

REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION

REVIEW OF THE 2014-2015 AND 2015-2016 ANNUAL REPORTS OF
THE ICAC

**At Room 814-815, Parliament House, Sydney,
on Monday, 20 November 2017**

The Committee met at 10:15 am

PRESENT

Mr Damien Tudehope (Chair)

Mr Ron Hoenig

The Hon. Trevor Khan

Mr Paul Lynch

Ms Tania Mihailuk

Reverend The Hon. Fred Nile

Mr Geoff Provest

Mr Mark Taylor

The Hon. Lynda Voltz

The CHAIR: Good morning and thank you for attending this public hearing of the Joint Committee on the Independent Commission Against Corruption. Today's hearing is a review of the 2014-2015 and 2015-2016 annual reports of the ICAC. This morning the Committee will hear from witnesses from the New South Wales Independent Commission Against Corruption: the Chief Commissioner, the Hon. Peter Hall, QC; Ms Patricia McDonald, SC, Commissioner; and members of the ICAC's executive. At the outset I thank all witnesses for making themselves available to appear today.

I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment. For the benefit of the gallery, I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of the public proceedings. Copies of the guidelines governing the coverage of proceedings are available. I now declare the hearing open.

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

PATRICIA EMILY McDONALD, Commissioner, Independent Commission Against Corruption, sworn and examined

ROY ALFRED WALDON, Executive Director, Legal Division, Independent Commission Against Corruption, sworn and examined

LEWIS ALEXANDER RANGOTT, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined

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

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

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

WITNESSES: No.

The CHAIR: Commissioner, the general practice is that we invite you, or anyone for that matter, to make an opening statement, if you are so disposed.

Mr HALL: Yes, thank you. First, I tender Commissioner Rushton's apologies; he is otherwise engaged in professional duties in the Supreme Court and is unable to be here today. There are just a few matters that I thought I would update the Committee as to some of the matters that have been developing in the ICAC since Ms McDonald, myself and Commissioner Rushton took up our positions, which may be of interest to the Committee. To that end, there are four areas in this opening statement on which I will make some comment.

First is what I would refer to as some in-house programs which we are developing at the Commission, and they have commenced development in the period since August until now; secondly, to advert to the position concerning the guidelines under the amended legislation, and I will ask Commissioner McDonald to address that; thirdly, the overview of development of what I would refer to as our investigation program going into 2018; and, fourthly, the question of the CEO position under the amendments to the ICAC Act. Before dealing with the first of those, so far as any matters concerning relevant statistics concerning our operations, we are in a position to provide any information in that respect, and, again, Commissioner McDonald will address any queries that there may be as to any matters arising from the statistical data concerning the operations of the Commission to date.

As to the first of those areas, the in-house programs, there have been steps taken towards two new programs: one is what I call the development of proactive investigation of the Commission against the reactive jurisdiction; secondly, the review that is ongoing as we speak of all units of the Commission and the functioning of those units and the operations between them and the communication platforms that exist between all members of the Commission within those units, is a review that is being undertaken by KPMG that has been engaged by the Commission to undertake that work on the basis that they will be in a position to provide us with an interim report by the end of this month. The final report will, I expect, be produced early in the new year.

The ICAC to date has pursued its important investigative function based on a reactive model, that is its investigative capacity has essentially been activated principally on the basis of complaints and notifications of alleged corrupt conduct. It is important that it continues to do so. However, in my judgement it is also important for the ICAC to determine whether there today exists a need to implement a more modern intelligence proactive model of investigation. I hold the view that there are powerful reasons for it to do so. The public sector environment has evolved and it has changed over time. New current day forms of service delivery of government services and associated funding arrangements did not exist, or did not exist to the extent they do now, when the ICAC was established. Today, the new systems used for contracting government services, such as public-private partnerships, outsourcing of government facilities, services to private sector entities, including non-governmental agencies, all bring with them new corruption risks and threats. In other words, the operating environment has changed. Today corrupt conduct is potentially more complex in nature than it has been in the past and correspondingly more difficult to combat. As with what I call old corruption, the new forms of corruption remain easily suppressed and disguised in secrecy.

The New South Wales public sector has undergone significant change since the ICAC was established. It is recognised that changes in service delivery methods giving rise to corrupting forces have become more

complex in nature and sophisticated in operation. That makes it difficult for agencies to combat. Accordingly, with such fundamental changes, in my opinion a more strategic approach needs to be adopted and developed by the Commission so as to properly understand and address and then respond to the complex changing environment in order to ensure that the Commission does function flexibly and effectively. Today, new ventures and partnership arrangements between government and non-government organisations for the delivery of government services can give rise to close and possibly conflicted relationships between representatives of government and public administration and private industry.

While public sector agencies may encourage the involvement or the engagement of private enterprise inter-ventures or partnerships, such relationships may bring with them increased corruption risks, for example arising from conflicts of interests, gifts and benefits. Accordingly, the need for a proactive methodology requires there to be a review of the Commission's resources and its capacity in order for it to effectively combat corruption. Such a methodology will require specialised personnel. It will require new databases and new investigative methodologies. In short, a new approach must be considered. Investigations in my view will increasingly be intelligence-led, identifying and targeting areas of medium-high to high-risk. That in turn will facilitate the deployment of resources where they are most needed. With increasing pressure on resources, in my view that makes perfect sense.

Strategic intelligence assessment also enhances the capacity for corruption prevention as well as providing intelligence data that will direct and guide certain investigative operations. Strategic intelligence facilitates the assessment as to where and in what form control systems are needed in order to prevent or interrupt corrupt schemes and activities. The strategic model draws upon a vast and varied pool of data relevant to the public sector. There will be an ongoing need for data holdings to be reviewed on a regular basis, thereby feeding into and guiding the investigative priorities and objectives. The time for updating the ICAC's investigative operations through the implementation of a proactive jurisdiction has not only arrived, it is overdue.

It may be noted that developments for a proactive jurisdiction have occurred in other States. The Crime and Corruption Commission [CCC] in Queensland has developed an intelligence-based approach. The rationale for, the design of and the operational requirements for the intelligence model were the subject of an excellent presentation by Dr Rebecca Denning of the CCC at last week's Australian Public Sector Anti-Corruption Conference [APSAC]. The Corruption and Crime Commission of Western Australia commenced a program for the development of a proactive capacity in the 2016-17 year. The Independent Broad-based Anti-corruption Commission [IBAC] in Victoria introduced an intelligence-based proactive capacity within a similar time frame as the West Australian Commission. The Corruption and Crime Commission of Western Australia said in its annual report:

The Commission analyses allegations received and information gained from investigations to identify corruption and misconduct trends, patterns and emerging risks. In 2016-17 a Strategic Intelligence Team within the Assessment and Strategy Development Directorate was established. This team has the primary objective of providing advice to the Commission and the broader public sector on trends and areas of risk for serious misconduct and corruption. This intelligence helps us to inform priority-setting and to ensure the Commission remains positioned to face the challenges of existing and emerging serious misconduct risks.

