. Can you give me an update on the results of these prosecutions? Have they been successful? There are not many. I think I have counted eight. There does not seem to be many prosecutions and I am just wondering if they have been successful or where we have got with it.

Ms O'BRIEN: I can give you an update in relation to there were a number of accused in relation to the operation called Operation Monte Cristo. That was a Police Integrity Commission [PIC] public hearing that subsequently got transferred away from the DPP to the Attorney General's department for the conduct of the prosecution. It was quite an interesting case because the first prosecution was discharged as a result of an argument in relation to the technical issue of the misleading conduct that was alleged and the benefit that the accused people were said to have achieved as a result of the misleading conduct. That was the subject of a decision as to the law by the presiding District Court judge. The matter has been appealed by the Crown and is before the Court of Criminal Appeal at the moment. Because of that decision, all of the prosecutions arising out of Operation Monte Cristo have been withdrawn by the Crown. I think most of the others—Operation Snowshoe, that is Robert Ware, that is a current matter. There has been another charge laid against Mr Ware since then and those two matters are proceeding separately. That pretty much takes care of most of it. Mr Nigel Davey—that has been completed in the commentary that you have there.

Dr HUGH McDERMOTT: How many of the investigations which led to prosecutions—how many convictions have you actually had?

Ms O'BRIEN: I cannot tell you off the top of my head. I can tell you that the number of LECC investigations that have gone to prosecution at this stage are few because of the length of time it takes for that whole process to run its course. I do not know if Mr Kirkpatrick has any more information?

Mr KIRKPATRICK: Two briefs of evidence have been provided to the DPP quite recently. There has also been a brief of evidence supported by the Australia Capital Territory court but a prosecution has not yet commenced. Perhaps we are best to take this on notice, but I believe there have been no prosecutions outcomes from LECC—initiated by LECC with an outcome—yet, due to the passage of time.

Mr PAUL LYNCH: At a previous hearing we heard concerns from the then chief commissioner about delays in finalisation of critical incidents as a result of the length of time it took for the Coroners Court matters to resolve. I notice that there has been a memorandum of understanding since then. Has any of it got any better?

Mr BANTOFT: No, it still takes a long time. I do not have any figures in regards to how long these matters take. Of around 82 critical incidents that have been monitored, around 38 of them are currently on hold due to either coronial proceedings or related criminal proceedings.

Ms O'BRIEN: Mr Lynch, if I might add something in relation to the previous question about prosecutions. A prosecution has commenced in relation to one of the police officers involved in the Byron Bay incident, which was the subject of Chief Commissioner Adams' first public hearing. It did not make it into that table because the charging only occurred in this reporting year, not the previous reporting year. That matter is the subject of a prosecution now and that is proceeding in the Byron Bay Local Court.

Mr PAUL LYNCH: What is going to happen now with the investigation into Suspect Targeting Management Plans? Where is that going?

Ms O'BRIEN: The commission's report that was presented last week was an interim report. It makes reference to the fact that the police have developed a new procedure or guideline that they are trialling in a couple of commands. The commission will monitor the rollout of that and report again when there has been sufficient time for the effect of that to be assessed.

Mr PAUL LYNCH: I was slightly surprised by the report in that Suspect Targeting Management Plans [STMP] is meant to target recidivist criminal offenders and some of the targets are clearly below the age of criminal responsibility and, therefore by that definition, should not be covered by that. I did not notice any commentary on that particular point in the LECC report. I would have thought it was an obvious thing to talk about.

Ms O'BRIEN: I cannot comment in relation to people coming under the age of criminal intent but certainly there were a number of concerning things about the cohort of people who were targeted, including young Aboriginal children who did not have criminal records. As you say, it was supposed to be targeted at recidivists and by the time they had been on the program for a year or two they had a record as long as their arm—so a lot of troubling aspects. I think it has been brought out in the open now and hopefully the new guidelines will tighten that sort of thing up.

The CHAIR: Speaking about guidelines, one of the things I noticed was that the LECC Act requires at the annual report to evaluate responses of the NSW Police Force and the NSW Crime Commission to some of the recommendations that you put forward. I am wondering how have they generally responded to your recommendations over the past two reporting years?

