

**REPORT ON PROCEEDINGS BEFORE**

**COMMITTEE ON THE INDEPENDENT COMMISSION  
AGAINST CORRUPTION**

**REVIEW OF THE 2018-2019 ANNUAL REPORTS OF THE ICAC AND  
THE INSPECTOR OF THE ICAC**

**At Macquarie Room, Parliament House, Sydney, on Friday 15 May 2020**

**The Committee met at 9:45**

**PRESENT**

Mrs Tanya Davies (Chair)

Mr Mark Coure  
Mr Ron Hoenig  
Ms Tania Mihailuk  
Mr Jamie Parker  
The Hon. Rod Roberts  
The Hon. Martin Taylor (Deputy Chair)

**PRESENT VIA TELECONFERENCE**

Mr Justin Clancy  
Mr Dugald Saunders  
The Hon. Adam Searle  
Mrs Wendy Tuckerman

**THE CHAIR:** Welcome to the New South Wales Parliament once again—the Parliament of the people of New South Wales, without the people of New South Wales present. It does feel a little bit odd in that respect. I hope all members and witnesses are doing well in the current circumstances with COVID-19, and thank you very much for your time to come here today to speak with the Committee, as well as Mr Reed, who is online. Thank you for joining this public hearing of the Joint Committee on the Independent Commission Against Corruption. Today's hearing is to review the 2018-19 annual reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption. My name is Tanya Davies and I am the Chair of the Committee and the member for Mulgoa.

With me today are my colleagues the Hon. Taylor Martin, MLC, who is the Deputy Chair of the Committee. We also have Mr Mark Coure, the member for Oatley; Ms Tania Mihailuk, the member for Bankstown; Mr Jamie Parker, the member for Balmain; and Mr Rod Roberts, MLC. We have a number of colleagues who are joining us via the telephone conference hook-up, which includes the Hon. Adam Searle, MLC; Mr Justin Clancy, the member for Albury; Mr Dugald Saunders, the member for Dubbo; and Mrs Wendy Tuckerman, the member for Goulburn. I draw the attention of members and witnesses to the fact that Mr Ron Hoenig, the member for Heffron, is an apology to this morning's meeting, although he will be joining us when we speak to the Inspector regarding his annual report.

Before we commence proceedings I acknowledge the Gadigal people, who are the traditional owners and custodians of the land upon which we meet at Parliament. I pay my respects to Elders of the Eora nation both past and present and extend that respect to other Aboriginal and Torres Strait Islander peoples who are viewing the proceedings in the building or on the internet. Today we will hear from witnesses representing the New South Wales Independent Commission Against Corruption, including the Chief Commissioner, the Hon. Peter Hall, QC; commissioners Mr Stephen Rushton, SC; and Ms Patricia McDonald, SC; as well as members of the ICAC's executive. This afternoon we will also hear from the Inspector, Mr Bruce McClintock, SC.

At the outset I thank all the witnesses for making themselves available to appear today. I remind everyone to turn their mobile phones either to silent or to switch them off, particularly as we have the added technical circumstance of the telephone conference, which does make noise from time to time. 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 governing coverage of proceedings are available. I now declare the hearing open.

**PATRICIA McDONALD, SC**, Commissioner, Independent Commission Against Corruption, sworn and examined

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

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

**PHILIP REED**, Chief Executive Officer, Independent Commission Against Corruption, before the Committee via teleconference, affirmed and examined

**ANDREW KOUREAS**, Executive Director, Corporate Services Division, sworn and examined

**BERNADETTE DUBOIS**, Executive Director, Investigations Division, sworn and examined

**LEWIS RANGOTT**, Executive Director, Corruption Prevention Division, affirmed and examined

**ROY WALDON**, Executive Director, Legal Division and Solicitor to the Commission, sworn and examined

**THE CHAIR:** Do any of the witnesses have any questions in relation to the procedural information sent to you regarding witnesses and the hearing process?

**Mr HALL:** No, none for me.

**Ms McDONALD:** No, thank you.

**THE CHAIR:** Mr Reed?

**Mr REED:** Yes, fine.

**THE CHAIR:** Excellent. Mr Chief Commissioner, would you or any other witnesses like to make brief opening statements before we commence questions this morning?

**Mr HALL:** Yes, thank you, Chair, I would like to make an opening statement. I appear here with Commissioner McDonald and Commissioner Rushton. There are a few matters that have arisen that I would like to address. It may take a little longer than the prescribed three or four minutes, or whatever it is, but I am mindful of the fact that the members of the Committee have got other work to do. If I have your leave, I might exceed that slightly.

**THE CHAIR:** That is fine. Please go ahead.

**Mr HALL:** Just as the incidence and nature of corrupt conduct continues to evolve, so also the Commission's methods and approach in preventing it and exposing it continue to evolve and develop. A recent illustration may be seen in the Commission's corruption prevention initiatives in dealing with the risks and consequences associated with the COVID-19 virus pandemic. It has long been examined in the relevant literature that at times of economic downturn the risk of fraud and corruption increases. The Commission's corruption prevention officers produced an excellent guide for the public sector entitled *Managing corrupt conduct during the COVID-19 outbreak – April 2020*, a copy of which was provided to the Premier, to all departmental secretaries and posted to the Commission's website. Though it is on the website, I have some hard copies here that I am happy to hand up to members of the Committee to perhaps facilitate if their interest is aroused by that matter.

**THE CHAIR:** Thank you.

**Mr HALL:** The nature of corrupt conduct makes it essential that the Commission retains and keeps its specialist and support staff in its service. The investigation and exposure of corrupt conduct is an especially difficult task. Secrecy is the core of corrupt conduct, and the parties to corruption have a common interest in maintaining that secrecy. Few paper trails or other records are left and some false trails are created. The investigation of corruption requires detailed and painstaking work by specialists who possess the requisite knowledge and have the requisite experience for the planning and execution of appropriate investigative strategies and methodologies. Similarly, the Commission's corruption prevention officers and associated staff provide valuable advice to the public sector on a range of matters, including the circumstances that are conducive to corruption within particular agencies and in the design of corruption controls.

Given the times in which we are presently living, I should say something about the work of the Commission during the COVID-19 pandemic period, which of course is still operating. The Commission staff have all been working from home since 26 March 2020 as a result of the public health orders and associated restrictions put in place by the Government. These arrangements have been regularly reviewed, but it is likely that staff will be requested in coming days to continue to work from home for another four weeks to comply with the public health orders. The work of the Commission has continued at a high level through this period and the Commission's

governance arrangements have ensured that decisions on complaints, the investigation work and corruption prevention activities have continued as seamlessly as possible.

I am advised that the number of complaints in relation to potentially corrupt conduct that the Commission has received during this period has not reduced compared to other equivalent time periods in other years. In addition, a number of these matters have become preliminary investigations. There has been a cessation of Commission activity in compulsory examinations and public inquiries as a result of the restrictions on movement and social distancing. The Commission is obtaining specialist advice from the Department of Health as to how the compulsory examination process might be able to be undertaken to try and ensure that investigations do not take longer than is necessary.

I update the Committee in relation to our Strategic Intelligence Research Unit, which we refer to as SIRU. I have previously advised the Committee on the establishment and work of this unit, being an initiative that supports the enhancement of the Commission's proactive approach to both investigation and corruption prevention. SIRU has established itself as a reliable source of strategic intelligence that feeds the Commission's investigations and in its corruption prevention functions. Moreover, it operates as a standalone unit, creating self-initiated intelligence products that enhance the Commission's ability to expose and prevent corrupt conduct.

Since the last Committee meeting, the role and activity of SIRU has been reviewed with a view to its work being effectively linked into the Commission's investigative structure. A review of SIRU's preliminary investigations to date has led to refinements in its business processes, allowing for greater collaboration between SIRU and the investigations division during preliminary investigation stages. Through its projects to date it has also assisted in exposing corruption hotspots and, thereby, to alert the Commission to serious risks not previously apparent.

Arising out of extensive statewide research and consultations by SIRU and other offices with public officials in an important area of public administration—which I am unable to detail for security reasons—the SIRU work has already led to the establishment of two preliminary investigations, with the prospect of additional matters being investigated in that particular area. In addition, a further two unrelated SIRU matters have also made preliminary investigations. In relation to current investigations and reports, there are currently eight preliminary investigations underway—four of these, as I have stated, being SIRU preliminary investigations. There are currently 11 full active investigations underway. In relation to investigation reports, 11 reports are being prepared for delivery at various times during the course of this calendar year.

I proceed to note a few issues on the question of ICAC funding. Proper funding of the Commission, of course, is essential to the exercise of its statutory functions. The Commission's mandate under section 12 of the ICAC Act is to:

... regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

The public interest and the public trust are the very *raison d'être* of the work performed every day by the dedicated staff of the Commission. The unpredictability of the investigative work that the Commission is called upon to perform, along with associated factors, are well known to this Committee. Such unpredictability is fundamental to proper funding of the Commission, and it explains why annual appropriations by Parliament do not and cannot provide for the resources the Commission actually requires, hence the need for supplementary funding during a budget year.

Premiers of both of the major parties have by their statements over the years—including the present Premier—made it clear that they believe in and they do support a strong ICAC. The real issue with ICAC funding has not been at that level. It lies in what has been referred to by Mr Walker, Senior Counsel, in his legal opinion on the ICAC as a "formalised bureaucratic process" involving the Executive Government and including the Expenditure Review Committee. Whilst in the second reading speech on the Independent Commission Against Corruption Bill 1988 on 26 May 1988 Premier Greiner emphasised that the Commission would be independent of the Executive Government. The role in assessing and determining its funding needs and resources, however, has been assumed by the executive branch of government. I say "assumed" because of the fact that no legal or statutory power has ever been conferred on the members of the executive branch of Government to do so.

The Commission, of course, under the statutory regime established by the ICAC Act is ultimately answerable to Parliament, there being a number of provisions in the Act specifically referring to Parliament. The Committee has accepted in its report entitled *Review of the 2017-2018 Annual Reports of the ICAC and the Inspector of the ICAC*, tabled 20 November 2019, that there should be an independent funding for the Commission; so also has the Legislative Council's Public Accountability Committee in its report No. 5 entitled *Budget process for independent oversight bodies and the Parliament of New South Wales*, first report, tabled 24 March 2020. The Inspector, Mr Bruce McClintock, Senior Counsel, has also expressed his view to similar effect.

In summary, there is the strongest support for an independent funding model consistent with the Commission's independence. It is clear, in my respectful submission, that there is a need for the Parliament to be supported by a funding mechanism that is as independent of political and bureaucratic influence as the Commission itself. The recent legal opinion of eminent senior counsel Bret Walker not only identifies the legal basis that favours an independent model; his opinion makes clear why as a matter of law it must be funded by a method that is entirely independent of the Executive Government. Whilst the existing funding system is unlawful for the reasons identified by Mr Walker—in particular its contravention of the independence principle that is enshrined in the ICAC Act—practical necessity requires that for an interim COVID-19-related period the Commission's interim funding will need to flow from arrangements that I understand the Government may announce between the present time and 30 June 2020.

The forward estimates released by the Government as part of the 2019-20 budget in the latter part of 2019 forecast substantial cuts to the Commission's budget for the 2020-21 year. In addition, additional savings measures were announced following the 2019 general election that were to apply to the Commission's budget from 2020-21 onwards. As was made clear by the Commission to the Legislative Council's Public Accountability Committee, should that forecast budget become reality there would arise the prospect of up to 31 employment positions in the Commission being made redundant, many involving frontline officers. It is plain that such a budget outcome would have a drastic impact on all of the work of the Commission.

Reductions in funding resulting in the need for compulsory redundancies have, save for one occasion, never been imposed upon the ICAC—and this is, presumably, so as to avoid severe disruption to the Commission's work. The exception occurred in June 2016, with the reduction in funding causing the loss of 12 staff by compulsory redundancies, which included frontline staff, and the loss of one of four of the Commission's investigation teams. The explanation for that extraordinary use of the funding lever by the Executive Government was not so far as I am aware ever explained in terms that revealed the real reason or justification for it. The impact on the Commission's capacity as a result and the morale of the surviving staff was considerable indeed.

The case for a new independent funding system for the ICAC is, in the Commission's respectful submission to this Committee, beyond argument. The issue then arising is the nature and content of the independent model. The special report addresses that issue in detail—that is the report lodged under section 75 of the ICAC Act. The model proposed is one that closely gives effect to three principles: firstly, the principle of independence in line with the provisions of the ICAC Act; secondly, the principle of accountability; and, thirdly, the principle of transparency.

The central concept of an independent, qualified, eminent person to act in assisting the Parliament is compelling. He or she will consult with this Committee; will consult with the ICAC Inspector; will receive budget submissions from the Commission; and will receive submissions from all relevant stakeholders, including Treasury. The eminent person would make independent inquiry as necessary. Following analysis, he or she will publicly report to Parliament. This process will provide the Parliament with accurate and reliable assessments upon which it could be confident that in the public interest it could rely. The process, from first to last, would be transparent and the reasons for such assessments would be made public.