The IBAC in its 2015-16 report observed:

As a contemporary anti-corruption agency, IBAC aims to take a more strategic, intelligence based approach to our operations, rather than being a reactive complaints-driven body. In this way, we aim to ensure our resources and powers are best directed to most effectively expose and prevent serious systemic corruption and police misconduct.

A widespread intelligence assessment requires then the collection, collation and analysis of a wide range of data from both government departments and agencies, local governments and other organisations. It is only by risk assessment of the inherent corruption risks within the public sector, having regard to the changes in the operating environments to which I have referred, that a strategic assessment methodology can be devised, both in terms of developing operating strategies and corruption prevention measures. An assessment of this kind will also become available to public sector agencies in order to inform them of the corruption control strategies that they need to have in place to meet the risks. At the moment steps are being planned to establish in the new year what I might here refer to as a strategic intelligence unit within the Commission. There is a considerable amount of work to be done to that end but I am confident and it is my intention to have it up and running in the first half of next year.

The second review is the review that is being conducted and overseen by KPMG. In taking office I took the view that the ICAC, like any organisation, needs to have a thorough examination of all its processes to ensure that it is operating effectively and properly and is meeting modern standards. Accordingly, KPMG representatives were met and a scope of work was finally determined with officers of the Commission. The reports to result from this inquiry, we hope, expect, will identify those areas where there is a need for quality

improvement, change and modernisation. It is important, particularly in an organisation such as the ICAC, which is divided into separate units, that there be an open and consistent communication path between all units.

The work of the Commission does not occur over any given year at a consistent or uniform volume or rate. There are inevitably peaks and troughs, though just when they are likely to occur and for how long they are likely to occur are difficult to predict or assess. It is not uncommon in busy periods for particular investigators to be taken off one investigation team in order to help out with another. The result is that the first investigation stops or slows down until that particular investigator returns to the former investigation team of which he or she was a member. An inevitable consequence is that if resources cannot meet demand the pace of investigation is likely to be reduced. This position has been noted in particular with the reduction from four to three investigation teams within the Commission following the redundancies that occurred last year.

The Commission is investigating a program for a review of its assessments and investigation divisions. There is a need for there to be a better match between resources and demand for investigative services and assessment services by a scheme that includes a supplementary workforce component so that resources can be adjusted to meet demand. The same applies to the assessments section of the Commission. To date, under what at times is great pressure on the assessments section, that section has managed to operate within required processing times. Accordingly, the external consultancy of KPMG has been engaged to provide a recommended scope of works to undertake, and identify such changes as may be required, to ascertain with some precision what are the resource demand imperatives in both the investigations and the assessments sections. A decision will then be made by the Commission on how we should proceed.

One possibility is an increase—I foreshadow—in the required number of investigative and assessment staff personnel and the possible establishment of a pool of suitably qualified part-time investigators—for example, recently retired law enforcement investigators much like the Supreme and District Courts have the engagement of acting judges to meet the courts' list demand. There may also be a need to increase the number of the permanent investigation and assessment officers. I anticipate the external review will establish many of these matters by the end of this month. That completes my comments on those two what I call internal reviews or internal programs that are under way.

I should say something in relation to the development, in very general terms, of our investigative programs. A number of live investigations have been underway for some considerable time. There has been a need to escalate the pace at which those investigations have proceeded and we have taken steps in the appointment of Mr Hoitink to head up the investigation division to maximise resources to accelerate current investigations. We anticipate that going into 2018 there will be a requirement for the three commissioners to consult as to whether or not public inquiries should be held in any one of a number of investigations that are currently reaching a conclusion in terms of the investigative stages.

Before dealing with the guidelines I will turn to the chief executive officer [CEO] position. The CEO position, of course, was created under the amending legislation last year. As I indicated to the Committee on the last occasion, I have deferred the appointment of the CEO. I did that following discussions with relevant officers of the Commission in order to determine what a CEO would do and how the CEO would fit into the structure and running of the organisation. Many of the functions that a CEO would perform are already being capably handled and dealt with by Mr Koureas, who is here today. The responsibilities in addition to the duties and functions performed in that role would be handled by a CEO but would not by themselves warrant a full-time CEO. Because the other functions that a CEO would perform are now and have for some time been competently performed by the officer in charge of such matters, it would not be an acceptable option to terminate that officer in order to make way for a CEO to take over his functions about which there is no criticism. Indeed, there is a high regard for the performance by him of those functions. I am not prepared to see that officer terminated in order to make way for a CEO.

The question then is how would a CEO fit into the structure, given those matters to which I have referred? A CEO position normally is suitable for a larger organisation than the Commission. At the moment we have just over 100 personnel. The CEO would simply not have enough to do on a full-time basis. It seems that one possible option which has been under consideration is perhaps for the appointment of somebody who may be a recently retired person who is highly experienced in corporate governance matters and familiar with government and the way it operates to take up that position on perhaps a part-time basis such as Monday, Wednesday and Friday of each week. In addition, the sorts of programs that I have been outlining in my opening comments could be programs which such a person could have ownership over to ensure that they are properly implemented and conducted.

Members of the Committee, the position of the CEO is under active consideration. I have made no decision yet as to any appointment in that respect. We are mindful of the requirement to give it active

consideration and to look at all angles so far as the Commission is concerned and that is being done. Commissioner McDonald will address the issue of the guidelines.

Ms McDONALD: The reference to the guidelines is a reference to section 31B of the Act, which provides that the Commission will develop guidelines to assist or give guidance in the conduct of public inquiries, in particular focusing on matters such as exculpatory evidence, the investigation of such evidence, its disclosure to affected persons and also questions about credibility of witnesses, ability to cross-examine on credibility and general procedural fairness being granted to persons attending or being subject to a public inquiry. This is really an update for the Committee.

Guidelines have been drafted. There is one small aspect of the guidelines that the three commissioners have to determine and I anticipate that will be done shortly. We anticipate that once the guidelines are finalised we will forward them to Mr McClintock, the Inspector of ICAC, to get his view on the guidelines. We are hopeful that will be done by the end of this month. Then we are aiming to get some comments from the Inspector and take those on board and have some discussions. Then we are aiming to have the guidelines tabled before Parliament when it resumes in February next year.

Mr PAUL LYNCH: From the things you have said about moving towards a proactive focus and the KPMG review, it inevitably sounds to me that you will need more resources for ICAC. Have you had any discussions with the Government about increases in funding?