Ms O'BRIEN: Yes, there were only a few matters that were dealt with in the last annual report in relation to the police response to our investigations. That is at the end of the investigation chapter, which is on page 30 of the most recent annual report. For my part, I would say that generally the recommendations we make are not all accepted in full; however, they are considered. Sometimes we have to go looking to see what the outcome was. There will be a lot more reported on in the next annual report because of the number of recommendations we made last year that have yet to trickle down and be responded to by the police. I might let Mr Kirkpatrick comment as to whether he has a view about the extent to which the NSW Police Force implements the recommendations we make because he does have a presence at some of the disciplinary meetings that it conducts.

Mr KIRKPATRICK: Yes, I agree with Ms O'Brien's view that in general the police do respond positively to commission reports but, as importantly, it opens up the dialogue between the two agencies to discuss meaningful outcomes to reports and in the main those dialogues have been quite positive.

The CHAIR: Ms O'Brien, given you are in the role of general counsel and CEO, if money was not an option and there was no efficiency dividend, would you prefer to see the role separated or do you think the role as one is working as well as it can?

Ms O'BRIEN: I came to have this role because I acted in the CEO role while the former CEO was on maternity leave and it became obvious to me that it was possible for both the roles to be performed by one person. There were things required of the general counsel role that overlapped with the CEO role, which meant that CEO duties could be performed without an extra amount of work that you might otherwise imagine would be required. It seemed to me that tasks such as representing the commission on steering committees about review of legislation, advising the commissioners about the approach to take in public reports and recommendations, representing the commission in other meetings—say, in relation to meetings with law enforcement agencies in relation to legislative reform—are things I would have done in my former life as a general counsel and things that I think a CEO might go to now. But a CEO with that legal knowledge and operational background can bring a lot more to the table in the context of an investigative agency.

Of course, everybody has a notion of what a CEO is and it is not usually someone who is also performing a legal role but this is not a classic commercial organisation or corporation. That is why I think what you want from a CEO needs to be viewed through the lens of, "What sort of an agency are you talking about?" You are talking about an agency that has its own Act, exercises very invasive and extensive powers, and everything that it does is bound up very closely with legislation and the need to be very careful about how those powers are exercised and ensuring that they are being exercised within a legal context. So long as the corporate services side of the ledger is able to be looked after by appropriately experienced people—and we already had that at the LECC, which is one of the reasons why the full-time CEO role did not really have enough to do.

If you have all of your managers doing the corporate services work competently, which we always have—they now report to a director of corporate services, which is the position that was created at the same time as my

current position was created. That leaves the chief executive officer to ensure compliance aspects of the commission's work under the Government Sector Employment Act and the Government Sector Finance Act. The chief executive officer takes responsibility for ensuring that the work is done properly but the managers who are doing that work now report up through a Director of Corporate Services and that leaves the chief executive officer more time to focus on the big picture stuff that the commission needs representation and advice on in relation to law reform, public reports, recommendations and that sort of thing.

Dr HUGH McDERMOTT: Acting Chief Commissioner, you said your role is for six months. Do you intend to apply for the role beyond that six months? Is it something you have not put your mind to? I am thinking of the stability of LECC.

Mr BLANCH: I have not put my mind to it at this stage. I do not like playing bowls, I have to tell you.

The CHAIR: We may send you some additional questions in writing and your replies will form part of your evidence and be made public. Are you happy to provide any written answers if required?

Mr BANTOFT: Yes.

Ms O'BRIEN: Yes.

Mr BLANCH: Yes.

Mr KIRKPATRICK: Yes.

(The witnesses withdrew.)

TERRENCE LIONEL BUDDIN, Inspector, Office of the Inspector of the Law Enforcement Conduct Commission, sworn and examined

ANGELA ZEKANOVIC, Principal Legal Advisor, Office of the Inspector of the Law Enforcement Conduct Commission, sworn and examined

IAN McCALLAN-JAMIESON, Senior Investigation and Compliance Officer, Secure Monitoring Unit, Office of the Inspector of the Law Enforcement Conduct Commission affirmed and examined

The CHAIR: Do you want to make an opening statement?