The period in which the new model clearly needs to be established is that period during which any interim budget operates—that is, until approximately November or December 2020. The new model would in particular need to be developed well before the end of that period in order for the appointment process for the independent assessor in the new model to take place, in order for preliminary work to be undertaken in the lead-up to what will be the first independent ICAC budget to be announced in or about January 2021. I thank Committee members for permitting me to make this opening statement.

**THE CHAIR:** Thank you, Chief Commissioner. We now move to the question and answer time frame with the Committee members. A member of the Committee, Mr Justin Clancy, needs to leave these proceedings a little bit earlier than the scheduled completion time due to another committee meeting he is attending. I will turn to Mr Clancy in the first instance to give him the opportunity to ask all his questions and then we will take it from there.

**Mr JUSTIN CLANCY:** Thank you, Chair, and thank you Chief Commissioner Hall for your opening remarks. I ask my questions with regards to the CEO, but before I do I refer to the special report on funding. Commissioner Hall, you spoke of the nature and content of an independent model. In the creation of this report, what consideration or analysis was done with regards to other comparable jurisdictions? If any, what did it reveal?

**Mr HALL:** I can respond, Mr Clancy, in this way: A considerable amount of research was undertaken. It included examining the new model that has been adopted in Victoria for the Independent Broad-based Anti-corruption Commission. It has looked at other models that might more by analogy than direct application inform—that is, the salaried officers review tribunal and the way in which it performed independently a function

to advise in respect of executive salaries and such like matters. With your leave, Chair, I might invite Mr Reed, who is our CEO and who is on telephone contact at the moment, to add to any of the detail that responds to your question. I can indicate that the greater level of detail can be provided. We can take that on notice and provide further information. But, with your leave, Chair, I will ask Mr Reed to address Mr Clancy's question and, indeed, if any of my fellow commissioners wish to do so.

**The CHAIR:** Certainly. Mr Reed, would you like to add more comments?

**Mr REED:** Yes. I think the Chief Commissioner has covered the pertinent points. The model in Victoria has elements that are similar to what is being proposed here. We did put into the ICAC's submission to the Public Accountability Committee's inquiry into funding arrangements a bit more detail about the background and history. I would think that if we were to provide that to you, it may assist as well in your understanding of the model that is being proposed.

**Mr JUSTIN CLANCY:** Thank you. I appreciate, Mr Reed, that you were appointed in July 2018 and that followed an amendment to part 11 of the ICAC Act. Mr Reed and Chief Commissioner Hall, the broader question is with regard to the CEO position. Is it working well? How are you finding that position? How has the position assisted ICAC in its governance and managing day-to-day affairs? Then, more specifically, what performance markers do you as CEO respond to? Have there been roles and tasks subsumed from other officers in the appointment of a CEO that has relieved other officers of roles and tasks, and what has that enabled them to do?

**Mr REED:** I will try to address all of those points, but if I miss anything please ask me to respond to the particulars. From my perspective in the nearly two years that I have been in the role of CEO the organisation of the ICAC has now got a governance structure that allows more separation between the day-to-day administration, which is what the CEO role under the ICAC Act is accountable for, and the operational work of the Commission, which is the work that most people see the end result of through public inquiries and reports. They are separate but interrelated and there is a boundary between them. The decision-making for operational decisions can only be made by the commissioners. The administrative decisions are able, partly through delegation but also as a result of that provision of the Act, to be managed on a day-to-day level by the CEO.

Of course, after nearly 30 years without having a CEO, that role having been vested in the role of the Commissioner or the Deputy Commissioner over about a decade, it takes time to put into place those changed arrangements. I think what it has done in terms of the roles of other people—and I will come back to performance markers—is that it now has a CEO focused on the day-to-day management of the organisation and how the administrative side of it runs. Therefore that takes some pressure off senior managers that would otherwise have been required to report directly to the Commissioner on these sorts of matters—not on the operations but on the administrative side—and it allows for that work to be done in a more consistent approach that would be reflected in any other public sector agency. That is the experience that I can bring to the role, having had over 30 years of administration and government experience.

Whilst it takes time for people to adjust, I think it is giving the organisation at the core in an administrative day-to-day management sense probably greater stability; that would be one example. In relation to performance markers, we are driven by the requirements of the Act in terms of performance. My job is to assist and ensure that we are reporting on those matters and are trying to meet those timeframes. That is the challenge that faces every officer in ICAC but nonetheless it allows me to focus on those. I have specific roles under various pieces of legislation in relation to those sorts of things and financial accounting. I think that was the point that you raised. I am happy to address anything else.

**Mr JUSTIN CLANCY:** That is fine. Thank you, Mr Reed.

**Mr HALL:** If I could be permitted to add to those comments: Mr Reed has, by reason of his extensive experience at high levels of public administration in this and in other States of Australia and by reason of the fact that he was the CEO in the Royal Commission that was conducted into institutional abuses, which was conducted by Justice McClelland and fellow commissioners, it was necessary for us to secure somebody who had his experience and abilities but who also had experience in how investigative commissions operate. There are not many people with the combined skills of a CEO in the corporate sector and in that limited specialised space. Mr Reed had brought that combined experience and it has been to the great benefit of the Commission not only within the Commission but in the liaison that the Commission has with other agencies both in New South Wales and in other States.

Additionally in relation to the financial controls and associated matters with the Commission he has made a substantial contribution. Whilst I was a self-proclaimed sceptic at the outset about whether we needed a CEO—

and we did not have one for the first six months of our stewardship—I came to realise that we most certainly do need a CEO and somebody of Mr Reed's capacity. That is all I wanted to add.

**The CHAIR:** Great. Thank you.

**Mr JUSTIN CLANCY:** Thank you, Chief Commissioner and Mr Reed. Chair, I have no further questions.

**The CHAIR:** Thank you, Mr Clancy. I will now ask members of the Committee who are in the room if they have any questions. Mr Parker?

**Mr JAMIE PARKER:** Thank you very much for attending today. I want to ask a funding question. On 30 November I asked the Premier a question in the House about the report that the Commission had submitted. The Premier indicated to me that she was interested in ensuring accountability and correct funding. She said that she had written to you as the Commissioner and also referred the report to the Auditor General and that the advice that she was seeking was from the Auditor General in regard to this funding question. That seems to be the mechanism that the Government is looking at in order to address this issue. Could you let the Committee know what your interaction has been with the Auditor General and whether or not that process has been satisfactory, and whether you think that process is the correct mechanism for resolving this funding issue that has been raised by ICAC?

**Mr HALL:** Yes. Mr Parker, perhaps taking that question in two parts, the Commission has worked closely and constantly over recent months with the Auditor General's office. We established at the outset a group within the Commission so that all our operations could contribute to the pooling of information that the Auditor General needed, some of it by way of statements to supplement what was perhaps not apparent from the records of the Commission. My rough estimation is that there would have been hundreds of hours put into a combined effort of Commission officers to provide information and meet on a number of occasions with officers of the Auditor General to facilitate and respond to any questions that have been raised. We have responded to all of them, to my knowledge.

Exactly why the Auditor General was asked to do this was not something I am party to, of course, but it does not examine in my view the issue that we raised in the section 75 report. Having said that, although the Auditor General has given us a scope of what she and her staff would be investigating, it is not entirely clear to us yet as to what matters will be addressed ultimately in the report to be made. But I do not apprehend that it is going to be directed towards this issue of a new funding model. I say that based partly on the basis that to my knowledge there has not been any indication from the Auditor General's officers in discussions with us that that is on the shopping list, as it were, of matters. As I say, we are to some extent a little in the dark as to exactly what is going to come out of the Auditor General's examination. All I can say is that she has had our full cooperation and we await to see the draft report.

We have had submitted to us a preliminary document that provides some information as to the progress that the Auditor General's office has been making, but to my knowledge we do not have anything in the nature of a draft report yet. We have made inquiry, in fact as early as this week, to determine whether or not we are likely to see such a draft. We have not yet been able to obtain any specific information to that effect. I apprehend it should not be too much longer.

**Mr JAMIE PARKER:** If I can just clarify that: If this is not the mechanism that will address the independence issue, what mechanism do you think should be used to ensure that your requests in the special report are met? Have you submitted it to the Premier? What mechanism do you think is the way to address this funding issue?

**Mr HALL:** I have recently provided a copy of Mr Walker's opinion to the Premier. So far as the model that we proposed is concerned, that was articulated in the proceedings of the parliamentary Public Accountability Committee. It is set out in the report.

**Mr JAMIE PARKER:** Yes, I think I am clear on that. My question was whether or not you had written to the Treasurer and what I was also trying to get at is that whether it was like the Expenditure Review Committee. You provided the advice to the Premier, so that answers my question. Thank you.

**Mr HALL:** Yes. We have not directly engaged, as it were, with the Executive Government over this. It has been said before—and I do not want to keep repeating it; it is all in the record—that we had invited the Secretary of the Department of Premier and Cabinet [DPC] to come and have discussions with us. That invitation was made in July last year. It is still outstanding; our invitation is still there. We have not yet had any response to that invitation. We are open, as I have said in my recent letter to the Premier, to work assiduously with the Premier, with the Inspector, with this Committee, in the design and establishment of this independent model, which I think

is clear now must be established. As to what will give it the impetus to make it happen, we are in Parliament's hands. We have endeavoured to get the best advice on the way forward. Through this Committee, the parliamentary Public Accountability Committee, through the Inspector, we have endeavoured to promote and see this as a reality in the public interest. Having now received the legal advice from Mr Walker, the law demands it.

**Mr JAMIE PARKER:** It is compelling.

**The CHAIR:** Thank you, Mr Parker. I will move to members who are on the telephone conference.

**The Hon. TAYLOR MARTIN:** Chair, do you mind if I follow up with one quick question on the point that the Commissioner was making?

**The CHAIR:** Mr Martin, yes.

**The Hon. TAYLOR MARTIN:** Just on that point of receiving advice, or on receiving the opinion, rather, would you mind walking through the processes of selecting a legal professional to give that particular opinion?

**Mr HALL:** The process of selecting?

**The Hon. TAYLOR MARTIN:** In selecting Bret Walker, yes.

**Mr HALL:** Mr Walker—yes. It is evident from what has transpired that I have always had doubts about the funding basis and principles applied to the Commission. Ultimately I determined that, at the end of the day, we can all have our opinions about whether it is a good thing, a desirable thing or a preferential way to go, but at the end of the day what does matter is what the law says. I determined that we wanted somebody who would be regarded as steeped in constitutional and governmental law and in public law and whose opinion I could ensure that I could rely upon. Mr Walker, many years ago now, was counsel assisting me when I was at the bar but I was performing the role of Assistant Commissioner for a time. His performance, if I can call it that, or his professionalism in that inquiry stays with me to this day. He was superb in understanding exactly how the Commission operates. He possibly has had more recent association with the Commission before I took up my current position. I am unaware of that, but I know Mr Walker by reputation. He is a regular at the High Court of Australia. He is well recognised for his abilities. I just determined that he was the person to assist the Commission for this purpose.

**The Hon. TAYLOR MARTIN:** Thank you. I appreciate that.

**Ms TANIA MIHAILUK:** Madam Chair—

**The CHAIR:** Same thought? I just wanted to alternate between those who are on the phone.

**Ms TANIA MIHAILUK:** Okay. I do not want to ask anything more on the funding.

**The CHAIR:** Colleagues online, are there any questions in relation to funding or the reports submitted to the Parliament this week, to which the Commissioner has been referring, to continue perhaps this line of questioning further?

**Mr DUGALD SAUNDERS:** Not from me. I have questions on other things but not on the funding, thanks.

**The CHAIR:** I just wanted to give an opportunity to anyone online to ask questions in relation to funding. If not, I will move on. Ms Mihailuk, did you want to add something?

**Ms TANIA MIHAILUK:** Not on the funding, no.

**The CHAIR:** Mr Roberts?

**The Hon. ROD ROBERTS:** Not on the funding, Chair.

**The CHAIR:** Can we give an opportunity now to someone online to ask their line of questioning, please? Who would like to go?

**Mr DUGALD SAUNDERS:** Thank you, Chair. I just wanted to ask questions about investigations and open investigations. I have looked at the report for 2018-19 and I have looked at the number of days and average times to deal with complaints and all that sort of stuff. I just wonder how many open investigations there are currently.

**Mr HALL:** I take the reference to "open investigations" to refer to public inquiries. At the moment there are no public inquiries proceeding. There are reports being written and in due course that will be written to complete those public inquiries. There are also submissions being received in relation to matters dealt with in



public inquiries during the course of last year. As earlier indicated, we have not been in a position to conduct public inquiries by reason of the COVID pandemic. However, we are looking at the possibility of an alternative approach when we are ready to go with the next public inquiry if the COVID lockdown continues, and so on. I am keen to keep exploring with experts the ways in which that can be done. I anticipate that it will not be in this financial year, but it could be that we will recommence with a new public inquiry in the next financial year.

