

**REPORT ON PROCEEDINGS BEFORE**

**COMMITTEE ON THE INDEPENDENT COMMISSION  
AGAINST CORRUPTION**

**REVIEW OF THE 2019-2020 ANNUAL REPORTS OF THE ICAC AND  
THE INSPECTOR OF THE ICAC**

**At Jubilee Room, Parliament House, Sydney on Friday 14 May 2021**

**The Committee met at 12:50**

**PRESENT**

Ms Tanya Davies (Chair)

**Legislative Council**

The Hon. Adam Searle

**Legislative Assembly**

Mr Justin Clancy  
Ms Tania Mihailuk  
Mr Jamie Parker

**PRESENT VIA VIDEOCONFERENCE**

**Legislative Council**

The Hon. Trevor Khan

**Legislative Assembly**

Mr Ron Hoenig  
Mr Dugald Saunders  
Ms Wendy Tuckerman (Deputy Chair)

**The CHAIR:** Good afternoon and thank you for attending this public hearing of the Committee on the Independent Commission Against Corruption. Today's hearing is to review the 2019-20 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption. Before we commence, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet here in Parliament. I also pay my respects to the Elders past and present of the Eora nation, and extend that respect to other Aboriginal and Torres Strait Islander people who are viewing the proceedings 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; Mr Stephen Ruston, SC; and members of the ICAC executive. Afterwards we will hear from the Inspector, Mr Bruce McClintock, SC, and Ms Chelsea Delahunty, Acting Principal Legal Officer from the Office of the Inspector of the ICAC. At the outset, I would like to thank the witnesses for making themselves available to appear today. May I remind everyone to turn their mobile phones off or to silent. 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.

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

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

**PHILIP REED**, Chief Executive Officer, Independent Commission Against Corruption, affirmed and examined

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

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

**BERNADETTE DUBOIS**, 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

**ANDREW GARCIA**, Manager, Assessments, Independent Commission Against Corruption, affirmed and examined

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

**Mr HALL:** No, thank you.

**Mr RUSHTON:** No, thank you.

**The CHAIR:** Wonderful. Would you, Chief Commissioner, and anyone else like to make a brief opening statement before the commencement of questions?

**Mr HALL:** Thank you, Madam Chair. Good morning to you and to the members of the Committee. My understanding is that the last meeting of this Committee was on 15 May 2020 regarding the 2018-19 annual report. A considerable number of matters have occurred since then. I am unable to address the issues that have arisen since the last meeting without some slight extension of the conventional three or four minutes. I have estimated it will take between about 10 and 15 minutes for me to address the issues that I thought might be of interest and concern, perhaps, to this Committee. If I have that leave then I will proceed to open on those matters, Madam Chair.

**The CHAIR:** Please proceed.

**Mr HALL:** As I stated in my foreword to the Commission's 2019-20 Annual Report, three months shy of the end of the 12-month period covered by the report much of our lives had been in lockdown and the Commission had closed its premises in that time, with the majority of staff set up to work from home remotely because of the coronavirus pandemic. The challenge we had before us was to keep operating as effectively as possible within the confines of remote access while maintaining the wellbeing and enthusiasm of our staff. Little did I know that this situation would be ongoing, as it has been. Like many organisations around the nation, the Commission has adapted to the changing circumstances and the challenges of operating effectively under the COVID-19 pandemic. We began the process of staff returning to work in the office in mid-December 2020 under a detailed return to the office plan; however, we did not reopen the office to the public until 1 March 2021, to ensure that the office remained COVID safe.

Apart from a pause in some of the Commission's public activities between late March 2020 and early August 2020, the work of the Commission has gone on unabated. Between 1 July 2020 and 31 March 2021 the Commission has undertaken a considerable range of activities. If I could be forgiven for detailing some of the matters, it nonetheless does perhaps convey what the Commission has been doing in that interval I referred to. The Commission has undertaken the following work in that period: received and assessed 2,033 matters; initiated 14 preliminary investigations, of which three were Strategic Intelligence and Research Unit preliminary investigations; and completed 20 preliminary investigations, including four SIRU preliminary investigations, of which six were escalated to full investigations. We completed five full investigations in that period and we issued 363 section 21 and 22 notices in the exercise of our compulsory powers. We obtained 105 section 35 summonses to witnesses. We issued and executed 20 search warrants under section 40 of our Act.