Mr BUDDIN: I might make some introductory remarks, if I may. I can circumvent them bearing in mind some of the things that I have heard in the proceedings that have unfolded already. As the Committee is well aware, the Law Enforcement Conduct Commission has for a number of months been dealing with a very challenging situation. Nevertheless it is important in my view to observe that it is very gratifying that the LECC has been as productive as it has been during that period. Those achievements are reflected not only in its Annual Report and in other reports to Parliament but also in its conduct of investigations, some of which have been the subject of intense public interest and attention. The LECC is to be commended given that it has only finite resources with which to work for highlighting systemic issues within the NSW Police Force as an important focus of its attention. May I just refer to some examples?

The Acting Chief Commissioner referred to this a little earlier—a really important report that was codenamed Operation Tusket which relates to the Child Protection Register. I am not familiar with whether or not all of you have had the chance to trawl through the 200 pages of the very well-researched evidence-based material but I am sure you are aware of the fact that over a 16- or 18-year period 700 errors were identified in the administration of the Child Protection Register including, as the Acting Chief Commissioner said, people who should not have been on the register that were and vice versa.

As the former Chief Commissioner observed in the foreword to the report, it was of significance that the report entailed a high degree of collaboration between LECC and the NSW Police Force and that it had relied heavily upon the efforts of many individuals within both of those agencies who helped to reveal the deficiencies in the administration of the system. The second report to which I would like to very briefly refer is codenamed Operation Trieste which investigated the arrest of two Afghan women, an incident that received widespread publicity and which was captured on NSW Police Force body-worn video cameras and in respect of which LECC made findings of serious misconduct. That is an indicator of LECC being aware of the need to involve itself in questions about behavioural change within the institution that it oversees.

As already has been discussed, as recently as last week LECC produced two more interim reports concerning two very significant issues that, as you have heard, are continuing. It is of critical significance that they remain ongoing and it is also important that there is a reflection of the collaborative efforts between the two agencies in terms of recommendations being made, acceptance of those recommendations intending to get best practice outcomes. I think it is important to observe that one of the co-authors of those reports, Commissioner Drake, has a five-year appointment and will no doubt continue her involvement in those important projects.

May I briefly review each of my statutory functions in turn and in doing so I am mindful of the fact that some committee members only joined the committee in 2019. I will highlight some factors which are set out in greater detail in the most recent Annual Report. First of all there is the inspection function. There are five pieces of New South Wales legislation that are subject to the inspection function. They relate to the use of covert warrants as investigative tools by the four agencies, including the LECC, that are empowered to rely upon them. Record-keeping and record destruction obligations are imposed upon those agencies as well as reporting obligations. Inspections are conducted by two full-time members of the Secure Monitoring Unit [SMU] which was transferred from the New South Wales Ombudsman's Office to the Office of the Inspector of the LECC (OILECC), and one of them is sitting to my right.

The SMU report on deficiencies observed during the inspection process and then as Inspector I request that agency heads respond to the matters that they identify and the results of those inspections are then reported to Parliament, with the exception of TI reports, as and when required and once tabled are placed on the OILECC website. I can foreshadow that internally we are conducting a review of the various functions of the SMU with a view to considering whether changes to legislation or to process in relation to each of the various agencies should be recommended. I just foreshadow that. We have only just started embarking upon that process.

Secondly, the complaints handling function, as Committee members would be aware the function is very specific: Does the conduct constitute agency and/or officer maladministration or officer misconduct? Because of that limited capacity, a number of complaints simply do not fall within the jurisdiction of the OILECC. A summary of the complaints and how it was handled by the OILECC appears during the relevant reporting period, which is now somewhat dated, in last year's Annual Report. In order to provide feedback and, hopefully, to assist in improving service delivery, the OILECC furnishes the Chief Commissioner of LECC at six-monthly intervals with a schedule of complaints dealt with during the relevant period.