**Mr DUGALD SAUNDERS:** Sure. I had, and I cannot put my finger on it exactly where—

**The CHAIR:** Sorry, Mr Saunders, Commissioner McDonald wanted to add something further to that.

**Ms McDONALD:** Sorry, Mr Saunders. Currently the public inquiries that have been commenced during our regime are at the stage where we are either writing the report—and a number of those have been progressed substantially—and/or we are waiting for the ending of the series of submissions by either counsel assisting or and affected parties. There is one public inquiry, Skyline, which has not completed and we anticipate that there will be a couple of days more hearing once, as the Chief Commissioner said, we get over the difficulties with COVID-19. The commissioners have determined in respect of another investigation that there should be a public inquiry. And, again fingers crossed, we are hoping that that will start at the end of August. Turning from those two matters there is a number of other investigations where a lot of work is done and they are progressing. We anticipate that the three commissioners will be turning our minds to whether there should be public inquiries in those matters.

**Mr DUGALD SAUNDERS:** Thank you. That is great. I cannot put my finger on where I had it, but I had written something down that I thought there was a number of open investigations and some that I thought may have been open for a couple of years. You have sort of addressed some of that or some of the investigations that are continuing, but I wonder if there are any particular impediments that have caused problems along the way for investigations?

**Mr HALL:** There are always problems of one kind or another in every investigation and we have to deal with and solve those problems, but there is nothing in particular that is presenting a general problem so far as public inquiries are concerned that I am aware of.

**Mr DUGALD SAUNDERS:** It is obviously very difficult and thank you for bearing with us, but while I am here can I also ask this: How do you feel counsel assisting have continued to be utilised and do you regard them as useful? In what ways do you see them as being useful or not?

**Mr HALL:** It is always valuable to have external counsel. Firstly, we select counsel who we know are able to undertake hearing work in the Commission which is similar in some respects but very different in others from the day-to-day work in courts. Some practitioners are not as au fait about how our proceedings are conducted over others, but the role of counsel assisting is immensely valuable. It provides assistance to the Commission in that you have got somebody who has his or her own independent role from the Commissioner, although there is always some liaison and communication between counsel assisting and the Commissioner. But it is not just the principle of two heads being better than one. It is having some distance sometimes between counsel assisting and the Commissioner that often can serve a more objective and analytical approach.

Counsel assisting are normally very skilled in advocacy, skilled in analysing facts and familiar with the rules of evidence. Although the rules of evidence do not apply to the Commission, some of the principles upon which they are based and some of the principles that we are required to apply in terms of standard of proof are familiar to counsel assisting. They plainly maintain those principles in mind as they proceed in terms of both the probative value of evidence, where to find it, principles of fairness in terms of putting matters to witnesses so that they have a fair opportunity to respond to, and to ensure fairness all round. That is a very summary way of saying that the role of counsel assisting is extremely valuable. We could not do the work without it. We have our own lawyers in-house who are also very specialised and very skilful but they have their own work to do and they, too, often would say, "We prefer somebody from outside come in and do it because we wouldn't be able to do the other work if we had to do all the advocacy-type appearance work." I hope that gives you some idea of the value of counsel assisting.

**Mr RUSHTON:** Can I just add to that? Generally speaking, counsel assisting are used for public inquiries only. When it comes to compulsory examination that is conducted in private, we generally use the in-house lawyers not only because they are excellent at that work but because obviously we have funding restrictions that would not allow us to employ counsel often to perform the role.

**The CHAIR:** Thank you, Mr Rushton. Mr Saunders, do you have any further questions?

**Mr DUGALD SAUNDERS:** Thank you very much. That was great.

**Mr HALL:** Thank you.

**The CHAIR:** I will now ask Ms Mihailuk to propose her questions.

**Ms TANIA MIHAILUK:** Thank you, Madam Chair. Just on investigations, and of course the current COVID-19 pandemic, I note in the report on page 15 there is a graph or table that gives us an indication of the number of investigations that have been completed and so forth. I want to ask the commissioners their view on some of these targets. I think they are quite ambitious targets, for example, of 80 per cent investigations to be completed. Clearly in the current environment that would pose some pressure to ICAC, and understandably so, but also I think that comparing the number of investigations that have been completed in previous years is also troublesome, because you now have affected parties being able to make submissions, for example, and quite rightly Commissioner McDonald referred to the need to wait for these parties to complete their work.

I wonder whether it is worth revisiting some of these very ambitious targets of ICAC? To my mind I think it is better that an investigation be done thoroughly and properly as opposed to some sort of pressure being put that it has to be completed by a certain time, for example. I would like to have your view on that because there is a target of 80 per cent completion of all investigations. I just think that is very ambitious. While it is a nice target to have the reality is that it is not about the number of completions but, rather, that matters are undertaken properly.

**Mr HALL:** Yes. Perhaps if I could respond to that. There is always a balance to be drawn between quantum, quality, time and resources. I believe it is important to have targets. However, in my experience they do not override or trump the quality that goes into the work. The Commission is ever mindful that investigations must be carefully undertaken. If key performance indicator milestones need to be adjusted, application is made to have it increased or extended and that application is considered. Where there is obviously good reason to extend it, it will be extended. So there is no sort of rigid system whereby no matter what the time line has to be met. But it is important to have some milestones, and the particular idiosyncratic difficulties sometimes in particular cases require more time and is always a matter that is discussed and evaluated. As I say, the investigations that we conduct can impact greatly on people who are the subject of our investigations.

We ensure that there is always an attempt to obtain corroborative evidence to ensure that our findings are soundly based; to ensure that the person affected has every opportunity, in terms of the requirements of procedural fairness, to be heard and to meet any allegations made against them. It is time-consuming. As I said at the outset in my opening statement, it is painstaking work. The officers of the Commission, I have to say, are highly dedicated to the cause. We are not a public servant agency and I am not for a moment suggesting that public servants and their agencies do not similarly perform to very high standards but all I can say is from what I see in the Commission the dedication of staff is never numbers or quantities, it is always the quality of the work and what has to be done to properly investigate. I understand your concern that you could have unrealistic targets being set but I think we do have to have targets. We have to have key performance indicators. They are being regularly reviewed monthly to ensure that they are realistic. If there is good reason to extend time, as I say, then you could be sure that will be usually granted. I hope that deals with your concern or your interest in the matter you have raised.

**Ms TANIA MIHAILUK:** I was concerned that obviously all our reporting is made publicly available and a report or a table like that could be construed in a negative way.

**Mr HALL:** I understand, yes.

**Ms McDONALD:** Could I just add, I agree targets are important but when I was revisiting the report that was one of the things that struck me, that should we look back at the key performance indicators to see, particularly where our investigation environment has changed. As we set out at page 31 of the report, one of the developments in investigations has been the amount of digital information we get now. The old days of executing a search warrant and getting two boxes of documents has gone. You download on computers, you download on phones and the material is just extensive. Of course, that adds to the time that our investigators have to take to identify relevant material, not only relevant material to prove any allegations but also we have important obligations with exculpatory evidence to identify that and to notify everybody of that evidence. In a way I am sympathetic with the points you make but I think we have to make sure that our key performance indicators do reflect the investigative environment under which we are functioning.

**The Hon. ADAM SEARLE:** In relation to the funding model, Chief Commissioner, I have got the interesting perspective of not only being on this committee but also having been on the Public Accountability Committee inquiry. I note that the percentage of full investigations completed within 16 months appears to have declined in the two years prior to 30 June 2019 from nearly 90 per cent to about 50 per cent. Will you inform the committee how the current funding model has contributed to that? What insights do you have to offer of the likely impact of the current funding model for the current financial year and the years ahead?

**Mr HALL:** Mr Searle, I can answer your question in this way. There is no metric, as it were, which will show that the quantum of financial resources can be allocated to a particular investigation. Every investigation, as you know from your experience, is a tailor-made case and it depends on the substance of it. There have been two very long inquiries in our time that drew heavily on the Commission's resources. One was Operator Dasha and the other was Operation Skyline. Without going into the detail of them, those two inquiries are probably amongst the longest public inquiries the Commission has ever undertaken and it occupied a lot of time and resources in the period you are talking about.

In the past there have been investigations, public inquiries that have been completed within a relatively short time, even two or three weeks. Our time since we took up office as the three-commissioner model has, as I said, been heavily devoted to those very long-running investigations. It is just simply not possible to do a mathematical exercise to say, "Had we more money we would have done more inquiries", because it depends on how many investigators you have at any one time. Certainly if we had more investigators and support staff we would be able to get through more work quickly. That is axiomatic but it is not really possible to be any more precise in seeking to answer.

I do not know whether I have answered your question but perhaps I could just complete my answer by saying that the model that is proposed would have the benefit of a two-stream approach whereby, apart from the monies appropriated by Parliament, the demands and the needs of the commission can be on a flexible basis reassessed during the course of the year and an application made for funding. If we could see that that funding mechanism would further support the Commission by increasing our resources we would certainly be able to do more work in a shorter period of time. When we came into the Commission in 2017, as you know, we retained KPMG consultants to do a root-and-branch review of the whole Commission. It gave its initial report and fortunately that report led to an increase in funding after the redundancy period I have referred in 2016.

After we had been operating with three commissioners performing overlapping inquiries, all in a shorter period of time, it soon became apparent that we needed more resources. We simply could not operate at that level on an ongoing basis. That led to a realisation that we needed more money; we needed more resources if we were to continue to do that to get through more work more quickly. So we re-engaged KPMG to do a post-evaluation assessment as to what would be required to maintain that. KPMG furnished its second report which was provided to the Executive Government. It sought an increase in funding of the order, from my recollection, of \$4.1 million, or something of that order, in order for us to be able to operate as a three-commissioner model in the way I indicated a moment ago.

The response ultimately by Treasury to that application for the increased funding was a negative—no, refused, not \$1. This was an evidence-based analysis by KPMG. There has never been any suggestion that it got it wrong or that it was not based on fact. The result of that is that we have not been able to continue to operate with overlapping inquiries as we did in the first 12 months. I would not attempt to do it with limited resources because of the occupational health and safety risks of overstressing the staff, and hence, we have not. I will finish this long answer by saying that one of the problems was, as I understand it—and I stand to be corrected—there was never any funding modelling done for the three-commissioner model. If there was, I have not heard about it or seen it. That is why, as it were, a retrospective by KPMG was essential. Mr Searle, I do not know if that deals with the point of your question.

**The Hon. ADAM SEARLE:** That does deal with my question Chief Commissioner. I ask a follow up question relating to the funding model—and I apologise if you covered this in your opening. What are the skills and attributes of the person who would fulfil the office of assessor under your model?

**Mr HALL:** It would plainly be somebody who has performed at a high level in management, in particular, involving financial management issues. It may be the head of a national corporation. It could be somebody who is in a consultancy, such as the one I mentioned at KPMG or Deloitte or one of the other large firms. But the person would not only need the attributes of being able to understand the number crunching side of things but would also need to have an appreciation of management and corporate governance but, most importantly, a person who, in the community, is regarded as a person of unquestioned integrity. They are the sort of position description type concepts that I would envisage. I am sure others will be able to add to that.

**The Hon. ADAM SEARLE:** My final question relates to the report of the Inspector for the period ending 30 June 2019. On pages 19 and 20 three examples have been given of referrals from ICAC to the Inspector relating to allegations of misconduct by ICAC staff. Are you able to indicate what the nature of that misconduct was? And what was the resulting action in relation to those staff members and, I guess related to that, whether they remained employed at ICAC?

**Mr HALL:** I cannot recall the detail of the cases.

**The Hon. ADAM SEARLE:** I am happy for you to take it on notice.

**Mr HALL:** I was about to say that. I am happy to provide full information on that.

**The Hon. ADAM SEARLE:** For your assistance, on page 19 it is complaint C2-2019 and on page 20 it is C8-2019 and C11-2019. I guess there is also the related one of C10-2019. On notice, will you answer that?

**Ms McDONALD:** Mr Searle, could I just assist. In our report at page 50 we deal in a summary fashion with those three matters that the Inspector was notified about. Just put broadly, I think there were two complaints which raised bullying and the other complaint was a matter of a breach of Commission policy by giving a person engaged by the commissioners—an interpreter—access to our computer network. As I said, page 50 deals with them briefly but, as the Chief Commissioner has indicated, we will take that on notice and give you some more detail.

**The Hon. ADAM SEARLE:** Thank you. I would appreciate that.

**Mr HALL:** Certainly.

**Mr MARK COURE:** The guide of the ICAC that was given out today, and I understand members of the Committee received it earlier, "Managing corrupt conduct during the COVID-19 outbreak", states that some forms of corruption and serious misconduct are more prevalent during periods of significant disruption and economic downturn. You reference the media release of Deloitte of March 2020 which warns of a spike in bribery and corruption due to COVID-19. Chief Commissioner, you touched on this earlier today in your introductory remarks. Has ICAC found this to be the case during the COVID-19 outbreak already? What are some of the main measures that agencies should consider—and I know you talk about it in this document—to mitigate this risk?