Mr HALL: We certainly have given the question of funding consideration. It is still under active consideration. We propose to have included in the budget submission for the next year a separate submission dealing with this area in which there will be an endeavour to give some costings as to what this will entail in terms of computer based data systems and software programs and the appointment of two specialist intelligence analysts. Those are the principal cost items. There would be a need for at least two specialists intelligence analysts. I understand—I stand to be corrected on this—that the Independent Broad-based Anti-corruption Commission [IBAC] currently has three such specialists.

They—this form of intelligence analyst—are in demand by law enforcement agencies in the country generally. They command pretty substantial salaries. They are hard to obtain because the numbers do not meet the demand; hence law enforcement agencies are only too happy to snap them up if they can. However, the general costing will be put forward in the submission in the budget. I anticipate that there could also be an additional requirement for other personnel in the Commission. Certainly, as I have indicated, at the moment, current demands cannot be satisfactorily met by existing numbers. We have been taking steps to engage people on a short-term basis to handle particular investigations. That has proceeded apace. We now have a number of additional investigators coming on line, but for fixed periods only, at this stage.

Mr PAUL LYNCH: How many extra people do you need to meet the current demand adequately?

Mr HALL: Mr Hoitink is in a better position and I might, with your permission, ask him to address that issue. It is a matter that he has been closely involved in.

Mr HOITINK: Eleven within the investigation area. That would basically include the two people for the strategic intelligence unit.

Mr PAUL LYNCH: What does that amount to in dollar terms?

Mr HOITINK: For that I would have to go to Mr Koureas; I am looking at the staff.

Mr KOUREAS: With the inclusion of other operating expenses—of balancing et cetera—it would be in the vicinity of \$2.5 million. It could be a little bit higher, as we fine-tune the request. The submission will form part of the Treasury final budget proposals during the first week in December. We are aiming to have them completed at the end of this month for submission to Treasury and consideration.

Mr PAUL LYNCH: Just so that I am clear on this, that is extra staff to meet the demand? That does not include whatever other extra resources might be required to fit in with the pro-active approach that has been discussed?

Mr KOUREAS: That includes the provision for additional intelligence analysts for the strategic intelligence unit.

The Hon. LYNDA VOLTZ: But it does not include the hard equipment—the new computer and technological investment?

Mr KOUREAS: That includes our operating costs but capital costs form part of a separate business case also being prepared for Treasury's consideration. The Commission is seeking to change its funding model

or ICT and we are in the process of finalising that over the next two weeks. That will provide for data allowance et cetera for additional software and hardware for the strategic intelligence unit. They are estimated costs at this stage.

The Hon. LYNDIA VOLTZ: Because you are waiting for the KPMG report?

Mr KOUREAS: No, the KPMG report is looking at the operational costs—the recurrent costs, if you like. Capital funding is a separate business case. We have obtained information from IBAC, for example, to help us provide an estimate of the capital acquisition costs for software and hardware and running costs of the software to be able to submit a case to Treasury for consideration.

Mr HALL: If I could go back to Mr Lynch's question, one of the important outcomes of the KPMG review which is presently underway is to determine, with precision, what an objective assessment would indicate as to the need to increase existing manpower to meet existing demands. We do not have, yet, the information which tells us the number, but I anticipate that, when we receive the interim report at the end of this month, the report should indicate, with precision, what KPMG assesses is the current need, in terms of personnel, to meet current demands. Whether it is another 8, 10 or 11 is subject to the KPMG assessment.

Mr PAUL LYNCH: Who has funded the KPMG review? Is that from ICAC's own resources?

Mr HALL: Yes, that is so.

Mr PAUL LYNCH: I would like to go back to the cost of the capital equipment. Do you have an estimate yet—even a ballpark estimate—of what that might involve?

Mr KOUREAS: I do not have that information but I will take it on notice.

Mr HALL: Mr Hoitink may be in a position to have some evidence on that, I think.

Mr HOITINK: We currently operate a number of different intelligence databases—one which is currently used by a number of law enforcement agencies. We will be looking to enhance that. So we already have the base system. It is really the add-on software that is required to be able to talk to the other different databases.

Mr RON HOENIG: Chief Commissioner, in the Commission's 2009-10 report to Parliament it said that in 2009-10 the unit "will continually monitor trends and issues in the public sector with a view to developing proactive approaches to investigations". I gather from what you have told us that you are elevating the priority of proactive investigations, or did you not have sufficient resources to focus on that area?

Mr HALL: Firstly, I am not sure whether the report to which you refer—the 2009-10 report—identifies what was being referred to as a "proactive intelligence approach". Whether it is the strategic intelligence approach which is in Queensland, Western Australia, Victoria—and it is my intention to bring it here—which was in mind, certainly the capacity to carry out that sort of proactive investigation has not existed until now, as you would understand from what I have already said. Whatever the proactive approach was that that report was referring to, it is plainly not enough. A different approach is needed, in my estimation, which will require an approach that I anticipate will assist in three main areas of the Commission—investigations, prevention and assessments. Trying to answer your question, I do not understand what proactive approach the author of the report had in mind at that time. It is not the one that I have in mind.

Mr RON HOENIG: When you talk about a strategic, proactive approach, I understand what you are referring to in terms of the private sector's involvement to a far greater extent in delivering government services and conflicts of interest that flow from that, particularly in relation to government or elected people. How does the Commission go about doing that? Do you monitor a variety of those activities? Do you, of your own motion, begin to examine them? The amount spent on some of those activities is now huge—some are record infrastructure investments. How does the Commission go about doing that? Without disclosing operational matters, at what point do you go in? Do you, of your own motion, just decide to look at something?

Mr HALL: It is the own motion power that is already in the Act that I have seen as providing the window of opportunity for this proactive approach. With the analysis of relevant data, we expect to be in a position to identify—not just for the benefit of ourselves but for the agencies themselves—what risks their operations present, what controls they have in place to manage corruption risks, and the adequacy of those controls. It requires establishing and also maintaining over time an informed appreciation as to how particular agencies are equipped to deal with emerging risks arising from new forms of contracting and the like. It involves an own motion type of investigation in order to provide a solid base to understand what control systems particular agencies have, having regard to the risks in procurement, for example, that are likely to arise and whether they are equipped and trained and so on to be able to manage those risks.

Therefore the intelligence data outcome is not only to assist us with our prevention and investigation activities; it should provide benefit directly to the agencies themselves. It is not as if we want to keep secret from them any of our assessments and analysis which they might be able to benefit from to improve their system. It is more of an own motion, as necessary, driven by the intelligence data we obtained—if necessary, directly from the agencies themselves. As I indicated earlier, there will need to be constant monitoring of the data relevant to all of those matters.