There is one particular challenge that I would like to make reference to and it concerns complaints that are made anonymously or in respect to which a claim is made that it is a public interest disclosure. Not infrequently such complaints constitute allegations of an extremely serious kind but which have the capacity to impact not only upon the integrity of individuals within LECC but upon the institution itself. For that reason alone they need to be taken extremely seriously. Needless to say, such allegations can be made very easily and may be based on rumour alone. They can also be motivated by the range of human factors with which Committee members would be all too familiar.

I emphasise that such complaints are fortunately very few in number but nonetheless they occupy a very significant amount of the OILECC's time and resources, as they are usually of a very highly confidential and/or sensitive nature and thus require very skilful handling. Added to that, the OILECC has limited resources in terms of personnel, time and skills to deal with them. Whilst on the subject, I observe that these challenges are not unique to the OILECC. Indeed, in my capacity as Inspector, I am well aware that LECC on occasion has to deal with similar issues which arise in relation to complaints about members of the NSW Police Force. My experience is that LECC deals with such matters with due sensitivity particularly as they raise issues that cannot be ventilated in public. I appreciate that what I have said about this delicate issue has been stated in general terms but I am very mindful of the significant legislative restrictions, such as appear in section 180 of the LECC Act, about what I am entitled to reveal.

The final function—I am going to combine them—is auditing the operations of LECC and assessing the effectiveness and appropriateness of their policies and procedures. This entails being provided with information about all aspects of LECC's activities, in particular obtaining the papers and minutes of its four main committees. Once that material is absorbed, the OILECC is in contact with the relevant area of LECC to make requests for further information, to raise requisitions, to seek clarification and to proffer suggestions. The OILECC is also provided on a monthly basis with an audit schedule—this is on a confidential basis—which sets out an analysis of LECC's performance in respect to its statutory powers.

As a result of specific complaints received by the OILECC, it is engaged in discussions with LECC concerning policy enhancements to issues as diverse as drug and alcohol testing, the code of ethics and conduct and prior employment restrictions. The OILECC's oversight of LECC's complaint handling process is and remains a pivotal focus. The number of systemic deficiencies in LECC's complaint handling processes have been identified. As there is no scope for the OILECC to conduct what is in effect a merits review, the deficiencies usually relate to issues of process rather than of outcome. They concern issues surrounding the backlog in finalising complaints, timeliness of responses to complainants and the adequacy of reasons provided for positions that LECC has made.

I advise the Committee that an audit report was conducted by Centium into LECC's complaints assessment process, which was completed in July 2019. The report was comprehensive and pointed to certain deficiencies which coincided with views that the OILECC itself had identified. LECC accepted the report's recommendation and agreement was reached with relevant staff members concerning the implementation of the proposed management action plan. I have been in communication with LECC to inquire about the progress of the implementation of that plan. I advise the Committee that although there still remains room for improvement in this area, the OILECC notes that the Assessment Team has made some positive enhancements to its practices in recent months. None of the matters to which I have referred is intended to detract from the dedication and hard work of the officers who are at the operational end of LECC's complaint handling function.

Finally in respect to this issue, I have already had some preliminary discussions with the Acting Chief Commissioner about various issues concerning LECC's complaint handling processes. He has signalled that a number of changes designed to improve the entire process hopefully will be implemented in the near future and he adverted to a couple of them during the course of his evidence.

The way forward—in my view there is room for very considerable optimism for the future. The next few months provide LECC with a real opportunity to conduct a review of all aspects of its operations. The insights,

perspectives and breadth of experience in a number of important public sector roles that the Acting Commissioner can provide will be of enormous assistance in charting the next few steps for the organisation.

Mr Blanch will also be able to provide a fresh perspective or, in the words of Michelle O'Brien, fresh eyes about the organisation's future goals and priorities—in that context, he will have the considerable benefit of the experience that Commissioner Drake has had throughout her lengthy professional career but also during her tenure at LECC. There are also a number of other senior people in the organisation who will be able to provide assistance in the process. Fortunately there is one challenge that LECC will not have to face—that is because the Government after receiving representations, including from the OILECC, has reconfigured the ministerial administrative arrangements so that the Premier and Special Minister of State now have joint responsibility for administering the LECC Act. Thank you for that opportunity.