**Mr HALL:** I cannot be sure as to the number of any complaints or notifications we have received in what I call the COVID-19 period for investigation. I think one matter is said to be possibly related to COVID-19 circumstances, if I can use that expression, but I need to check to be sure about that. The problem which this paper addresses is largely driven by a number of factors. One is that the normal controls and management of controls in ordinary times tends to fall away either because the staff numbers reduce, or for other circumstances, and that opportunities by the unscrupulous are there because the corruption controls are not being properly supervised and in place.

The other is, of course, that there may be people who are driven to do something that they would not otherwise do by reason of circumstances that have befallen them. As I have said, it appears from the literature that there is a definite link between periods of recession or depression. I do recall in the period that this paper was being prepared, being shown, our own statistics for the recession 10 years ago with the global financial crisis and there was a spike in the statistics of complaints alleging corrupt conduct, fraud-type activity. As to the current figures, I am not in a position to say whether we have received any notification or complaints. I am happy to have it examined if you would like that.

**Mr MARK COURE:** Yes, if we could. Are you aware of any agencies, that you have heard of or seen, that have implemented some of these ICAC recommendations in this guide?

**Mr HALL:** No, I cannot say we have heard of them. We will do a check and I am happy to take that on notice.

**Mr MARK COURE:** I appreciate it.

**Mrs WENDY TUCKERMAN:** My question is in relation to the percentage increase of complaints alleging improper use of records of information. The report from 2017-18 noted 19 per cent and it has gone up to 27 per cent in the 2018-19 annual report. Do you know why there has been an increase in those allegations? Do you think agencies might require more corruption prevention assistance and advice in this area?

**Mr HALL:** Perhaps I can say I am not in a position to say why that increase occurred. We would need to examine particular circumstances. The 2017-18 and 2018-19 cases involving alleged improper use of information, it is a question that I think is certainly one that, with respect, does deserve a detailed answer and I am happy to take that on notice and provide the Committee with any information we can glean from our records that might provide an explanation and address the important point you have raised, and that is to say, whether it displays some form of corruption and risk that needs to be examined by our corruption prevention team to address in a future report.

**Mrs WENDY TUCKERMAN:** Thank you. I have no further questions.

**The Hon. ADAM SEARLE:** Nor from me, Madam Chair.

**The Hon. ROD ROBERTS:** In my opinion the Commission is working extremely efficiently and effectively in what is a difficult sphere of operation. Notwithstanding, of course, a lack of resources from insufficient funding, I think you are doing an exceptional job. I refer to what the Hon. Adam Searle touched upon which were questions concerning page 50 of your report in relation to those internal issues of staffing. In my opinion from having read the allegations they appear to have been minor indiscretions that have been appropriately dealt with by the Commission.

I ask Chief Commissioner, who may want to deflect the question to Mr Waldon and perhaps Ms Dubois. At what stage is the Inspector of the Independent Commission Against Corruption informed of allegations raised about Commission staff? Albeit these are minor indiscretions, it has shown that the Commission's staff, like everybody, are fallible. What mechanisms and protocols do you have in place if a serious criminal allegation is raised against the Commission's staff? It should be borne in mind that the public can read this report and may say, for want of a better expression, "They are policing themselves." Who polices the police? If there is a very serious internal allegation, not like the ones that are mentioned on page 50, what is the protocol in place?

**Mr HALL:** Just dealing with the first part of your question, that is, when is the Inspector informed, we have endeavoured to always inform the Inspector as soon as we are aware of the fact that there is an allegation that we think needs to be investigated. The outcome we then convey to the Inspector. It is important that the Inspector is aware of these matters early and can follow what is happening and what our response to the problem has been. In relation to the second part of your question, fortunately there has not been such a case in my time. There are protocols we have in place dealing generally with misconduct issues that are followed through.

In the case such as you have mentioned, if there were an allegation suggesting criminal offences or activities engaged in by an officer of the Commission, there would be most certainly an immediate investigation undertaken. If it were serious enough that person obviously would be suspended until the investigation is completed. Both Mr Reed, our chief executive officer, and Mr Waldon are very familiar with our protocols and procedures in relation to such matters. I might just see if Mr Waldon wants to add to what I have said, if I might be permitted. Mr Waldon reminds me that in the case of that kind, as you have said, our immediate response would be twofold in terms of, firstly, notifying the NSW Police Force and, secondly, notifying the Inspector.

**Ms McDONALD:** Mr Roberts, also, depending on the nature of the allegation—a serious allegation particularly against maybe senior management—often we engage an outside investigator to come in and conduct the investigation and then provide a report with possible factual findings et cetera. If it is a more minor allegation then it may be an in-house investigation. But again we have protocols that look at that and determine the appropriate investigative stage and then, of course, it is referred to generally the commissioners or the Chief Commissioner for a determination of what are the findings, and then what action has to be taken, if any. But throughout the Inspector is notified. He is informed initially of the allegation and while we are going through the process of investigation the Inspector is being updated the whole time.

**The Hon. ROD ROBERTS:** I might just add some observations to those answers. Chief Commissioner Hall, you said it has not happened in your time and I am glad it has not. I trust that it does not happen, but we have not had COVID-19 in our time before and it shows what unpreparedness can lead to. I appreciate what Ms McDonald has said. I am having trouble with the bridge between if we uncover serious criminal conduct inside in our own organisation we would employ an outside—

**Ms McDONALD:** I am sorry, can I—

**The Hon. ROD ROBERTS:** Perhaps you did not use the word "employ"—we would engage an outside investigator to look into it on your behalf.

**Ms McDONALD:** Could I just intervene there?

**The Hon. ROD ROBERTS:** Certainly.

**Ms McDONALD:** I am sorry, on my part I think there was a miscommunication. As set out in your questions, allegations cover a spectrum of conduct and there can be allegations where the conduct, although it is conduct that we are concerned about is down to the less serious end of the spectrum. At this end of the spectrum would be criminal activity. I can only reiterate Mr Waldon's comments that if there were any allegation of serious criminal conduct against an employee my understanding is that the police would be involved immediately, or a requisite outside regulatory authority. My comments about how we would investigate, which was really leading on from how do we investigate our own, was really looking at that other end of the spectrum. Once you move into the area of an allegation of serious criminal conduct, as Mr Waldon mentioned and as the Chief Commissioner just mentioned, you are into bringing in the requisite authorities like police or whoever else is the appropriate body.

**The Hon. ROD ROBERTS:** Thank you. I have no further questions.

**Mr JUSTIN CLANCY:** Chair, if I could be excused. I thank Chief Commissioner Hall and the other witnesses.

**Mr HALL:** Thank you, Mr Clancy.

**The CHAIR:** Are there any further questions from our members online that they would like to ask the witnesses?

**Mr DUGALD SAUNDERS:** No, thank you.

**The CHAIR:** I will give Mr Parker the opportunity to ask his questions.

**Mr JAMIE PARKER:** I have just two questions. First, one about funding and one in regard to the inspector's audit. Does the ICAC have any comments about the inspector's audit into the ICAC's procedures for dealing with counsel assisting?

**Mr HALL:** I agree with and embrace what the inspector has said about the matter. The role of counsel assisting is a very specialised role that not all members of the bar or others fully understand. I think the research and paper into that area is important so that people can fully appreciate and give effect to the high standards expected of counsel assisting. To some extent, there is a parallel with conduct expected of Crown prosecutors. That is to say, "Do not go in there looking to get scalps, as it were." But you have a duty to both the tribunal as well as the witness and others to proceed in a fair, objective and independent fashion and not with any animus or preconceived notions that can lead to unfairness or, indeed, undermine the whole evidentiary process and the value of it. I think it is a paper that is important to have there for members of the legal profession and others to see because there has not been a great deal published on the subject. It was certainly time for somebody to do it. The inspector, having taken it on as a specific investigation by him, makes a great contribution both to the work of the Commission but what he said about counsel assisting will equally apply to an area such as royal Commissions and other commissions of inquiry.

**Mr JAMIE PARKER:** My second question is in relation to the second KPMG report, which indicated that with the new three-commissioner model, additional funding in the order of \$4.1 million would be required. You commented that that money was not forthcoming and that the Government refused it—not one dollar. In February 2018 I asked the Premier a question in Parliament about funding for the three-commissioner model and she replied:

Indeed, when the two new ICAC commissioners were appointed, I made it very clear to them that if ... they needed additional resources they should approach the Department of Premier and Cabinet and the Government would provide additional resources.

Have you been given any reason why this commitment by the Premier was not carried out in relation to the request by ICAC for additional resources?

**Mr HALL:** I should clarify that the funding that was sought—the \$4.1 million or whatever the figure was; about that amount—did not apply to grant funding. It was part of the—

**Mr JAMIE PARKER:** Base funding.

**Mr HALL:** —structural change of the Commission. It was a matter for Treasury and it was dealt with. The application was made to Treasury under—at the time it was called the PTA, which stands for parameter something or other. In effect, as I understand, Treasury adopted the view that it did not fit within those parameters for that application that we made. This application that we made was fully documented. It was fully analysed, as I said have before, by KPMG. We regard it as a central funding. But it was not an application to the Department of Premier and Cabinet or to the Premier. It would have to go through Treasury. One of our complaints, of course, has been that we would like to know the reasons sometimes as to why our applications are only partly successful or not successful at all.

That is why I have earlier referred to one of the three principles of transparency. It is important, I think, that if applications are made and fail—and we saw that as a very significant application at the time for the reasons that I have mentioned—at least we would be told why. We perhaps could examine then if there is some other route to follow with Treasury that we could work through. There is an opaqueness about the funding issues very often and that is one of them.

**The CHAIR:** In following up, Chief Commissioner, those last comments you made, you did indicate on page 5 of your annual report the number of occasions you came to DPC and the Premier seeking grant funding. You indicated in your introductory comments in your annual report that each time that grant funding was provided by the Government. However, the final time that you approached the Government for grant funding, you indicated in your introductory comments:

... the DPC has signalled that it expects the Commission to deliver its work within its appropriation budget, independently and without further supplementation from the DPC or other sources.

Having given members of the public and the Committee that understanding of your last request to the Government for grant funding, has that been the main stimulus that has seen the Commission go to a lot of effort to produce reports to the Premier and also to gain the additional commentary from Bret Walker, SC, to once again re-establish the need for additional ongoing appropriations budgets, more than what the forwards have indicated? Is that the link that you have made from continuing the grant funding process to these formal reports requesting a significant change in funding modelling?

**Mr HALL:** Yes. I have earlier indicated at different times that the applications for grant funding, I believe, have had the support of the Premier. We have received a number of grants through the DPC. One particular grant that I have referred to publicly was when time was running out and we had not heard from the DPC. I made contact with the Premier's office and it was through that intervention that the grant funding became available. The reference that you made in the report to the foreshadowing, as it were, that grant funding—supplementary funding as it was referred to and that they should consider ceasing that—was a comment in a letter written by the Secretary of the DPC in July last year to me. It was a letter that firstly announced that the application for additional grant funding was successful. It was a sizeable amount, I think from recollection—two-point-something million. But the author of that letter reluctantly advised the Commission that we would be given that extra grant funding but so far as the future was concerned, the matter you have raised—that is to say, the need for the Commission to work within its budget without supplementary funding—was something that needed to be considered or might happen.

That statement sounded the alert to me that if there was going to be such an across-the-board approach to remove grant funding—or, as the letter referred to it, supplementary funding—that would be an immense threat to the Commission. I have referred to the unfortunate circumstances that occurred in 2016. It was very much at the forefront of my mind that never again did I want to see that happen. Foreshadowing in that letter the possibility the grant funding or supplementary funding would no longer be available and that we would have to work within the appropriated amount was a matter of real concern. We have not been in a position to have any dialogue with DPC over it, as I have indicated. In response to that letter I wrote a letter to the secretary. At the end of the letter I suggested there be discussions, that he could come to the Commission and meet all our directors, understand how we all work and understand why it is not the same as a government agency that is required to work within its budget, simply because, firstly, we are not a government agency. The bureaucracy thinks in terms of the fact that if we are not, then we should be treated like one.

But if we were deprived of supplementary funding, then it would be a disastrous outcome. To sit there and do nothing to put a case against ceasing supplementary funding was unthinkable. Speaking for myself, I am sure my commissioners were always of the same mind. We were not going to sit and do nothing about that. We saw it as a threat. It had to be met and hence the need for an independent funding model became more and more evident as essential. But it did, in my mind, display a lack of appreciation as to why the Commission's operations are completely different from those of government agencies and the budgeting and financial resourcing of the Commission is driven by factors that do not apply or operate with government agencies.