The other side of the scope from this approach is to identify in particular, with corrupt activities that are either ongoing or which are recurrent within a particular agency, the capacity for us to have earlier intervention in the investigation process—that is, to use our covert powers at an earlier time than would currently be the case. The potential benefit of targeting either known or suspected corrupt conduct that is happening in real time or which is likely to be repeated as a pattern of conduct will provide us with a greater opportunity to intervene at an earlier stage and use our covert powers to obtain evidence upon activities at the moment, which is very difficult to prove after the fact, as I am sure Committee members would fully appreciate.

In summary, those are the sorts of benefits that come from the approach. I refer the Committee to a report that was produced by the Western Australian Commission which outlines the objectives and benefits from this sort of approach. It is called "Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector", Corruption and Crime Commission, 26 March 2016. It is a report which is quite readable, it is not over-lengthy and it provides an excellent analysis as to the scope and purpose of this form of investigation.

The CHAIR: I take it that there are specific examples, using this pro-active approach that you have identified and endorsed, whereby it has uncovered corrupt activities.

Mr HALL: I am not in a position to say how—

The CHAIR: Not your own organisation but, say, the Western Australian one.

Mr HALL: No. I am not in a position to say how the methodology was employed, for example, by IBAC or the Western Australian Commission in particular investigations, other than to refer, as I have already have, to their observations as to the need for and the benefits that flow out of this form of approach, both from a prevention perspective and potentially for investigative potential.

Mr GEOFF PROVEST: Where witness credibility issues arise during one of ICAC's compulsory examinations and the matter ultimately proceeds to public inquiry, should counsel assisting have a duty to disclose those issues at the public inquiry? Should this be a matter included in ICAC's procedural fairness guidelines for conduct of public inquiries? Would any confidentiality issues arise?

Mr HALL: Firstly, I will take the first part of that question. The guidelines in their current draft form expressly deal with the issue that you have raised—quite properly, with respect. That is to say that if the Commission is in possession of what might be called exculpatory material, under the guidelines such material must be disclosed, subject to one important issue, and that is the timing of the disclosure, for obvious reasons. The ultimate discretion as to when such material is disclosed must remain within the discretion of the particular commissioner conducting an investigation, for obvious strategic investigative reasons. But at the end of the day, no person should be denied procedural fairness—no person at all. In respect to what you raise, procedural fairness includes, in particular, the need to ensure that any exculpatory material is produced.

The Commission is not there, as it were, to get scalps, to win cases and so on; it is there to uncover truth and, wherever the truth lies, that is what should be disclosed. Confidentiality would only apply in the circumstances which I have indicated that it should be withheld until the commissioner determines it is an appropriate time to disclose. As to whether there could be any other confidential limitations upon such information, it could, for example, include issues such as statutory obligations of confidentiality or legal-professional privilege. I think each case would have to be determined on its own facts.

Mr GEOFF PROVEST: Under the recent changes to the ICAC Act, where ICAC makes an adverse comment about a person or a body, it will generally have to publish a fair account of their response. How will you implement this change? Will it require a review of processes? If so, have the necessary changes been made?

Mr HALL: Yes, there will be a need to change the form of reporting. There will need to be a separate section in the report which identifies the nature of the case, as it were, that the person affected by the adverse finding sought to make out so that the reader will be able to understand, in a summary form at least, what that person was contending for. It is a question of fact finding. As to a change in procedures, I think it will be ultimately the responsibility of Mr Waldon and the individual commissioners to ensure that those matters are properly dealt with and disclosed in public reports. We have not yet, as you know, released any reports since we

have been in office, but I am mindful of the fact that in the New Year the very position you raised may very well become a reality and it needs to be addressed properly.

Reverend the Hon. FRED NILE: This is a general question. Commissioner, in 2015-16 external visitor traffic to the ICAC website was down 30 per cent from the last reporting year. Is there any explanation for that? Could that be due to the extensive public and parliamentary criticism of ICAC's previous Commission and its commissioners? Has the public's confidence in ICAC been undermined? If so, what action are you taking to rectify that?

Mr HALL: I am not familiar with the statistics about the downturn in the traffic that you referred to. It is a matter that I am happy to look into and, if necessary, provide a further answer. As to reasons as to why that traffic might be down on previous years, I am quite frankly not in a position to give you an explanation. It is no secret, however, that the Commission over the last 18 months to two years has been through a difficult period. It is a matter of concern that the difficult period occurred, but it now being past history the intent is to ensure that the Commission conducts all of its operations in a way, as I have indicated, that meets community expectations in terms of procedural fairness and in terms of the legal requirements to do so. I do not take any downturn in the traffic accessing the website as indicative of a fall in public support for the Commission. It is possibly due to the fact that in part of the troubled period I referred to there has been a reduction in public hearings and that itself accounts for some reduction in the traffic. Other commissions similar to our own have noted their experience that every time they have a public inquiry there is a spike of interest from the public and more hits on the website occur. That could be another partial explanation as to why those numbers are down on 2015-16.

Reverend the Hon. FRED NILE: Was there any corresponding decrease in other public interaction with the Commission, such as complaints and so on?

Mr HALL: Yes. I might, with your leave, have Commissioner McDonald take you through those figures, which might assist in answering your question better than I can do.

Ms McDONALD: We have received some internal information about current statistics. Even though the past report indicated a decrease in the number of, for example, complaints on matters received, it seems we are now on an upward trend. For example, the 2016-17 period indicates a 2.2 per cent increase in the number of matters received compared with 2015-16. Just looking at our statistics for the first quarter of 2017-18, it is of a similar upward trend. It seems that the number of complaints will at least be consistent with the increased number we received in 2016-17. If you then look at the next stage, the matters referred to a preliminary investigation, again in 2016 we had a decrease from the previous year. Again, in 2017-18 it appears that the numbers have increased and will reach the same level as 2015-16. On current trends we will probably match that number as well. It does seem that in 2015-16 there was a decrease in the number of complaints and then matters being escalated to a preliminary investigation. That seems to have been reversed last year, and we are continuing with that upward trend at the moment.

Reverend the Hon. FRED NILE: I know ICAC is very important and I support it. Is there any need to consider whether there needs to be some promotion of ICAC itself? I know it does not normally do that—you do that through your job and through inquiries—but it may be an issue you could examine.

Ms McDONALD: We recently co-hosted the APSAC, and there has been some publicity through that about our role. In addition, when we last appeared before the Committee, we had just returned from Albury, where we attended a public gathering for community leaders at which the three commissioners spoke, and also our corruption prevention section then ran a number of workshops for the local community.

Reverend the Hon. FRED NILE: That is very important.

Ms McDONALD: Yes, and that is something we will continue to do—indeed, we might have another trip into the country planned for maybe May of next year, if we have the resources. We are continuing with that type of work, but an overall view of the opposition within the community is something we will have to take on notice.

Mr MARK TAYLOR: Commissioner McDonald, we have heard from the Chief Commissioner about the CEO position. Do you hold a similar or different view to that of the Chief Commissioner?