The CHAIR: Thank you for those opening statements. On the current set-up, and we talked about this with the Acting Commissioner as well, we do not have an oversight commissioner. In the next six months there might be a bit of talk about what that means and it will be discussed whether it stays as is or will still have an oversight commissioner. Do you have thoughts on that?

Mr BUDDIN: This is a perfect opportunity to have the benefit of the people that I referred to, including the Acting Chief Commissioner, to provide his insights and wisdom about that.

The CHAIR: New eyes.

Mr BUDDIN: As I understand it, Commissioner Drake is going to assume considerable responsibility for that role. I think there is every chance that between the two of them we will be able to have a much better informed view as to whether or not a standalone position of that kind is necessary going forward. That will also be informed by a whole range of other things, including the personnel in the future that represent the leadership team, and by that I mean whoever ultimately becomes the Chief Commissioner, the role of the CEO. I think in a sense all these things are interleaved and having the benefit of the next six months where there is a sort of an informal audit being performed by people of high experience will be invaluable. I am not in a position to observe in vacuo whether or not it is necessary. I understand and totally appreciate where Andrew Tink was coming from in relation to the very helpful report that was commissioned and which he provided, but the landscape may have shifted. I suspect that the landscape I am talking about having shifted may include the budget situation. What I am saying is that all these things are interlocked.

The CHAIR: You mentioned in your opening remarks that the Premier and the Special Minister of State now have that administrative role rather than the Police Minister. What impact do you see that having in your role and for the overall function of the LECC?

Mr BUDDIN: I think the previous roles saw the Minister for Police put in a very invidious position of having administrative responsibility for the police—totally understandably—and the Crime Commission but also administrative responsibility for the body that was overseeing the police. It is a classic issue of governance that had to be addressed and the Government addressed it. What I am talking about is removing what was a significant obstacle and hopefully there will be clear space at least so far as that aspect is concerned. I do not know if that answers your question.

The CHAIR: I am happy to hear that you are basically happy with how that has moved in that direction.

Mr BUDDIN: I suppose seeing that I made those representations—

Dr HUGH McDERMOTT: When did you make those representations? I am looking at the timeframe. To my mind, we had dysfunction and a significant few months where the LECC was in freefall as far as management level goes. At the same time you are saying to us, "No, it's going on in the right way with this governance between the Special Minister of State and the Police Minister".

Mr BUDDIN: Oh, sorry.

Dr HUGH McDERMOTT: I just see a conflict with that, that is all.

Mr BUDDIN: I can correct it, but my impression is that it was something around the April period last year.

Ms ZEKANOVIC: I think so.

Mr BUDDIN: Does that assist you?

Dr HUGH McDERMOTT: It just seems that what you have said, how that governance has been sorted out has then—now we have got all kinds of problems. I guess I will leave it at that for my colleague to finish.

But it just seems to me that we have got a problem: We have got instability in the LECC. We have got a lot of issues regarding budget and all kinds of things that are going on. You are saying, "Well, we have sorted out this side of it" but it does not seem to have sorted anything out. It just seems that there are now two Ministers impacting—

The Hon. TREVOR KHAN: Well it has.

Mr BUDDIN: I think it has—

Dr HUGH McDERMOTT: That is what I am trying to come to.

Mr PAUL LYNCH: The particular problem has been sorted out.

Mr BUDDIN: Perhaps it is one thing at a time. Is it the ultimate panacea? Obviously not. However, it removed a significant fly in the ointment. I am not putting it any higher than that.

Dr HUGH McDERMOTT: I understand.

Mr BUDDIN: I am simply saying that at least LECC does not have to deal with that issue anymore.

The Hon. ADAM SEARLE: Inspector, you mentioned some structural deficiencies in the processes that were in place at LECC that were addressed in that—was it an Isentia report?

Mr BUDDIN: Yes. In the assessment—

The Hon. TREVOR KHAN: It was Centium.