That is the root of the problem. The Treasury have their modelling and their methods of doing things. They do, I have no doubt, a very fine job when it comes to government agencies, but we try to repeat: We are not a government agency. We are not in law. We do not look like a government agency; we do not act like a government agency. We act in the public interest under our statutory mandate. Hence, there needs to be a different approach to funding the Commission that is tailored for our operations. I am sorry that is a long answer. Yes, I suppose, in due course it did lead to my decision to seek legal advice on what the law says. That led to the decision to brief Bret Walker, SC.

**The CHAIR:** Thank you, Chief Commissioner.

**Mr RUSHTON:** Can I add to that briefly?

**The CHAIR:** Yes, Mr Rushton.

**Mr RUSHTON:** As I recollect it, DPC's resistance to providing further grant funding is also reflected in the submission it made to the Legislative Council's Public Accountability Committee and the evidence given by the departmental secretary. It was the same theme that we are part of a cluster and, therefore, we have to live within the cluster system. I am reasonably confident that is the case.

**Mr HALL:** If I could add one more comment in light of what Commissioner Rushton has said. I do not need to repeat it, but the members of the Committee who read Mr Walker's opinion will see his reference to the fact that we have been put into a government cluster. The inference is: We should never be there. We do not

belong to a government organisation of any kind, let alone a cluster. The point that I think Mr Walker made was that the objectives of a cluster and what it seeks to achieve in terms of financial resourcing is fine for the public sector but not fine for the Commission. We should not be in a government cluster.

**The CHAIR:** Thank you, Chief Commissioner and Commissioner Rushton. I do have a couple of more quick questions. The next one is more in relation to a suggestion potentially for future annual reports. I draw your attention to page 17 of your report, table three, entitled Key quantitative results for accountability activities. What is first listed there is a reference to how many meetings the ICAC has had with this very Committee in 2018-19. You indicate you had zero meetings; the previous year there were three meetings.

**Ms TANIA MIHAILUK:** We had an election.

**The CHAIR:** You took the words right out of my mouth, Ms Mihailuk. What I wanted to perhaps suggest—I know that in other tables you have had various asterisks next to reports or findings and you put explanatory information next your asterisk. I wonder that in future if a State election does fall within a reporting period, perhaps you make reference to that because certainly the Parliament did not sit for close to five months and then this Committee itself was not reconstituted until June 2019. That may give some understanding as to why there were no meetings.

**Mr HALL:** Yes. With respect, we should do that and we will do it in future.

**The CHAIR:** Thank you very much. I have two more questions. First, I have a belated statement for congratulations for your 30 years.

**Mr HALL:** Thank you.

**The CHAIR:** We probably should have started the meeting off with that rather than saying it at the end. Here's to another 30 years of excellent work. You mentioned a little bit in relation to the establishment of a national anti-corruption intelligence network, which I found really exciting to read. Could you perhaps elaborate to the Committee members how that is functioning? But, more particularly, have you uncovered any obstacles to that functioning in the best possible way, whether that is obstacles in terms of barriers between States and Territories in the legal framework, political barriers or jurisdictional issues that perhaps are preventing the best and highest functioning of that network across Australia?

**Mr HALL:** I can say that we have not encountered any jurisdictional or other boundaries, as you have referred to. There has not been any difficulty in the exercise of our functions by reason of such boundary issues. In relation to the overall operations of the body, I would prefer if I am permitted to take it on notice. The particular offices within our organisation who are more closely associated with that are in a position to provide more detail than I am able to. We are happy to provide it. It is an important area for the Committee to be kept informed about.

**The CHAIR:** That would be great. Thank you, Chief Commissioner.

**Ms McDONALD:** Could I just raise one matter? The chief is correct. So far there have been no jurisdictional issues, but there is kind of a possible issue hovering there in that sometimes we look at, or we could look at, a particular area within the New South Wales public sector, which also has a contribution to funding or some role, for example, of the Commonwealth. There is an issue about if we need Commonwealth documents, material or information, how do we go about that? If I can answer broadly, at the moment there is a lot of cooperation between ICAC and other agencies or other parts of the public sector, both federally and State, but in the back of my mind always is that increasingly in a federation, where it is not just a matter of State funding by self or State role, where there is Commonwealth input, the implications for the exercise of our jurisdiction. I think it is something that it is there, it is not an issue because we all cooperate, but there is the potential there.

**Mr HALL:** If I could do that, I referred to a matter that Strategic Intelligence and Research Unit has been investigating. It is a large area of investigation. It does involve contacting and liaising with both State and Commonwealth agencies—Federal agencies. In the past sometimes Federal agencies have been reluctant to provide information. I am pleased to be able to say that in relation to the particular investigation that SIRU has been conducting, there have been fruitful communications with both Federal and State agencies, who have provided information for us. There is a potential dividend, I suppose you would say, for both agencies if this investigation is successful. So, as to who is going to pay for the overall investigation, it will be a nice question as to whether the federal agencies will get more benefit than the State out of what we are doing. Perhaps I am diverting a little bit but I envisage that in the future with this investigation, as it develops, there may need to be some form of task force established with ourselves and other agencies represented to take it forward. Funding issues will probably come up at that stage.

**The CHAIR:** Thank you. We certainly look forward to more information on your intelligence network operations. I have two more questions. The first one is in relation to table 25 on page 94, where you presented a



summary of the various numbers of complaints from the various government sectors. Local government, from your data, presents close to 30 per cent of the volume of complaints that your organisation is managing. No doubt that is related somewhat to how many local governments are out there across New South Wales. Could you perhaps explain or explore a little bit further in terms of the corruption prevention work of your organisation and how you may go about assisting local government further to tackle what seem to be some problems?

**Mr HALL:** Yes, local government has always been an area where a large number of complaints are received by the Commission, as the Committee appreciates. Corruption Prevention do communicate with Local Government Association, for example, and also with local councils. It is mindful of the corruption risks that can arise at the local government level. Prevention is the area that should always be at the forefront. SIRU has created a database, which is showing the percentage of problems in different local government areas. That is, as I earlier indicated, important for us to be able to give our attention to some areas that seem to have a problem more than others. We do not necessarily need to go investigating in those areas, but it does enable Corruption Prevention to consider whether or not they should liaise with that particular agency to see whether their corruption prevention systems are as they should be and, if not, to assist in advising redesigning. There is a lot of work going on in that area.

We are mindful of the fact that because it has produced a lot of complaints over the years—not all of them, of course, having been substantiated—there is a real need for the Commission from a prevention point of view to remain in contact and to keep providing services that local government needs to have. A lot of the matters, of course, surround planning issues. There has been considerable work by the Commission in that area. Madam Chair, we are happy to provide any details that you might care to have as to precisely what we do in terms of advising local governments in relation to corruption risks and in terms of corruption controls. We do, of course, have occasion to refer matters that we receive back to local councils if we think it is appropriate to do that so that they can look into the problem and then report back to us as to what they found. The Commission itself has had some major investigations into local councils. As you imply, prevention is better than cure. It is better to try to ensure that there is ongoing education in this field.

**The CHAIR:** Thank you. I will send through some further questions on that.

**Mr HALL:** Sorry, Chair, I might speak quickly to Mr Rangott, who is in charge of prevention. I am reminded that the Commission—

**The CHAIR:** Mr Rangott could sit at this table if he wants to make a contribution.

**Mr HALL:** Perhaps, yes. I was about to speak for him; Mr Rangott speaks for himself.

**Mr RANGOTT:** Thank you, Chief. Madam Chair, we do have a specialist town planner on my staff. He is attached to all of our planning matters. I do not make a decision about those planning matters without his input as well as that of one of my other principals, who has a long history working in local government. So we have him on board. Commissioner McDonald, for instance, led our Operation Dasha report, which had a strong local government theme to it. We do have a specialist training workshop that we deliver that deals with planning issues. I always try to make myself available to anyone in the local government sector who wants to talk about corruption prevention issues as well.

**The CHAIR:** Thank you. There is one final question from me. In relation to mental health of people who you may be investigating or people who have received a summons to appear, what is it that your organisation is doing to support people in that situation who will be coming to the ICAC for various reasons? I am mindful that there have been instances not only in New South Wales but also elsewhere that people have taken their own life prior to coming to an ICAC hearing or a compulsory examination. Could you inform the Committee as to the steps you have taken and the policies and procedures that are in place to look after people's mental health?

**Mr HALL:** Yes, the Commission is very mindful of the fact that there could be stress and mental health issues encountered in the course of its work. In Operation Aero, as was made public in the course of that inquiry, tragically a person who had been summonsed to give evidence in a compulsory examination took his own life. It was, indeed, a great tragedy. The inspector investigated that matter and we provided information pursuant to his request about it. There was no suggestion that the conduct of any of the officers involved in any way contributed to that person's level of stress or anything that the Commission did should not have been done because we had full knowledge of some risk. There was no knowledge of any foreseeable risk or known risk.

I have mentioned earlier that one of our lengthy investigations is Operation Skyline, which I have been conducting for some time. The reason as to why it has drawn out as long as it has is that one of the main persons of interest in that investigation has brought to our attention that he was suffering from some form of mental illness, without going to the detail of it. I have adjourned that matter five times now by reason of the medical evidence that was presented. The medical evidence, though, we needed to be sure, was sufficient to warrant repeated

adjournments. We engaged a consultant psychiatrist to examine the person in question to understand what the competency of the person who wants to give evidence and what the capacity was for that person who is presently self-represented to cross-examine witnesses and to give evidence himself.

I determined, after we had evidence from the consultant psychiatrist that the Commission engaged, that although it is probably not strictly necessary, I would agree to taking his evidence in a private session of this public inquiry. The specialist endorsed that approach. I have also directed that he be given an opportunity to provide a narrative statement on everything he wants to say in his own defence and about the matters that are being dealt with. He has produced a very lengthy and detailed statement. These are just illustrations of the way in which the Commission has to be mindful of these problems of mental health and so on and try to adapt its procedures to ensure—and take advice to ensure—that the stresses of being summonsed to give evidence to the Commission are not excessive or inappropriate, having regard to medical advice. We do always endeavour to try to make assessments ongoing with the best advice we can get. We do not want anybody to suffer injury or harm through any investigations that we conduct. We do our best to try to do it on a case-by-case basis.

**The CHAIR:** You mentioned in those examples your individual approach. I wonder whether the Commission actually has set policies and procedures, separate to the good nature that you indeed are displaying towards your particular case, that bind various officers of the Commission to follow in these circumstances or is it really up to the individual investigator or Commissioner to determine?

**Mr HALL:** Chair, would you mind if I speak to Mr Waldon? I might ask Mr Waldon to speak, rather than try to perhaps inadequately summarise the position.

**Mr WALDON:** Thank you, Madam Chair. The Commission has a number of policies dealing with the exercise of our statutory powers, which are set out in what we call an operations manual. Various of those procedures deal with what we call a risk management approach in analysing what might be a risk, not only to our own officers but also to those people whom we deal with. Reviewing those recently, it became clear that we do not have an overarching policy. We need to go to the individual policies to see what the position is in relation to witness welfare. At the moment, we are in the process of developing a new draft policy, which will be an overarching policy to address the issues of witness welfare. As you probably might be aware, the inspector is also currently undertaking an audit into that area.

**The CHAIR:** Thank you for additional information. That concludes our question and answer time. Thank you very much for appearing before the Committee today. The Committee no doubt will send you some additional questions in writing. The replies to those questions will form part of your evidence and be made public. Would you be happy to provide a written reply within two weeks of receiving those questions or do you think some additional time would be necessary?

**Mr HALL:** Yes, we can do that.

**The CHAIR:** Thank you for your attendance. It was great to see you again.

**(The witnesses withdrew.)**

**BRUCE ROWLAND McCLINTOCK, SC**, Inspector of the Independent Commission Against Corruption, Office of the Inspector of the Independent Commission Against Corruption, affirmed and examined

**THE CHAIR:** I welcome Mr Bruce McClintock, SC, the Inspector of the Independent Commission Against Corruption. Thank for appearing before the Committee today. I tender my apologies; I have forgotten the name of your unbelievably wonderful and talented assistant.

**Mr McCLINTOCK:** Angela Zekanovic.

**THE CHAIR:** Thank you, Ms Zekanovic, for your attendance as well. Do you have any questions at all in relation to the proceedings for the next hour?

**Mr McCLINTOCK:** None at all, Mrs Davies.

**THE CHAIR:** Thank you. Would you like to make a brief opening statement before we begin with questions?

**Mr McCLINTOCK:** I would like to make a brief opening statement, Mrs Davies. I will keep it as short as I can, because I realise that there is only an hour and I know that some Committee members have specific issues they wish to raise. Thank you for the opportunity to appear. It is always a privilege to deal with my masters; in a sense I am the master of the ICAC, but you are my masters and it is you who supervise—well, you are my inspector, if I can put it like that. My Office, like everyone else in this State and most of the world, has been impacted by the current pandemic. I share the office with the Inspector of the Law Enforcement Conduct Commission. We closed our office some time ago and we have been working remotely since then. I know that is not to do with my 2019 year report but I suspect many of you will be more interested in some of the subsequent things that have occurred. We have been working effectively remotely and I do not believe there has been any material decline in the amount of work that we have been able to get through.