Ms McDONALD: I do have a slightly different view, and I have to preface it by the fact that I come from working as a barrister for 20 years, where I was in business for myself and dealing with management and any enterprise other than with about 30 barristers is something new to me. This is not a final position; I am still learning about ICAC and seeing how it functions. My preliminary view is that I am partial to the appointment of a CEO. Where my concern arises is that we have excellent people heading the various divisions, but often we

have to have a project that involves the coordination of a number of divisions and, in particular, the planned proactive group is a case in point. It is not just going to be the investigation; Mr Rangott's section will be fundamental for it and also Mr Koureas' section of the assessment section will be very important. With those very important projects, where a number of divisions are involved, to have somebody in a position of overview is important. I also think, for a lot of matters where I do not have the expertise and maybe our Chief Commissioner and Commissioner Rushton, who have come from a similar background, may not have expertise, a CEO may be of assistance. Although I take the Chief Commissioner's point that we are a relatively small organisation of only 102 employees, maybe something like a part-time CEO would be a good idea. I should echo the Chief Commissioner's view that this is no criticism of our current executive of corporate matters, but he has a particular role and fits in with the hierarchy in a particular way.

The CHAIR: This was raised earlier in relation to your approach to conducting investigations, when you said that we should have a much more proactive model rather than a reactive model. Is the funding and resourcing you have identified and that Mr Koureas explained to us, new funding that you would seek to adopt in relation to rolling out the new model?

Mr HALL: Yes, that is right.

The CHAIR: Is it the case that last week, when you spoke to the APSAC conference, you identified that the current level of resourcing from the New South Wales Government is more than adequate for your purposes?

Mr HALL: I was not addressing the whole of the budgetary requirements of the Commission. What I indicated was that the Commission acknowledged that there had been continuing support and, in particular, additional support in recent times. I did not go into the details as to what it was for, but I can do so.

In addition to the budgetary position, as the Committee would know, there have been special allocations from time to time to deal with particular investigations. It is that to which I was expressly referring, although not in terms of the fact that the Government has responded to our submission for additional funding on an allocation basis and it responded by granting our request as asked and not some lesser amount. That has enabled us to proceed with an important investigation. Without that additional funding we would not have been able to do it.

The CHAIR: Last week this Committee tabled in the Parliament a report relating to voluntary disclosures. I do not know whether you have had the opportunity to see that report, but one of the issues that arose in relation to it was the extent to which persons who make voluntary disclosures should receive protections in relation to the making of those disclosures. There was a concern of this Committee in relation to the potential damage to reputation and potential weaponising of ICAC for political purposes. It has been recommended that ICAC potentially form a view about how it would lessen the damage to people's reputation by virtue of the weaponising of ICAC. Do you have a view as to how you would deal with that issue?

Mr HALL: Yes. I have not read the report in detail—that is, the recent report of this Committee on protections for people who make voluntary disclosures—but I have read enough of it to understand the basis, and I have read all the recommendations made in the report. Against that background, turning to the specific question you have raised, I share the concern that certain people, certain situations and particular local government areas use ICAC as a weapon without there being any opportunity to test the basis upon which the accusation or the alleged reporting has been made.

My only knowledge as to where this question has been looked at is, as I recall, in Queensland, and there was a report—I am assuming for a moment that it was the equivalent oversight body in Queensland, although I would need to check that and am prepared to do so—in which a proposal was put forward to Government to deal with this, and Committee members may be aware of it. My recollection is the thrust of the recommendations was that where, for example, in the course of the lead-up to a government election, a person refers to the fact that a third person has been reported to ICAC or to an equivalent body in Queensland, there be a three-month period within which it would be an offence to disclose that until, in other words, the three months has elapsed, giving the Commission the opportunity to assess whether there is any substance to the allegation. My information—and I cannot recall where I got it—is that that recommendation has not gone anywhere so far in Queensland. Why that is the case I do not know.

I think, Chair, that is the extent of my knowledge about it. I share the concern, as I have said. It should not occur. It seems now to be becoming commonplace for the person who is subject of a report to put in a report to ICAC against themselves, in effect, saying, "I've been accused of so-and-so and I want this inquired into." That seems to be the modern counter to the weaponisation approach. None of that is satisfactory and I think it

should be an issue which would benefit from this Committee examining it. If it would be of any assistance, I will provide details as to that report in Queensland that I referred to.

The CHAIR: I think the recommendation contained in our report asks you to make recommendations!

Mr HALL: Happy to do so. We will take that on notice.

Mr RON HOENIG: Chief Commissioner, I return to the CEO issue. Several weeks ago the *Australian* published a story which emanated from a leak of conversations some Committee members had amongst themselves which, moderately accurately, probably described the mode of reasoning behind the appointment of a CEO and the amendment of the Act. The reasoning was that the commissioners have a determinative function and a fact-finding responsibility from the evidence to provide some mechanism of separation between the investigators and the fact-finding commissioners and probably to allow the commissioners to perform that role without regular personal contact with the investigators.

That is similar to the way in which judicial officers might operate, or where there are royal commissioners and roles of that nature the relationship between the investigators and the commissioner and counsel assisting is only a temporary one during the course of the royal commission, and where there it is an appointment for a five-year period and you are the supervisor of the investigators. Does not one run the risk of everybody being human, similar to ensuring that judges do not communicate with one counsel or anybody during a hearing? Are our concerns justified? After all, commissioners are appointed temporarily; there are successors after you.

Mr HALL: Your concerns are not justified, with respect. It is an interesting topic you have raised. I go back to square one, if I might—that is, where did this recommendation come from? I have not brought with me the particular report from the Department of Premier and Cabinet that produced the foundation report which in due course became incorporated by way of the amendments. I have read very carefully the relevant section dealing with the very matter you have raised. The report in that section refers to or uses the phrase "organisation capture" or words to that effect. I was concerned to determine whether the author of the report was referring to the commissioners being captive of investigators or others, or whether it had a different meaning or intent—and it did have a different meaning or intent. If members read the report, they would see that what the author was saying was that the commissioners should concentrate on what they are there to do, which is to investigate and to carry out the other functions of the Act. They should not be caught up with administration and governance issues; they should be separate and should not be caught up in or captive to being distracted by dealing with all those administrative functions, of which there are many. They should be separated so that the CEO concentrates on the organisational and administrative issues and the commissioner or commissioners can concentrate on what they are there to do, that is, investigation work.

From my reading of the report—I invite members to read it—it had nothing to do with suggesting that the commissioners somehow could be captive of the investigation division within the Commission. It is wholly different, as Mr Hoenig and other members appreciate, from the judicial forum, where the judge remains aloof and has no contact with either party without both being present. Being an investigative organisation, all of the Commission's processes are geared to performing the functions of investigation and prevention and consultation between the commissioners and the investigators, and it has to be that way. I have regular communications and conferences with Mr Hoitink for obvious reasons.