The Hon. ADAM SEARLE: It was Centium.

Mr BUDDIN: In the complaints handling process.

The Hon. ADAM SEARLE: Are you able to provide a copy of that report to the Committee, or is there some reason why you could not or should not? I am happy for you to take that on notice.

Mr BUDDIN: Yes, I will take it on notice. I am more than happy to provide it as long as there is no restriction on my being able to do so.

The Hon. ADAM SEARLE: I understand. That is why I am happy for you to take that on notice. What were your impressions of the structural deficiencies of the processes that were then in place at LECC and how have they now been addressed, beyond the sort of general remarks you have made so far?

Mr BUDDIN: Do you mean in the complaints handling processes?

The Hon. ADAM SEARLE: Yes.

Mr BUDDIN: Timeliness issues, backlog issues, adequacy of reasons provided to complainants.

The Hon. ADAM SEARLE: Were they all a function of the resourcing levels in place at the LECC? Or to what degree do you think they were a function of those?

Mr BUDDIN: The reason I am pausing is that I am actually trying to go back in time. I have not really given this a lot of thought. My sense is that one of the challenges that LECC had from the outset was that it was an amalgam of two different organisations, namely the Police Integrity Commission and the Ombudsman's office. I think there were cultural and organisational differences, which were reflected in the way in which those two organisations handled complaints.

The Hon. ADAM SEARLE: It covers a range of sins, doesn't it?

Mr BUDDIN: I beg your pardon?

The Hon. ADAM SEARLE: That term covers a range of sins.

Mr BUDDIN: Well, yes. I think there were cultural differences in the way in which they were used to handling complaints. I think that was a fairly significant challenge from the outset. The second related observation is—and I am really searching through the recesses of my mind time-wise about this—that there was a lag time between a number of officers and personnel coming on board and LECC going live in July 2017. There were a number of people who were in positions. That is understandable in any new organisation but I think there were people in a sense trying to work out what they should be doing.

One of the things that happened was that people quite rightly thought, "Let's promulgate some policies and procedures". The problem was that the people who were promulgating the policies and procedures—I am

talking about those in the complaints-handling area—were used to the template that existed more at the Ombudsman complaints-handling level than at the PIC level. The content of the policies and procedures was not as sharp as it should have been. I think that created some difficulties about exactly what the content of those policies should be and how they should be implemented. I do not know if that answers your entire question, but that is—

The Hon. ADAM SEARLE: I will come back to that point. I think Mr Khan has a question.

The Hon. TREVOR KHAN: Inspector, are you able to walk us through how and who appointed Centium?

Mr BUDDIN: I can find out for you but I think it was the—it was certainly by LECC itself—

The Hon. TREVOR KHAN: I am not being critical. Having had a bit of a google, I can understand why Centium might have been chosen as the organisation to do it. I am just wondering how that eventually was done.

Mr BUDDIN: I am not sure I know the answer. I can give you my impression that it was done by LECC and it was probably the internal audit and risk committee of LECC. There are a number of members of that committee who are outside members and I think they had access to that particular agency.

The CHAIR: You mentioned on that subject that you had spoken to the now Acting Chief Commissioner about reviews. Have you got a plan for forward reviews to keep in touch with how your new implementation plan is going? The Acting Chief Commissioner is only there for six months, obviously.

Mr BUDDIN: I actually wrote to him last week and asked for a number of things concerning the content of various policies and procedures and a number of other fairly targeted questions. I noticed just as I was coming to this hearing that he has sent a very lengthy response to me within a week. That is what I will be doing. I continue to send interrogatories at a fairly frequent rate—and I am sure, from LECC's point of view, at a rate that is fairly irritating and sometimes relentless. If they do not follow up, they hear from us very quickly.

Mr MARK COURE: That is good to hear.

The Hon. ADAM SEARLE: We heard earlier today from the Acting Chief Commissioner about the resourcing constraints on the organisation, which seemed pretty considerable. Given the number of further constraints that it seems will flow through the so-called efficiency dividend reducing the resourcing of the agency, it sounds like that is going to have a fairly significant and negative impact on its ability to do its statutory task. To what degree do you see that as a live risk to quality outcomes in terms of the operation of the LECC, given your role as Inspector?