I should also mention one other thing that has had an impact on my work since 30 June last year. I was appointed as Assistant Inspector of the Law Enforcement Conduct Commission last year to deal with a particular complaint. It was by one of the Commissioners of that Commission against the Chief Commissioner and the other Commissioner. The Inspector of the Law Enforcement Conduct Commission, Mr Buddin, had a conflict and could not do it himself, so I in effect was chosen by the Premier to carry out that report. It was lengthy and time-consuming and it took, I imagine, probably something like 20 days of full-time work to actually get it done, which, of course, because my Office is part-time, was spread out over some months. Because it was so substantial it has slowed me down to some extent with some of the things I have got to do for this Committee, but it was a matter that had to be given priority because of the nature of the complaint; it was very significant.

As you may or may not know—this is really a matter for the Law Enforcement Conduct Commission [LECC] committee—but the particular Commissioner was dismissed by the Premier as a result and the appointment of the Chief Commissioner, which had been for three years, was not renewed when it came up in February or March this year. There is now an Acting Chief Commissioner, Mr Blanch. He used to be the Chief Judge of the District Court. As for significant developments since 30 June and since my annual report, you will be aware—because it was mentioned, I know, when Mr Hall was giving evidence—that I submitted the counsel assisting report. I am happy to answer any questions you wish to ask me about that, but I will say in general that while the conduct in question was historical—it went back to 2014 and Operation Spicer and was under a completely different regime of the Commission and completely different Commissioners and, to my observation, things have changed since 2017 when the current regime and current Commissioners came in—I thought it very important to mark the disapproval that I felt for what had happened in that Operation Spicer inquiry.

I did not do so because of any vindictiveness or a need to “get” anyone; it was simply because I felt it necessary that counsel assisting in future be able to be shown a document that showed how things should not be done. But as I said in the report, I am confident things have changed. Ms Zekanovic and I have attended hearings and sat there and listened and I interviewed people who have been counsel assisting under the current regime, and their attitude—and I am confident that I can say that that conduct will not recur in the regime that applies now. I propose to continue monitoring how the Commission conducts inquiries with a view to making sure that those things are dealt with appropriately. As I said in the annual report, I have now concluded all the legacy complaints that were existing when I became Inspector. I am trying to refocus on the audit function, which I regard as at least as important, perhaps more so.

I have two outstanding audits, both of which you are aware of. The first is the welfare of witnesses audit, which you mentioned, Mrs Davies, to Mr Hall. I was slightly surprised to hear Mr Waldon say that they were preparing another protocol, because I was not aware of that, but I had a conversation with Mr Waldon after the

proceedings were adjourned and he is going to send me that. I will take account of that in my final report, which I anticipate will be given within the next month or so. I also have another audit inquiry into how the Commission deals with search warrants. It is to ensure that the Commission complies with the law as to search warrants. That is how the Commission obtains information—by executing search warrants. It is naturally an invasion of people's liberties, obviously, and it is important they comply with the law. I can say that my preliminary view is that things are okay, but that is a preliminary view. When I have reviewed the material I find that my thought process always improves when I come to actually write the report, which I am going to start doing probably next week.

I should mention also that we have dealt with the complaints handling procedure that Mr Parker raised on the last occasion. There is now a complaints handling procedure for the Inspector's office up on the website, of which I supplied a copy to Mrs Davies a couple of weeks ago as well. I suppose the other significant issue is the Commission's funding. I said what I said in my annual report last year and I see no reason to change what I have said. I should mention to the Committee, though, that Ms Zekanovic and I had a meeting with the officers of the Auditor-General's staff, who are carrying out the audit into the Commission, which, of course, is not just the Commission. It is LECC and the Ombudsman and the NSW Electoral Commission as well and, of course, across the work of the upper House committee that reported on the funding of those agencies. The only thing I will say is that obviously a model should take account of the independence of the Commission and the other agencies, too, but ultimately Parliament has to be involved. Whether it is, as the upper House committee recommended, this Committee that decides the funding and how it does it is a different matter.

It could be done like the appointment of the Commissioners and the Inspector is dealt with, where the Committee is given a power of veto over a recommendation, but there are various ways of doing it. As I said in the report, I am concerned about the sustainability of the present model and the impact on the independence of the Commission. It really should not have been allowed to develop in the way it has developed. It is unfortunate. It is easy to understand why, and I am not for a moment suggesting that the Government is not entitled to require fiscal responsibility for an agency like ICAC, but there does seem to be something wrong with the model as it is, where the Commission has to go cap in hand to the Executive to seek funding. I am quite sure there can be other mechanisms dealt with. I have some doubts about the Victorian model, which is pretty bureaucratic. But that is what I wanted to say by way of introduction. I am open to assist the Committee in any way that the Committee thinks appropriate.

**THE CHAIR:** Thank you, Inspector. Just for your information, I advise you that we have three members of the Committee connected to these proceedings via the telephone. I understand we have got Mr Adam Searle; is that correct?

**The Hon. ADAM SEARLE:** That is correct, Madam Chair.

**THE CHAIR:** The Hon. Adam Searle, MLC. We have Wendy Tuckerman, the member for Goulburn; and Dugald Saunders, the member for Dubbo online. I believe you know the other members; I do not want to take up any time with introductions. Let us turn straightaway to questions and answers. I will do as I did in the last Committee proceedings and take it in turns with the members who are currently in the room versus those who are online. Let me begin with members who are in the room. Does anyone have any questions of the Inspector?

**The Hon. ROD ROBERTS:** I do, Madam Chair. Inspector, thank you for attending today. I have two questions and they are completely unrelated, so I might start with the first one. In your actual report on page 22 is a complaint in relation to ICAC.

**Mr McCLINTOCK:** Page 22, Mr Roberts?

**The Hon. ROD ROBERTS:** Yes, page 22 of your report.

**Mr McCLINTOCK:** Yes, I have it.

**The Hon. ROD ROBERTS:** It is identified as C20-2019.

**Mr McCLINTOCK:** Yes.

**The Hon. ROD ROBERTS:** I bear in mind privacy issues and operational issues, but could you expand on that and tell us—I have great concern when somebody's private details have been inadvertently posted, and they say "inadvertently" here somewhere, I think. What were the details of that person and what circumstances surround that? Were you satisfied? I note that you said that you were—

**Mr McCLINTOCK:** Not unsatisfied.

**THE CHAIR:** Not unsatisfied?

**The Hon. ROD ROBERTS:** Not unsatisfied. So you have obviously drawn a conclusion, but what happened?

**Mr McCLINTOCK:** I am just actually trying to think. I will just check with—

**The Hon. ROD ROBERTS:** Please take it on notice, if you wish, and report back later.

**Mr McCLINTOCK:** I would rather answer it if I can, because it is one of those things that will always happen with the best will in the world. It was inadvertent, but it should not have happened. I have to say that I made a very similar mistake when I submitted the Law Enforcement Conduct Commission report to Parliament and accidentally disclosed the identity of someone who had made a protected disclosure. I might say that one reason I did so was I had given LECC three weeks to comment on the report and they did not tell me, but it is still regrettable. I found that acutely— "embarrassing" is not the word. It should not have happened. I will just check with Ms Zekanovic.

**The Hon. ROD ROBERTS:** Certainly.

**Mr McCLINTOCK:** I think I may have to come back to you with the precise details.

**The Hon. ROD ROBERTS:** That is fine.

**Mr McCLINTOCK:** It had to do with the upgrade of the website and there was just a slip made. Again, it is one of those things that ICAC reports to me. As I said, I will give the Committee the precise details of the issue.

**The Hon. ROD ROBERTS:** My second question arises out of your verbal statement at the beginning that you are going to undertake an audit of the search warrant process at ICAC.

**Mr McCLINTOCK:** Yes.

**The Hon. ROD ROBERTS:** What has led you to that? Why pick search warrants as distinct from, say, telephone intercepts or whatever? What has driven you to look at that?

**Mr McCLINTOCK:** One reason in relation to telephone intercepts is that my powers are very doubtful because it is a Commonwealth issue. There have been ongoing problems with getting the Commission and me access to telephone intercept material and I probably do not have power to actually audit it. If I did have power, I would. Search warrants I chose because there were—not by my immediate predecessors but by the second Inspector, retired Judge Harvey Cooper—a series of audits in relation to search warrants. I chose it because it had been done before, because it is a significant area, because it does involve infringement of the rights people would otherwise have and it is important to make sure that it is done right. I suppose I was perhaps influenced to some extent by—I appeared as one of the witnesses in the parliamentary inquiry into the search warrants back in the late nineties, early 2000s in relation to the police.

I have forgotten the name of the inquiry. I remember Mr Searle was a member of the committee in question. That was an intercept warrant issued, but I was still concerned about the basis upon which the application is made for warrants and so on. As a matter of interest, the Commission under the legislation itself has power to issue a search warrant. The Commissioners can issue a warrant. Fortunately, in the 30-year history of the Commission, of ICAC, they have never issued such a warrant. They always go to the appropriate judicial officer to have the warrant issued. That is something I will mention in the report. But those are the reasons why I chose warrants. It is important.

**The Hon. ROD ROBERTS:** So there was no actual incident or event that was the catalyst for you to look at it?

**Mr McCLINTOCK:** No.

**The Hon. ROD ROBERTS:** It is just a general overall audit?

**Mr McCLINTOCK:** Exactly. That is what I should be doing with the audit issues. I should not wait for a specific incident, because the aim of auditing is to prevent the incidents happening. If the Committee had any suggestions for things that it thinks I should audit I would be happy to take those on board. If any member simply wrote a letter to me, I am happy to consider anything that should be audited. There is a distinction between that and the other outstanding audit, the witness welfare one, which was prompted, as I said on the last occasion, by the death of the person in question and, as I said, also by my own experience in the early 2000s in the Randwick inquiry and the suicide of a witness who was not in any sense a person of interest but mistakenly came to believe he was.

**Mr RON HOENIG:** It was a young solicitor, was it not? A young Greek solicitor?

**Mr McCLINTOCK:** It was a young Greek solicitor, Mr Hoenig, yes, it was, with a young family. I remember it vividly. I had to listen to the suicide note, which he taped.

**The Hon. ROD ROBERTS:** Thank you, Madam Chair. I am finished.

**THE CHAIR:** I will turn now to my colleagues who are online. Does anyone have questions of the Inspector?

**The Hon. ADAM SEARLE:** No questions from me, Madam Chair.

**Mr DUGALD SAUNDERS:** Thank you Inspector and Ms Zekanovic for coming along today. I posed a question to the Commissioners as well around counsel assisting. Based on the fact that you obviously did an audit into this, I am just wondering what your thoughts are for the Committee on how you think counsel assisting has worked and can work possibly better in the future?

**Mr McCLINTOCK:** I think it is working well now. Like so many things in this area, it does not matter what formal procedures you set up; what matters is the people you choose. That applies as much to the choice of the Chief Commissioner and the Commissioners. The counsel that they have chosen to assist in the inquiries have a degree of moderation and an understanding of the appropriate role of counsel assisting, which is analogous in my view—and the Chief Commissioner said this in the book that he wrote about royal commissions—to the duties that a Crown prosecutor has of fairness and of not putting material that they do not have a basis to put, to put all sides of the evidence before the tribunal and so on. To my observation that is what is being done, but it really comes down to the selection of counsel. I think they can be trusted, from what I have seen as to how they do it. I do not think any more formal procedures are necessary.

What happened in the incidents that I dealt with in Spicer in that counsel assisting report were—I was going to say "regrettable". They were beyond regrettable. But I do not believe they will happen again. The calibre of the people now doing the work is first rate, both in terms of attention to detail and also in terms of fairness. There is one example I mention in the report where the Commission and counsel assisting were concerned that counsel for one of the parties had missed a significant piece of evidence that would have tended in her client's favour and specifically drew it to her attention so it could be followed up by her. That is the sort of conduct I would expect and which should happen. To my observation, as I said, it is happening and that is an example of it. I hope that answers your question, Mr Saunders.

**Mr DUGALD SAUNDERS:** Thank you, that is great. Your role is obviously a fairly important one in so many ways. Are you happy with the resourcing that you have to do that role? Have you got enough people to help you?

**Mr McCLINTOCK:** Yes, I do. I have mentioned this before: it is a part-time role, as I said. I do not believe I need any more resources other than—the way it works is I share Ms Zekanovic with the LECC Inspector, Mr Buddin, and I share an administrative assistant. That is what I need. I believe I have the resources to do the job. Ultimately it comes down to, again, the people. It is me, assisted by Ms Zekanovic, as to who actually does the work and I do not believe that more staff would be necessary. My salary is adequate. It was fixed as at 1 July 2017 and cannot be increased under the legislation in my term. It was fixed as the rate at which the Attorney General fixes for Senior Counsel for State Government work and that is how I am paid. I have got no complaints about that. It is a very fair way of remunerating me and, as I said, the resources are there.