The Commission's work is ongoing and it is teamwork. I find it wholly different from the background from which I came, including my almost 12 years on the Supreme Court. That was a solo operation; we operate solo at the bar. As a judge, although we are members of an institution, essentially we are working on our own cases. My experience of the Commission is wholly different; it is all about teamwork, and it must be. I must work closely with the investigators and take their advice, and I must give instructions on what I want them to do, and that is certainly true of Commissioner McDonald and Commissioner Rushton. I am not captive of anyone in the Commission.

Mr Hoitink acts on the basis that it is my call. All he does—which is a lot—is supervise his investigators to ensure that what they are doing is correct and that it is on target. He comes with enormous experience as an investigator, and I value his input in advising me in relation to each and every matter. There is no capture here at all; at the end of the day, I make the decisions as to whether we will or will not go down a certain path and I take responsibility for it. That is part of my function. Commissioner McDonald is in exactly the same position. There is no organisational capture of any of the Commissioners in the sense that we are captive to a group in the Commission, such as the investigators. We are not; the Commission's structure has always been based on the fact that we work as a team. I am not an investigator, or I have not been until taking up this position. We need specialists who are familiar with, for example, how and in what way we strategically employ covert powers to maximise the scope for obtaining evidence of corrupt conduct if it is occurring. That is

their role, their skill and their experience, and I look to them for advice. However, as I said, at the end of the day, the call is mine, Commissioner Rushton's and Commissioner McDonald's.

I have taken the time to explain that because it is not a form of capture which the question suggested and which others have suggested. The CEO position was not established to act as a brake or a filter on the work of the commissioners in some way. That is not, and I do not believe it ever was, the intention. In my view, the perception that has been written about in certain media is wholly wrong. Having said that, I am confident that this Committee should have no concern about organisational capture. I am mindful of the dangers of any organisation that is of limited numbers having a small gene pool that can feed off itself. That could be bad because it affects one's objective thinking about matters. That is inevitable with an organisation of this size, but it is certainly something of which I am ever mindful. I do not want to have a mindset that is not entirely my own.

Ms McDONALD: I think the Commission's new structure assists or acts against the form of organisational capture referred to by the very fact that Commissioner Rushton and I are part-time commissioners. We are still running prosecutions and defending people within the criminal justice system. We employ the same principles of fairness that are second nature when we are acting in that arena that we use when acting in our commissioner role. Given the way the three-commissioner model is functioning, there are obviously some decisions under the Act where the three of us have to have discussions and the majority decides.

For example, the public inquiry decision is not a decision that the investigators, the solicitors or the legal division make; it is a decision that the three of us will make when we sit down by ourselves and determine whether in the circumstances a public inquiry is appropriate, taking into account factors which the new Act raises about protection of people's reputations, adherence to procedural fairness and so on. Even moving away from the provisions in the Act requiring us to act together, the three of us regularly have meetings to discuss matters and we do that on the basis of appropriate conduct, principles et cetera. I think the three-commissioner model and the Chief Commissioner's background at the bar and then as a judicial officer for 12 years, and Commissioner Rushton and myself still being out there, in a sense, at the coalface, act against any possible organisational capture.

Reverend the Hon. FRED NILE: I have another question relating to your reports. In 2012-13 there was a decline in section 11 reports from public agencies such as the Ombudsman, the Commissioner of Police et cetera to the ICAC. In 2012-13, there were 756 section 11 reports, and in 2015-16 there were only 605. Is there any explanation of the decline, is the Commission doing anything to address it, and does it have any implications for corruption prevention in New South Wales?

Mr HALL: Yes. I can deal in part with that question. I have noted a decline in protected disclosures to the ICAC, and I think the annual reports reflect that decline for two years. Although I could not attend the committee meeting involving the Ombudsman, who is of course the oversight agency for protected disclosures, I had my delegate raise that issue with the committee to ascertain the reason. The response was that the decline in reporting to the ICAC by the Ombudsman under the protected disclosures legislation is not peculiar to the ICAC; it is more a general pattern that there has been a reduction in protected disclosures generally. I have been concerned and I am concerned about that decline. That form of protected disclosure is, of course, vital to the Commission.

I have read a recent report in the Federal arena that looked at some of the problems that can arise under disclosure legislation. Some of it is attributable to the fact that even senior officers within agencies and departments do not properly understand the legislation, and they do not have proper training programs for staff. If they do not understand it, there is little hope of those beneath understanding it. It is a very good report. It was in the Federal report. I cannot remember the title of it. I am sure it was a report made last year. It seems to me that more needs to be done. I have been impressed with the vigour with which IBAC has pursued protective disclosures in Victoria. IBAC, unlike New South Wales, is the oversight agency for their protective disclosure legislation. It has conducted many seminars and training programs to overcome the sort of problems I have indicated. It will be a matter that I will certainly be taking up with the new Ombudsman, who is due to be appointed shortly, as I understand it. I would like to see whether more can be done in respect of informing people as to how the legislation works and how people should be responding, and also sending the message that people should be encouraged to do this as part of their duty. They should not be regarded as stepping out of line from their fellow workers. If they see something, they should report it, to encourage people to understand the purpose behind the legislation so that there is proper reporting.

Reverend the Hon. FRED NILE: Section 11 is not only the Ombudsman.

Mr HALL: No.

Reverend the Hon. FRED NILE: It is the Commissioner of Police.

Mr HALL: That is true, yes.

Reverend the Hon. FRED NILE: All Ministers of the Crown, et cetera.

Mr HALL: Yes. I am afraid I am not in a position to answer for other agencies. However, if I could take that on notice we will see if we can provide a more detailed answer for you.

Reverend the Hon. FRED NILE: Thank you.

Mr HALL: I accept it is an area of concern. Mr Rangott, who is the director of our Corruption Prevention Division within the Commission, may be in a better position to supply more information. If it is acceptable to you, I will ask him to respond.

Mr RANGOTT: Reverend Nile, the section 11 complaints are of a class where the reporting CEO, the head of the agency, has formed a reasonable suspicion there may be corrupt conduct. A fall in those types of reports is arguably a good thing. In any case, we would expect some natural statistical variation throughout the years, which might account for some of that difference. The other thing we find from time to time is that those section 11 reports are driven by complaint patterns within agencies. In turn, they are sometimes driven by the amount of publicity that the ICAC gets and the amount of attention that is given to corruption issues within an agency, within the public sector. They tend to wax and wane a little bit with the attention that some of our major public inquiries are receiving. That may explain some of the difference, but as the Chief Commissioner said, we will investigate further and provide you with more detail.