Mr BUDDIN: If it is realised, I think your, if you do not mind me saying, fairly leading question assumes the answer.

The Hon. ADAM SEARLE: I am not offended by the term.

The Hon. TREVOR KHAN: Counsel rarely is.

Mr BUDDIN: But I guess time will tell. I think there is another dynamic in this, which is whatever it is that the Auditor-General determines and finds.

The CHAIR: Inspector, you were in the room when I asked the Chief Commissioner at the very start of the hearing about the special report that was initially tabled in Parliament and then withdrawn. He answered that it had been withdrawn due to names being in there that were not supposed to be, but I think it sort of falls back onto your department for that. Can you explain what happened at your end?

Mr BUDDIN: I did not have anything to do with the writing of the report or anything that followed the writing of the report and its release.

The CHAIR: Have you any comments about what happened, though?

Mr BUDDIN: I do not know what happened. I have not informed myself about what happened for the very obvious reason that it was written by someone else, namely, the Assistant Inspector. If you have questions about any aspect of the process, may I respectfully suggest that you refer them to him. I am not suggesting that the question is not entirely appropriate.

Dr HUGH McDERMOTT: Maybe he needs to be called, if you really want to know. You have asked that question a number of times. Maybe he needs to be called so that he can answer it.

The CHAIR: Yes. We can have a discussion about that.

Dr HUGH McDERMOTT: I have a question. You were here in the room when I asked this question of the Chief Commissioner.

Mr BUDDIN: Yes.

Dr HUGH McDERMOTT: In your opinion, what actually needs to happen or be provided to give stability to the LECC after what has happened in the past few months?

Mr BUDDIN: Probably the most important thing is having the most suitable person in the chair of Chief Commissioner.

Dr HUGH McDERMOTT: There has been talk about there being changes to the criteria for that role?

Mr BUDDIN: I am sorry; I do not mean to be glib about that.

Dr HUGH McDERMOTT: That is all right.

Mr BUDDIN: But, I mean, just about everything flows from having the right person.

Dr HUGH McDERMOTT: From the leadership position. That is right, of course.

Mr BUDDIN: Absolutely. I do not think you can get away from that. But that is true of just about any agency, frankly. It is all about leadership.

Dr HUGH McDERMOTT: And that there has been talk about changes to the criteria and making them more like the ICAC. Do you have a view on that?

Mr BUDDIN: Well, I will just re-emphasise what I was going to say. What really matters is getting the right person, not the eligibility requirements. But I understand the argument about the eligibility requirements and extending the pool because, quite frankly, there are a limited number of people, even in the legal fraternity, who would be both interested and suitable. And if that is what is thought to be necessary to ensure that we get the right person, so be it; but I have some reservations, one of which would be, really, the point that I think Tink might have made how royal commission powers are normally vested in a person of Supreme Court status. That is a ticklish path down which I am not terribly keen to go any further.

Dr HUGH McDERMOTT: Any other reservations?

Mr BUDDIN: No. I do not think so.

Dr HUGH McDERMOTT: What about the idea of a permanent appointment to this key position—

Mr BUDDIN: Sorry?

Dr HUGH McDERMOTT: —as Chief Commissioner? Obviously, there was a period of time to which the previous Chief Commissioner was appointed.

Mr BUDDIN: Yes.

Dr HUGH McDERMOTT: What do you think of appointment to these key positions as appointments to an ongoing position? Would you agree that that should happen?

Mr BUDDIN: I am sorry, you are going to have to clarify what you mean by "ongoing".

Dr HUGH McDERMOTT: Once you are appointed to your position after you finish your period of probation, or whatever—like any other public servant—they continue on in that role.

Mr BUDDIN: Well, correct me if I am wrong, but my impression is that the position—I do not have the legislation in front of me—is for a term of up to five years. Is that right?

Dr HUGH McDERMOTT: That is right.