If it were necessary, I could always ask the Department of Premier and Cabinet for additional funding for any specific purpose if I needed it. An example that I touched upon in relation to the witness welfare report on the last occasion was whether I might need some outside advice from, say, a psychiatrist. I have not come to a final view about that although, tentatively, I do not think I will. If I did need that, I would seek assistance from DPC and I believe that if I made a good case—and I think there would be a good case for that—I would get it. But we are not talking millions of dollars, obviously.

**Mr RON HOENIG:** Inspector, you were sent a copy of my brief remarks I made to the House in response to your audit of Operation Spicer?

**Mr McCLINTOCK:** Yes.

**Mr RON HOENIG:** I should just add, in fairness, that when issues like impropriety of counsel become an issue for the courts, normally those issues are distilled for the courts by Senior Counsel or by counsel and they are specifically argued, because a review does not involve the complete examination of an entire proceeding—no-one has those resources. I went to look at some transcripts of Operation Spicer and they are no longer on the website. I could not find them so I took the opportunity of speaking to Senior Counsel who was appearing for one of the parties—not Mr Gallacher. It was one that everybody probably in this room knows and one that I have got the highest regard for.

He told me certain things. You identified a number of failings in the audit, but he told me things. The opening by counsel assisting contained material that was never subject to evidence and was never put to witnesses, including his client, in complete breach of client and the NSW Bar Association. The examples given by the Inspector are only a few examples that happened all the way through the proceedings. Answers were given by witnesses that were regularly subject to comment, not just the ones the Inspector referred to—"I'll give you money to go and get a taxi", as an example.

**Mr McCLINTOCK:** That was one I did refer to.

**Mr RON HOENIG:** Yes, that is what he said. He said that it was legally sloppy. A witness would have put to him, "You are a developer", where there is a statutory definition of what a developer is. When the witness would say he is not a developer, counsel would then produce a document from a website where the witness says, "You are a developer." The witness would be badgered into conceding he is a developer, rather than the facts that would constitute being a developer and these things occurred over objection. He said when his client was giving evidence and the comments continued as they were through the proceedings he just took it upon himself to object to every comment. He said ultimately at that point the Commissioner started to appreciate that she had some responsibility for counsel.

I asked him about the fairness of the inquiry. He said, "I have never experienced anything like it. Not only was it not fair, it was like a Soviet show trial." He said, "If counsel conducted themselves in public scrutiny like that, how could anyone know what occurred in exchanges between the Commissioner and counsel behind closed doors?" Just on that developer issue referenced on page 15 of your report, a Crown solicitor subsequently gave advice to say that there was no evidence that particular person was a developer subsequently. There is a reason I am asking you that; you know that from comments that I made. Clearly, if that is an accurate assessment of Senior Counsel of the way in which Operation Spicer was conducted, then you are really into that Whitehorn category, are you not?

**Mr McCLINTOCK:** In what category, Mr Hoenig?

**Mr RON HOENIG:** How the fairness of a prosecutor—that classic Whitehorn test—

**Mr McCLINTOCK:** Yes. Sorry, I just did not hear you.

**Mr RON HOENIG:** —that was referred to by McClellan in *Wood v R*. You are really into that category, are you not?

**Mr McCLINTOCK:** Yes.

**Mr RON HOENIG:** It is just not a failure of process. What flows from that is, of course, you observe that—I mean, people like Mr Gallacher have no remedy, none, because there was no finding against him.

**Mr JAMIE PARKER:** There were findings against him.

**Mr McCLINTOCK:** There were findings against him.

**Mr JAMIE PARKER:** There were four findings against him, Mr Hoenig.

**Mr RON HOENIG:** Well, they were findings of fact. There were no—

**THE CHAIR:** Is there a question?

**Mr McCLINTOCK:** Well, yes, but there is an important principle in there. There were no findings of corrupt conduct against him, that is quite true. The reason why was, of course, the Cunneen decision had intervened and the High Court had found that the Commission's power did not extend to making findings of corrupt conduct in those circumstances. However, the Commission made clear findings that Mr Gallacher had breached the electoral laws in various ways by soliciting donations from property developers, people who are unquestionably property developers. There were findings. Now, he could have challenged those findings on the administrative law grounds if he thought it appropriate to do so. I might say he did not complain to me about the findings that had been ultimately made against him. He complained to me about what Mr Watson had done in relation to that specific matter that I dealt with, those two questions, one of which did contain a comment of the kind that you mentioned—"You are going to regret giving that answer before this inquiry is over." But there were adverse findings made against Mr Gallacher.

There was no challenge to them; there could have been a challenge to them. That said, though, the point that you make about the overall unfairness of the inquiry I will deal with. First, I do not know which Senior Counsel you were talking to, but if he is anything like me he feels the sting of losing and can have very strong views about what happened in a particular case. But there is no doubt that I thought that the conduct was inappropriate and unfair, and that should not happen. There was other material and I said so in the report. There

was other material I could have put in but I would have been saying the same thing in relation to the same conduct over and over again. I thought I had done sufficient, I said to Mark, my disapproval of what had actually occurred in Operation Spicer and, as I said, I thought it was wrong but also bear in mind that it was six years ago. There has not been a repetition of it. If there is a repetition of that, I will step in and then I would do—as you know, counsel assisting is not an officer of the Commission, that if there is an improper failure to control counsel assisting by a Commissioner, who is an officer of the Commission, I can take steps and I would.

**Mr RON HOENIG:** Why does impropriety of counsel not infect, ultimately, findings of fact by the Commission?

**Mr McCLINTOCK:** Because there was an independent evidentiary basis for all of them. As I said, there are cases where counsel misbehaves but it does not warrant a quashing of a conviction or a new trial in the criminal area simply because it has no necessary effect on the actual outcome. The Wood case that you mentioned, and that I know vividly because I did the civil trial for Mr Wood, the malicious prosecution case, I know that judgement intimately, was an example where there was clearly an impact on the outcome because it involved what had happened and what the prosecutor said to the jury in the closing address and the infamous 50 questions which reversed the onus of proof and put it on the defendant. But there was nothing like that in here. Each of those four findings was independently justifiable regardless of anything that Mr Watson had done during the course of that inquiry.

But my own view about this is that that inquiry did immense damage to the public standing of the Commission. That is the reason why I am so determined, and that is the reason that I produced the report and said what I said. It is the reason why I undertook that audit of counsel assisting. As I say, I am determined that will not happen again, at least while I am the Inspector of the Commission. It was serious and it was wrong.

**Mr RON HOENIG:** I want to ask you about two other matters. One is your audit in respect of search warrants. Members of this Committee, or certainly former members of this Committee, have some unresolved concerns about matters relating to search warrants. Can I send those to you independently for you to look at?

**Mr McCLINTOCK:** Of course.

**Mr RON HOENIG:** They are unresolved and they are troubling to us so it affects that.

**Mr McCLINTOCK:** I am happy to receive anything from—I mean, my Office is closed but there is an electronic open door at all times. I have never come across a situation where additional information and additional points of view do not improve the actual process and the outcome so I am happy to receive anything from you or the other former members of the Committee whom you have mentioned. You will bear in mind that if it involves anything to do with the execution of the search warrants on Labor Party headquarters and the issues that are currently being considered by the Commission—

**Mr RON HOENIG:** Yes, but I do not propose to ask you to. Until the Commission reports about that matter I do not propose to involve myself in it.

**Mr McCLINTOCK:** No. I did do a report where I rejected a complaint from the Labor Party about that raid. I should not call it a raid, I am sorry—about the execution of that warrant.

**Mr RON HOENIG:** I want to ask you about another issue. I have been told this several times but again recently. I initially sort of dismissed it. People who have been through that investigative process and who have not been charged or convicted have found themselves with their bank accounts closed and an inability to open up other bank accounts. Do you have any perception how that may well have happened?

**Mr McCLINTOCK:** Other than that the banks are frightfully skittish at the moment.

**Mr RON HOENIG:** This is not just recently. This is historically.

**Mr McCLINTOCK:** There is something in my memory that you have struck a chord with but I cannot remember what it is now or who it was, but I have heard that before.

**Mr RON HOENIG:** Certainly any commercial arrangement that someone has with their own bank must be separate and different from anybody from the Commission or their officials or investigators. They should not be involved in that sort of thing, should they?

**Mr McCLINTOCK:** I am sure the Commission would not try and stop someone or interfere with someone's normal banking arrangements. Again, if they did and it came to my attention, I would have something to say about it. I would have thought that in circumstances like that that is a reaction—perhaps, an overreaction on the part of the bank. Inevitably—and this applies to witness welfare as well—an investigative agency like ICAC will have an adverse impact upon people's reputations and upon their mental health. It cannot be avoided.



If someone has actually engaged in corrupt conduct and they are hauled in to a private examination, it is undoubtedly a cause of very, very great stress. That cannot be avoided because if someone is caught they will of course feel the usual feelings of guilt and regret and the fact is that they are going to be publicly exposed for doing what they do. It cannot be avoided. The issue, though, is how you can best control it so vulnerable people are recognised and steps are taken to protect them.

It is the same in relation to reputation. Inevitably, people's reputations are going to be harmed. A finding of corrupt conduct, justifiably, will ruin someone's reputation—a justifiable finding of it—and it will probably mean that they have to be dismissed from whichever public office they have. But that is what happens. The Commission takes all the steps that a court would take to ensure that its actual outcomes are correct and that people are accorded procedural fairness. There is now a statutory regime because of the 2015-16 amendments about giving exonerating evidence to witnesses. I have forgotten the exact phrase in the legislation.

**The CHAIR:** Exculpatory evidence.

**Mr McClINTOCK:** Yes, and they do that. If Parliament decides to have a body like ICAC—and it did in 1989 for reasons that were perceived to be good and I have always been a supporter of it; I am a supporter of the introduction of an ICAC at the Federal level—those things will inevitably happen. It cannot be avoided. I believe that with the latest round of amendments—the ones that came out of the report that Mr Gleeson and I did in 2015 and the ones that we independently added at the same time—the organisation does operate in a way that draws the balance on the one hand between being fair to people and on the other hand exposing corruption. It is a serious job and it is always a balancing exercise. I do not want to use a cliché, but you cannot make omelettes without breaking eggs. I withdraw that: It is a ridiculous cliché.

**The CHAIR:** It is accurate, that is for sure.

**Mr RON HOENIG:** Those are anecdotal quotes we used to get from the bar from people whom we know and respect. You do not get those anymore, do you?

**Mr McClINTOCK:** No, you do not. I mentioned the report, going down there myself, to represent a woman barrister who had been hauled in in one inquiry where Mr Watson said to her, "I didn't get you down here, Ms X, because you beat me in that case last week." That might have been perceived as a joke, but it is not a joke and these proceedings are not funny. I would be the last person to criticise good humour but that kind of levity and frivolity is simply inappropriate in dealing with situations like that. But what you say about the complete absence of that kind of criticism—look, I can remember talking to people involved in Operation Spicer at the time. I can remember going with them. In fairness to Mr Watson, it was not all one way. You saw what I said in the report about some of the things that were said to him.

**Mr RON HOENIG:** Yes.

**Mr McClINTOCK:** I do not regard any of that as being of great credit to the Sydney bar but, as I said, the really important thing is that I do not believe it will happen again. As I said to you three times now, if it does, I will take steps.

**The CHAIR:** Colleagues online, do you have any questions to ask?

**The Hon. ADAM SEARLE:** Not from me.

**Ms TANIA MIHAILUK:** My question is right on that topic. Mr McClintock, you mentioned again about counsel assisting and your confidence that that would not happen again. I want to clarify this. When we were referring to your ability to monitor public inquiries, for example, how are you suggesting that you are going to be monitoring public inquiries? Are we referring to looking at transcripts post the inquiry?

**Mr McClINTOCK:** No. I go down and see. Ms Zekanovic and I go down there and sit in the room.

**Ms TANIA MIHAILUK:** Is that quite regular, or is that just—

**Mr McClINTOCK:** It was done on a number of occasions in relation to when I was undertaking the counsel assisting—audit. Obviously, given the lockdown it has not happened. It has not happened since. But many of the inquiries are available online. You will also remember that under the legislation I have power to require production to me of any document or any material in the possession of the Commission.

**Ms TANIA MIHAILUK:** That is right.

**Mr McClINTOCK:** Obviously I cannot be monitoring everything and I would be hoping that people—

**Ms TANIA MIHAILUK:** You do not give any warning that you are going down there, do you?

**Mr McClINTOCK:** No, I do not. In fact, I have seen expressions of surprise on the face of the Commissioner when they realise that I am sitting at the back of the court. But, no, I definitely do not give notice. But I cannot watch everything, obviously.

**Ms TANIA MIHAILUK:** No.

**Mr McClINTOCK:** I would hope that anyone who feels that something untoward has happened would make a complaint to me or even just informally notify me so I can at least check it out by looking at the transcript. They are actually sound recorded and being sound recorded I can always, if necessary, actually get the incident in question.