Mr PAUL LYNCH: Is it perhaps the case that one of the reasons there might have been a fall in reports is the change of the definitions "corrupt behaviour" and "corrupt conduct"? There has been a bit of publicity saying that ICAC no longer has jurisdiction over everything; it can only be serious matters. Does that perhaps lead you to suspect that fewer complaints are being made because of that?

Mr HALL: Yes, that does tend to affect the position that has happened in several States. Victoria is certainly one of them where less serious matters have been hived off and are now dealt with by their other integrity agency and the emphasis in the Act of serious and systemic corruption and not other lower forms of corruption could very well account for that. I think it has been reflected in the statistics, as I recall, of other commissions, although I cannot be precise about that. It does reflect the fact that the jurisdiction is seen to be dealing with the heavier forms of misconduct or corruption.

The CHAIR: One of the issues that we asked you to look at was the relationship between yourself and the Inspector. Tell us how that relationship has evolved. Is there a memorandum of understanding [MOU] in place between you and the Inspector as to how that relationship is fostered?

Mr HALL: We recently revised the MOU with the Inspector and provided it to him with some suggested changes. He replied to that. I cannot remember when but it was not that long ago. Apart from picking up on two typos he embraced the revised memorandum with the new substantive provisions in it. It was at the time of discussions about the MOU that I proposed to the Inspector that we have, if he saw any sense in it, a get-together on a quarterly basis or, alternatively, if he would prefer to do it on an ad hoc basis, that is to say periodic meetings to discuss matters concerning either of us or involving either the Commission or his office. He responded positively and proposed that we meet in December, so there will be a meeting with the Inspector.

The Inspector has referred to us a number of historic matters that he has been asked to investigate and he has sent those matters to us. They are being progressively looked at. From my perspective the relationship has been wholly productive. It is a good relationship, as I anticipated it would be. The Inspector has a very good understanding of course as to the Commission, its functions, of the legislation, and I have indicated to him that from my point of view it is a completely open door so far as he is concerned and to make contact with me any time that he wishes to. To answer your question, all is well in our relationship.

The CHAIR: I have a question about time limits. What would be the expectation of the Commission for finalising a complaint? What is the general time frame from first receiving the complaint and then dealing with it by way of a preliminary inquiry to its finalisation?

Mr HALL: I am afraid I cannot answer that in respect of any actual statistics. I think there are some statistics that we keep that would give a better idea as to what the timeline is. If I could take on notice that question, we will supply it. Perhaps Mr Hoitink, being head of investigations, might be in a position to say something.

The CHAIR: I will give some background to the question. Often the public are aware of a substantive matter that ICAC is investigating and there has never been, or appears not to have been, a public finalisation of

that matter. Either the matter may well have been disposed of and no-one knows that it has been disposed of or it is ongoing. I am interested, generally, what the process is for investigations starting and when a result would be anticipated or completed.

Mr HOITINK: Ideally our key performance indicators are around the 16-month mark once an investigation comes in. We look at limiting an investigation to a period of 120 days. Within that 120 days the matter is assessed. If the panel decides that it goes on to an investigation, we look at a period of 16 months. That obviously relates to particular matters. There may be some matters that would extend beyond that period based on the complexity of the matter.

The CHAIR: When a matter is resolved or finished, is the complainant and the person complained of notified in relation to the decision which has been reached by the Commission?

Mr WALDON: I might answer that. It rather depends. The complainant would probably be notified. The person who is complained against, if they know they were complained against, either because the complainant has made that public or someone else has made it public, or they have been interviewed by us and we have asked them questions so they know they have been investigated, will, as a matter of course, be written to and told that the investigation has now been finalised. If someone does not know that they were the subject of an investigation then we prefer not to enlighten them at that stage, we do not tell them.

Reverend the Hon. FRED NILE: Commissioner, I note in your reports over a number of years that the ICAC's assessment panel has made fewer decisions to investigate matters in the last three reporting periods—the decrease is almost 50 per cent. In 2013-14 there were 76 decisions to investigate and in 2015-16 it decreased to only 41. Is there any explanation for that, as to the decrease in the number of matters ICAC decides to investigate? Has there been some change in ICAC's assessment panel's operation or the terms of reference?

Mr HALL: I know it is variable and it does depend on a number of matters. Our director of assessments is here today. He is in a position to give some evidence, I think, as to his perception as to the way in which that trend has occurred and, with your leave, I could ask him to address that.

The CHAIR: He is not sworn. Can you take it on notice?

Mr HALL: I will take that on notice and come back to you with some more precise statistics and also explanations as to why there has been a fewer number of decisions going to investigators.

The CHAIR: I might run through a few issues that have been raised in relation to the report. In 2015-16 the ICAC had four new training workshops on offer. What spurred the creation of those four new training workshops and what has the feedback been like?

Mr HALL: Can I ask Mr Rangott to answer that?

Mr RANGOTT: That decision predates my term at the Commission, but I understand that it was an attempt to broaden the offering of educational products that were available and were quite successful but fairly standard one-size-fits-all training workshops. For some reason it was an attempt to explore areas such as town planning, for instance, which is something that comes on our radar from time to time. Some of our standard offerings are the ones that get the most attendees, but to date we have had some pleasant feedback from these workshops as we have delivered them.

The CHAIR: In the same period, you had 68 speaking engagements. How do they come about?

Mr RANGOTT: Typically we will be contacted by an agency. It is very common for an agency to contact us; they might be conducting their own ethics training or corruption prevention initiative, and they might ask us to contribute by making some sort of a presentation or giving an address. They typically are initiated from senior managers in the public service.

The CHAIR: I take it you would be fairly receptive to those applications for speaking engagements.

Mr RANGOTT: Indeed.

The CHAIR: In 2014, the Commonwealth Ombudsman inspected the ICAC's stored communication warrants and the preservation of those and found the ICAC compliant except for one minor issue. What was that minor issue?

Mr HALL: I am not in a position to respond to that question. I am not sure whether Mr Hoitink is, otherwise I will need to take that on notice.

The CHAIR: And perhaps the manner in which it was rectified.

Ms TANIA MIHAILUK: Commissioner, going back to your introductory statement, in your statement you made clear that there are a number of matters; there is obviously a backlog in ICAC, and that next year you will be making a decision, together with the other commissioners, on which matters would require public hearing and which order. I now appreciate that the legislation enables the Commission to have more options. My only concern with that is the perception that may transpire in the future that ICAC is not being seen as undertaking enough public inquiries. I raise this because obviously we know what kind of year we have had in the last 12 months, but I think it is something for the Commission to think about. I am making this more of a statement rather than a question, but I am concerned about that for the future and for the reputation of ICAC.