We undertook 138 surveillance deployments. We took 54 statements and conducted 60 interviews; conducted 67 compulsory examinations; conducted the Operation Keppel public inquiry over 19 days; and

commenced the Operation Witney public inquiry. The Commission furnished three investigation reports to the Presiding Officers in operations Cygnet, Avon and Dasha. The Commission ran 68 corruption prevention workshops and made 84 presentations in that time. It provided corruption prevention advice on 123 occasions, and it has produced nine external publications in that period and posted corruption prevention awareness videos that have had over 87,000 views. Since March 2021 we have completed the public hearings in Operation Witney and commenced the public inquiry in Operation Paragon, which is still current. We have also furnished an additional report, which has been tabled, in Operation Mistral, being an investigation carried out by Commissioner Rushton.

I can say to this Committee that I am proud of how the conscientious Commission staff have overcome the challenges of the pandemic period to ensure that the fight against corruption in New South Wales and its public sector has continued on behalf of the public of New South Wales. In the 2019-20 annual report issues of funding of the Commission were discussed, and there are matters that have arisen since that report related to the funding issue of which I feel I should inform this Committee. A great deal of water, as it were, concerning ICAC funding has flowed under the bridge on the question of the need to explore a new independent funding model for the commission. Two fundamental matters concerning the financial arrangements of the Commission are now well established. First, the present system for funding the ICAC is seriously deficient. It undermines the Commission's independence. It also limits its capacity in functioning as the State's anti-corruption agency.

Second, the pressing need for the development of an independent and effective funding mechanism for the Commission necessarily involves, in our respectful submission, the constitutional responsibility of the New South Wales Parliament. It is not, as a matter of law, one that rests with or that can or should be undertaken or discharged by the Executive Government. The Parliament's role and responsibility arises from the statutory provisions of the ICAC Act—in particular, those provisions that create the Commission's independence and those provisions that establish the existence of what is, in my submission, a special statutory relationship that does exist between the Commission and the Parliament as established by the ICAC Act. The provisions of the ICAC Act and the consequential legal significance of those provisions have, as members of this Committee would be aware, been carefully analysed and explained by eminent Senior Counsel Mr Bret Walker in his legal opinions dated 16 April 2020 and 15 October 2020.

The key elements that would constitute an independent funding model or mechanism have been set out in the Commission's first special report made to Parliament under section 75 of the ICAC Act in May 2020. In this opening statement the matter of immediate concern is not the substantive issue as to what exactly an independent funding model looks like. Rather, it relates to what I would refer to as due or proper process by which the independent model should be established. I will attempt to make clear what I refer to as the "process". However, before doing so I note the following points. The legal advice in the opinions expressed by Mr Walker do provide a definitive analysis of two matters: firstly, the legal issues that mandate an independent system for funding the Commission; and, secondly, the process by which that is to be given effect. In that respect, the design and establishment of an independent funding model must be undertaken by the Parliament that created the ICAC.

In light of the events as they are developing, I wish to say something about the role of the Parliament. The first of the two matters to which I have referred is the substantive issue. It is one necessarily requiring, in our respectful submission, the consideration of all members of Parliament—that is, all government and non-government members. In her performance audit report of October 2020, which has been tabled in the Parliament, the Auditor-General for New South Wales, Ms Crawford, identified a series of fundamental problems with the current funding system for the ICAC. The Auditor-General also referred to the role of the Parliament in the matter. In relation to the matter of process, she recommended that there be consultation between the Commission and the other integrity agencies and the Parliament. The Auditor -General wrote:

However, the report recognises that the current role of these entities in the funding arrangements for the integrity agencies poses a threat to their independence. Consequently, it is important to recognise the important role of the NSW Parliament in determining the appropriate funding model for the integrity agencies. The audited agencies should consult closely with the NSW Parliament when considering these recommendations to ensure the views of Parliament are reflected appropriately in any changes arising from the implementation of these recommendations. This recognises the appropriate role of the NSW Parliament in safeguarding the independence of its integrity agencies.