**Ms TANIA MIHAILUK:** When Operation Spicer was being conducted are you aware whether the then Inspector also sat through some of those inquiries?

**Mr McClINTOCK:** No, he did not.

**Ms TANIA MIHAILUK:** He did not?

**Mr McClINTOCK:** He did not. The then Inspector, who I might say passed away last weekend—

**Ms TANIA MIHAILUK:** I did not know.

**Mr RON HOENIG:** David Levine?

**Mr McClINTOCK:** David Levine, yes.

**Ms TANIA MIHAILUK:** We did not know.

**Mr McClINTOCK:** He had been ill for some time. He actually resigned his office as Inspector because of ill health. He was only 75. He had got his three score years and 10 but I regard 75 as young these days.

**Ms TANIA MIHAILUK:** Yes.

**Mr McClINTOCK:** He died last weekend. He had been very ill for some time. But he was in a difficult position because he was also the Inspector of the Police Integrity Commission, as it was then. Really, it would be impossible for one person to do those two jobs now with the LECC. As a result of ill health and because he had to do the inquiry that Premier Baird asked him to do as a result of Cunneen there was a whole series of complaints. As I mentioned before, there were 23 complaints outstanding when I took over. Mr Gallacher's complaint in relation to Spicer was one of them. What I am trying to do is avoid any criticism of Mr Levine or rebut any criticism of Mr Levine not going down there. He had an extraordinarily heavy workload. Ms Zekanovic will correct me but I suspect the workload of the LECC Inspector is about double that of the ICAC Inspector; she agrees. But, no, he did not go down there, so I understand.

**Mr JAMIE PARKER:** Thank you very much for coming along and I appreciate the report. I should say I really strongly support the recommendations, in particular the fact that you chose to take this in a more informal way rather than saying that this complaint met the test and Act for misconduct or inappropriate or abuse of power or maladministration. That test not being met I think was absolutely the right call and I do respect the findings that you have made while you have unresolved concerns, I think your term was, about that conduct but it did not affect the outcome that was ultimately arrived at by ICAC.

**Mr McClINTOCK:** That is what I believe, Mr Parker. I take on board what Mr Hoenig said about a failure of process can be very serious and can affect the outcome, but my belief in this case is that it did not.

**Ms TANIA MIHAILUK:** That clarification is very important.

**Mr JAMIE PARKER:** We just talked about workload. Something in the information provided by Mr Watson I found quite concerning. Obviously he agreed, to use his terms, that he should have and could have worded the matter differently and better. I accept that.

**Mr McClINTOCK:** Yes.

**Mr JAMIE PARKER:** But one of the ways that I guess by way of mitigation he talks about is the fact that they are working seven days a week for several weeks and his wife had been intimidated.

**Mr McClINTOCK:** Yes.

**Mr JAMIE PARKER:** Obviously that is a broader issue for counsel assisting—what kind of workload that they are placed under and the resources that they have to do their job effectively. Obviously this was a very serious matter where he at least felt that his wife was being threatened. Have you turned your mind to looking at that as a general issue about workload for counsel assisting, security, and those types of issues? Have you thought about that?

**Mr McCLINTOCK:** Mr Parker, the problem that the barristers have—I think all barristers will realise this—is that we work incredibly hard. In my first 10 years at the bar I do not think I had a weekend when I was not in Chambers, except over the vacation. We are used to that. You have to just because the amount of material that you are given in a case can be overwhelming. As you get on you get better assistance from capable juniors and so on. As you get more senior you get better solicitors as well but I agree I did find that disturbing although in a funny kind of way I do not think Mr Watson was quite saying that was the reason. He was trying to give background.

**Mr JAMIE PARKER:** He was cranky, he said. He was frustrated and cranky.

**Mr McCLINTOCK:** He was, yes. But we all get frustrated and cranky. Sure, look, there would not be a barrister of any experience who has not lost his temper in court sometimes and I am not exempt from that, but you have got to keep yourself under control and comply with the proprieties. You have to. You see, whether you appear in a courtroom or in a tribunal like that you are in a uniquely powerful position. You have enormous privileges—for example, you cannot be sued for negligence in what you do in court. You cannot be sued for defamation when you accuse someone of being a liar in court—all of those things. You have a huge number of privileges and also just the privilege of running a case is an enormous one, just the fact that you are allowed to do it.

With those privileges come enormous responsibilities and one of the responsibilities is, no matter how angry or how upset you are, no matter how under stress, no matter how unprepared you feel you may be—justifiably unprepared sometimes because you simply have not been given the time to get ready; I have accepted a brief at 10.30 and been in court on that matter at 10.45; sometimes you have to—you have to keep yourself under control and observe the rules. The rules are fundamental. They are the same rules and the reasons behind them are the same reasons why Parliament is so—or why the Speaker or the President require basic norms of politeness and propriety where you cannot engage in name-calling. If you do allow that to happen it debases the whole process and it actually probably will lead to physical fights. You know the reason for the distance from the Government benches and the Opposition benches in the House of Commons—two sword lengths. I am sorry for that little speech, but those things are fundamentally important. While barristers joke and talk about what they do, all of us underneath it know how serious the job actually is. As I said, you can destroy people. You have to sometimes or we have to try to, but no-one should think that that is pleasant. You are doing a job.

**Mr JAMIE PARKER:** Thank you.

**Mrs WENDY TUCKERMAN:** Inspector, thank you for your attendance today. I was just wondering, in this COVID-19 environment, and ICAC working remotely, has that impacted your ability to undertake your functions in relation to ICAC?

**Mr McCLINTOCK:** No, it has not. We are working remotely, Mrs Tuckerman, but I actually have been going into my office because it is easier for me to access—the computer there is easier for me to operate than otherwise. But my staff have been working remotely. No, it has not affected my ability to do it and in some ways, because I am part-time—I am still practising as a barrister—because I have lost basically three months of trials I found myself in some ways freer to turn to the Inspector material. I do not know if you saw the papers this morning but I was mentioned in relation to the Roberts-Smith defamation case.

That was due to start in mid-June and go until the end of July. That has been vacated because it is one of those ones that has to be done face to face. But that has given me an opportunity and that is the reason I am going to be turning next week to writing the search warrants report. I am actually physically writing it out because I am on top of the material now. I may have to delay a bit in relation to the witness welfare one only because of what Mr Waldon said. But I will be doing that straight after. But, no, the answer to your question is that I have been doing okay. There is a benefit to having a small office. Ms Zekanovic, I know, has been working from home. She found it difficult at first but has now come to adapt to it. She has a young child, who probably interferes.

**Mr MARK COURE:** Some of us on this Committee know exactly where you are coming from.

**The CHAIR:** Mothers are very talented at multitasking. We are excellent. Mrs Tuckerman, do you have any more questions?

**Mrs WENDY TUCKERMAN:** No further questions, thank you.

**The Hon. TAYLOR MARTIN:** Inspector, have you read the special report that was released just days ago into funding of ICAC?

**Mr McCLINTOCK:** The upper House one?

**The Hon. TAYLOR MARTIN:** The special report from the ICAC itself.

**Mr McClINTOCK:** Yes, I have. In fact, I have a copy of it here.

**The Hon. TAYLOR MARTIN:** That will be helpful for the next couple of questions.

**Mr McClINTOCK:** I have also read the opinion of Mr Walker.

**The Hon. TAYLOR MARTIN:** Do you believe that the current funding arrangements for yourself and your office are unlawful?

**Mr McClINTOCK:** No, but then I have a degree of independence in this sense: My rate was struck at the start of 2017 when I took up my term. My salary cannot be increased but it also cannot be decreased in that time. As I said, it is struck at the rate that applied in 2017 for the State Attorney General's Senior Counsel rate, but there is a cap on the amount that I can be paid annually. I have never come close to that cap. I will come very close to it this year—I am sorry, I will not come close; I will come closer to it this year. I say that simply because the DPC decided that the work I did as Assistant Inspector of LECC had to be within my cap as ICAC Inspector. The amounts that were charged for that go towards the cap this year, but I am still not going to exceed it. No, I am not in a position where I will ever need, subject to that one thing about getting specialist help, to ever go to the Government and seek funding. I believe it does not affect my independence.

It is different in relation to the Commission. I am not going to detract from what Mr Walker said. By the way, probably the best answer to why he was selected, which Mr Hall did not give but I will, was that there are three or four barristers at the Sydney bar who essentially select themselves and Mr Walker is one of those three or four. You can see that politicians of both sides trust him as can be seen by the fact that he is doing the *Ruby Princess* inquiry right now. He is an eminent constitutional lawyer. I am not sure I would have used the word "unlawful". I would say not in accordance with the principles that the Act espouses, particularly from just the simple use of the word "independent". But, as I said, there is a distinction between me and the Commissioner.

**The Hon. TAYLOR MARTIN:** Thank you and I appreciate that. I ask this without casting any aspersions on Bret Walker's reputation, of course, but do you believe that it is prudent to rely on a single opinion? Do you think it might be worthwhile getting a second opinion?

**Mr McClINTOCK:** As I said, the more input you have, the better, basically. For example, there would not be anything wrong with an opinion from the New South Wales Solicitor General. I would have anticipated that that is something that the Government would probably do. You see, so many things in this area are debatable. They are arguable. Lay people often find this hard to understand: There is not always a right or wrong answer in law. You can see that with the Cunneen case. In the Court of Appeal for the Chief Justice, the most eminent jurist in this State, dissented and said the Cunneen inquiry was lawful. In the High Court Justice Gageler dissented and my estimation of him is profound. Yes, we all know what murder is. There is a bright line there. We all know what theft is. But when you come to issues like construction of Acts of Parliament like the ICAC Act, it is argument and there is no necessary right bright line to provide an answer.

I would have thought that a logical thing for the Government to do would be to obtain advice from the Solicitor General. In the LECC inquiry that I did, advice had been obtained on one aspect from the Solicitor General that I relied upon and on another aspect I obtained advice—because I wanted it to be not me doing it—from the State Crown Solicitor about particular aspects of the LECC legislation. But, no, I have no difficulty with their being someone reviewing Mr Walker's report and I would have thought that Mr Sexton, the Solicitor General, or Mr Kell, the Crown Advocate, are the appropriate people to do so.

**Mr RON HOENIG:** To be successful in its ability to attract funding from the Executive Government, which effectively is the way in which budgets are done in this State, doesn't the Commission have to demonstrate with some specificity precisely the nature of the corruption that it is pursuing? Otherwise, it is like every other investigating body. It is like the police when it wants more money to investigate cold case murders or want to go and chase more effective paedophilia prosecutions. Does it not have to be relatively specific to the areas that it needs to pursue its investigation?

**Mr McClINTOCK:** I do not think I have ever seen the materials that the Commission has put to the Premier in support of it.

**Mr RON HOENIG:** Neither have we.

**Mr McClINTOCK:** I understand that it will indicate the general nature of the investigation that it wants to carry out. Bear in mind that there is a problem with ICAC funding in this sense: Yes, it has to have a base grant to carry out its activities but the work does fluctuate. Yes, you could give it X million dollars and, yes, there would be a surplus at the end of the year, but that is not an appropriate way of dealing with public finances. So the practice has grown of giving it a certain amount of money and if it needs more—and this has been going for at least 10 years—it then asks for the additional money. In the past, with the exceptions that the Chief

Commissioner mentioned this morning, the money has always been granted. There has been a change in recent times, as I understand the position, but it does not seem to me at least that that is the right way of going about funding an agency like the ICAC.

My own views are I do not know that this Committee, which is what the upper House committee said, is the appropriate way of doing it. But, as I said earlier, Parliament must be involved. It is public money. The Commission is suggesting an independent person to actually do it—again, subject to ratification by Parliament. There are various ways it could be done but I do not think it should go on the way it has been. Yes, it may be unlawful or not in accordance with the legislation. That may be the case, but that does not seem to me to be the main consideration. The main consideration is that it is not the best way of doing it.

**The CHAIR:** Thank you, Mr McClintock. Are there any further questions from members who are online, bearing in mind we are coming to the conclusion of our time?

**Mr DUGALD SAUNDERS:** No, thanks, Chair.

**Mrs WENDY TUCKERMAN:** No, thank you, Chair.

**The Hon. ADAM SEARLE:** No.

**The CHAIR:** Given that we have come to the conclusion of our time frame, I thank the Inspector and his excellent multitasking able-bodied assistant, Angela Zekanovic, for their attendance. Thank you for coming 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 will be made public. Would you be happy to reply within two weeks of receiving those questions?

**Mr McCLINTOCK:** Absolutely and, may I say, it is a pleasure to appear here. As I said, I welcome the supervision that I get from this Committee.

**The CHAIR:** Thank you. We enjoy supervising you, sir. Thank you very much for your time here today.

**(The witness withdrew.)**

**The Committee adjourned at 13:21.**