Mr HALL: The question of public hearings keeps coming up as the important issue. At the APSAC conference last week, at the closing session the commissioners present from Queensland, Victoria, Tasmania and myself were all asked to address it. The approach taken, of course, was driven by the different legislation in those States, in particular Tasmania. There were varied responses as to the approach taken to public inquiries. There was support, I might say, from two of the commissioners for the power to conduct public hearings and inquiries. In my response I indicated that public hearings, like many issues, have their upsides and downsides. The upsides include the fact that it does bring to the community notice and corruption is exposed—what I would describe as the deterrence value of the nature of the corruption then exposed in the public arena, to encourage people who would not otherwise come forward to the Commission to do so when they see a matter being dealt within a public inquiry.

The Act itself does address functions of the Commission to expose corruption, and public hearings can be a proper way in which to expose corrupt conduct. Apart from the general arguments for, and, of course there are others against, in particular the risk of damage to reputation, that is avoidable. There are a number of other issues which I sought to address in the conference last week; they include, in my view, the decision that has to be made at the beginning as to whether there is any investigative value in having a public inquiry. Once that question has been answered, and it is answered in the affirmative, then a public inquiry should be a balanced and an objective inquiry; it should on no account, in my view, turn into what some people refer to as a show trial. But if conducted responsibly and properly in a balanced manner, there is a safeguard that it will only be conducted in public in a way in which it does not needlessly damage reputations for those involved in some shape, manner or form in corrupt conduct—the damage, of course, associated with their own wrongdoing as proved by cogent evidence.

My answer, in summary, is there is a need for public inquiries, they do serve a useful purpose in many different respects. They must be conducted responsibly and, if they meet all those tests, community confidence in the functioning of the ICAC will be maintained and enhanced. I understand the concern you have for public inquiries and hearings, and whether there is in fact enough of them or whether there are too many of them. I think each case has to be evaluated according to the requirements of the Act. Some of these issues that need to be addressed before an inquiry is decided upon do not lend themselves to ready answers and do require the input of the three commissioners, who I am sure will have different perspectives on some issues relevant to whether or not there should be a public inquiry. I am not sure if I have answered your question.

Ms TANIA MIHAILUK: That is very good.

The CHAIR: One of the things that you do is prepare a strategic plan, which is on the website. In view of the observations you have made here today, I take it that that strategic plan will be amended—is that proposed?

Mr HALL: I am not sure that it will need to be amended, but I need to look at it. I have not read it in recent times. If it did not accord with the present requirements of the Act then it would need to be changed.

The CHAIR: It might reflect, for example, a different emphasis that the Commission is adopting in relation to proactive investigations of corrupt behaviour.

Mr HALL: Yes, and certainly it would be the subject of the annual report, as IBAC does and Western Australia does. But, as I have indicated, we will not be up and running with that until the first half of next year. I accept that those sorts of changes should be made.

Mr MARK TAYLOR: Chief Commissioner, you indicated that you believed you had the power for own motion inquiries. You are using this at the start about your proactive strategy. Is it the case that you believe you have the current powers to conduct proactive investigations?

Mr HALL: Yes.

Mr MARK TAYLOR: Are you satisfied with the powers that you have?

Mr HALL: Yes.

Mr MARK TAYLOR: In order to reassure the community, is it possible for you to put in layman's terms your idea of proactive investigations? How do proactive investigations differ from fishing expeditions or random audits of agencies?

Mr HALL: It requires collecting data from a very large number of sources. The reliability of the data is put through analysis to determine whether or not it is material that is relevant. It is not a fishing expedition in the sense of it being limited to trying to get evidence on the subject matter, the objective of which is unknown. I think I have emphasised that the sort of information which would be obtained can be obtained by way of survey or from different agencies and is information obtained from the source—that is, those people whose organisation you are examining. You and I would expect that the executives of such agencies would welcome the examination of their systems by the ICAC for their own protection and would be willing participants, as has been the case interstate in this sort of exercise.

The surveys that have been undertaken both in Western Australia and Victoria, which have been extensive throughout the public sectors in both States, were designed to identify what controls those agencies have and whether there are any gaps in them. It was emphasised in their report that it was not to be taken as a judgement as to the adequacy of the agency or to level some criticism on them. It was simply a fact-finding exercise, and that was explained to the agencies. As I understand it, the interstate agencies were almost uniformly cooperative and willing to support. I am talking about the intelligence data there so far as the particular agency or departments of government rather than personal conduct of individuals. It is not a fishing expedition; it is really a fact-finding operation. That will support the corruption prevention function of the Commission and aid in the assessment of investigations. Being able to mine and access the data you already hold, which at the moment cannot be fully accessed, has obvious advantages of drawing and linking associations between people in relation to relevant matters. I do not see that as fishing.

As I have indicated, there are some investigations in which it is very difficult to get firsthand evidence of corrupt conduct. It is only through the use of our covert powers used strategically in the ways that are employed that we can construct, almost mosaic-like, piece by piece, a case of corrupt conduct. The more worthwhile information you have, obviously the easier it is to build the mosaic. I do not see that this is equivalent to perhaps a mischievous fishing expedition which sometimes can be conducted in certain quarters. It is really quite targeted. It is intended to produce an overview and some detailed drilling down into various scenarios to better direct resources, should they be implied, in certain areas where there are procurement risks, or in other areas of local government.

In other words, part of the rationale or objective is to ensure the resources are being targeted to where they are most needed in terms of the efficiency and use of limited resources from government in all States. It paints the landscape and gives us direction as to where to go. In an operational sense, as I have indicated, in certain classes of investigations where there is ongoing corrupt conduct, it permits an early intervention use of our powers. All of that must be a good thing and it must enhance the capacity of the Commission. I cannot see it would in any way attract criticism.

The CHAIR: It has been a very worthwhile discussion. The Committee appreciates the work that you have put into preparing for today. It has been enlightening for us to hear the way that you and your assistant commissioners have approached your new roles. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. The replies to those questions will form part of the evidence and be made public. Would you be happy to provide written replies to any further questions within five business days?

Mr HALL: Yes, we will do that.

The Hon. TREVOR KHAN: Is that enough time?

The CHAIR: I am in your hands, if you need more time—

The Hon. TREVOR KHAN: Taking into account the time of the year, I do not think it is time critical.

The CHAIR: It is not time critical.

The Hon. TREVOR KHAN: Can they be allowed 14 days?

The Hon. LYNDA VOLTZ: Yes, 14 days.

The CHAIR: Fourteen days will be fine.

Mr HALL: Thank you, that would be appreciated. If there is a need for further time in relation to any matter, we will advise.

The Hon. LYNDIA VOLTZ: You can always ask.

Mr HALL: Thank you for the extra 14 days.

The CHAIR: Thank you very much. That concludes the public hearing today. I place on record my thanks for the work that you have done.

(The witnesses withdrew)

(The Committee adjourned at 12:02)