Mr BUDDIN: Clearly, for whatever reason, Mr Adams' term was only three years. Now, I am not privy to why that was the case but I would have thought, as a general proposition, that a term of up to five years, as the legislation suggests, is entirely appropriate. But I do not know why, and I suspect you would have to ask whoever made the decision—

Dr HUGH McDERMOTT: I am just asking for your opinion; that is all. There is a five-year term or a three-year term, depending on which commission you are put in charge of. Why can there not be a key position that is just ongoing?

Mr BUDDIN: But it was the word "permanent" that I was baulking at, that is all.

Dr HUGH McDERMOTT: That is all right. I will go on to the final part of that, about stability of the LECC. What about funding and ongoing funding at the moment? Obviously we have got the efficiency dividend and the impact that that is having on the number of staff and the number of operations and investigations that can be undertaken in the LECC. I would think that would have an adverse impact on the LECC as the next few years progress, if it is not already happening. What is your view on that? What do you think should be happening about the funding?

Mr BUDDIN: I think this is really the point that Mr Searle was making in a slightly different fashion and I had the same response to him. If things fall out in the manner in which you have suggested, then that would obviously be a matter of concern, but LECC has not made the case, as we sit here, to indicate that that is the situation. What they have foreshadowed is that things look as though they are going to be grim in the succeeding years.

Dr HUGH McDERMOTT: As the Inspector, you look at the big picture and what is going on there. I put to you that surely you must have a view of what you think will happen to the organisation the way it is going.

Mr BUDDIN: If that be the case, then let us look at it then, but I would be concerned in the way in which it was expressed from my predecessor sitting at the table. But, if that is the way things go, then clearly there is room for concern.

Mr PAUL LYNCH: Adams had a three-year term. The Government knew for three years the vacancy was going to come up. Do you have any insight as to why they could not make a permanent appointment?

Mr BUDDIN: I am sorry: I am not quite sure I understand that question.

Mr PAUL LYNCH: They have just made an appointment of an Acting Chief Commissioner. They have known for three years there was going to be a vacancy.

Mr BUDDIN: Well, first of all, the short answer is no. I have got no idea. I can shed no light on it.

Mr PAUL LYNCH: It was just a fishing expedition.

Mr BUDDIN: All right. Okay. Fine.

Dr HUGH McDERMOTT: While we are going there, I have a question for you. In the annual report the Chief Commissioner did talk about the efficiency dividend. He was quite clear about the efficiency dividend and the impact it was going to have on the LECC and his concerns for that. Do you think that might have been a factor about why his contract was not renewed?

The Hon. TREVOR KHAN: Goodness gracious. He actually came and gave evidence before an upper House inquiry—

Dr HUGH McDERMOTT: I am not asking you the questions.

The Hon. TREVOR KHAN: —and made his—

Dr HUGH McDERMOTT: Mr Khan, I am not asking you the questions. I am asking the Inspector.

Mr BUDDIN: Right. Do you seriously think that I know the answer to that question—

Dr HUGH McDERMOTT: Possibly not, but it was a nice fishing expedition, once again.

Mr BUDDIN: —or even if I knew, do you think that I would have to answer it? No.

The CHAIR: Let us get back on track. Are there any other relevant questions? As there are none, thank you very much.

Mr BUDDIN: Thank you.

The CHAIR: As you would have heard in the last one, we may send you some additional questions, which would form part of the evidence made public. Would you be happy to provide a written reply to any further questions?

Mr BUDDIN: Yes. I think the question from Mr Searle was about the Centium report. Is that correct?

The Hon. ADAM SEARLE: Yes. If there are no restrictions, obviously we would like a copy.

Mr BUDDIN: No. I will make due inquiry.

The CHAIR: Great, thank you. Thanks very much for attending. That officially concludes the Committee's public hearing for today. The Committee will meet again tomorrow to hear from the other agencies that it oversees. I place on record my thanks and the Committee's thanks to all the witnesses who appeared today. In addition I would like to thank all the Committee members, the Committee staff and Hansard for their assistance in the conduct of the hearing.

(The witnesses withdrew.)

The Committee adjourned at 15:57.