The role and the responsibility of a State Parliament to itself determine the funding of an integrity body such as the ICAC has, in addition to Mr Walker's two legal opinions, also been considered elsewhere by current and former judicial officers of the highest standard. Sir Ronald Wilson, a long-serving former justice of the High Court of Australia, highly esteemed Justice Kennedy of the Western Australian Supreme Court and the Hon. Peter Brinsden, QC, a former judge of that court, were appointed and jointly constituted the formidable Royal Commission that undertook the investigation of the notorious commercial activities of government and other matters in Western Australia, commonly referred to as the "WA Inc." Royal Commission. In their final report the Royal Commissioners stated:

To aid the Parliament in securing public accountability, the Commission recommends both the modification and enlargement of a number of independent agencies which will subject the governmental system to investigation and review. To emphasise that the responsibility of these offices should be to the Parliament and not the Executive, we have described them as "independent parliamentary agencies". That designation is to be given practical effect in our recommendations by involving the Parliament directly in the appointments to these vital offices, in their funding, and in receiving their reports and recommendations.

Those are their Honours', and Commissioners', observations in part 2 of the multi-volume Royal Commission report, chapter 2, paragraph 1.3.7 on page 1-12. On the same aspect, there is also evidence of the legislative intention concerning the ICAC Act in the statements by former Premier Mr Greiner to the Legislative Assembly on 28 May 1988, in which he stated:

I made it clear in my statements before the election that the proposed Independent Commission Against Corruption would be responsible to Parliament, and not to the Executive Government. The independence of the commission and its responsibility to Parliament is constituted in a number of ways.

This statement is found in *Hansard* of 20 May 1988 at page 678. In recent discussions at meetings held between ministerial advisers and Commission officers as to the possibilities for change in the funding arrangements for the Commission, the Commission emphasised that the threshold issue that must be first addressed is the issue of process—that is, the procedures by which the Parliament can consider and determine the nature and the constituent elements of an independent funding model for the ICAC.

However, there was no particular interest displayed by the ministerial advisers in pursuing that issue with Commission officers. The exact reason for that is as yet unclear—at least unclear to me. As matters presently stand, I do hold a concern as to the possibility or the prospect that at least certain members of the Executive Government may in due course consider assuming a substantive role in determining a funding model for the ICAC. The concern or the apprehension to which I have referred is, however, moderated to some extent in the knowledge that the legal position concerning the Commission's independence has now been clarified by senior counsel in clear and unequivocal terms. The legal advice in that respect, of course, is known to the members of Parliament by reason of it having been part of the Commission's two section 75 special reports. As a matter of law the Parliament's responsibility, as discussed in the second Walker opinion, for determining the reform agenda precludes any substantive role to be performed by the Executive Government in decision-making concerning the funding of ICAC. In that respect I refer in particular to the second opinion of Mr Walker of 15 October 2020 at paragraphs 3 to 9 and 11 to 12.

I will then address working towards a parliamentary solution as events have unfolded and stand at the present. Stepping back from the constitutional and the legal issues, there are three other important matters of detail in my respectful submission. Firstly, the statutory functions of the ICAC must be borne at the forefront of all considerations. The ICAC exists and the functions of it are to be exercised so as to protect the public interest and to prevent breaches of public trust as its paramount concerns. I refer to section 12 of the ICAC Act in that regard. Secondly, the issue of a new and effective funding model is beyond argument a public interest issue. It is decidedly not a partisan political issue, in my respectful submission. Thus the members of this Committee in its report dated November 2019 were unanimous in accepting that the present funding arrangements are unsatisfactory and further recommended that the New South Wales Government examine a new independent model for the ICAC in the then current budget cycle, which of course has long since run its course. Thirdly, as it is the Parliament that has the responsibility for devising and taking action on the matter it may determine the procedures by which it should discharge its functions concerning the same.

If necessary, procedural matters can be supplemented by the making of any additional standing orders or sessional orders as may be considered necessary. There has as yet been no response or reply to the Commission's statutory reports, styled in the Act as "special reports", to the Parliament under the provisions of section 75 of the Act. The Commission respectfully requests through this Committee that members of Parliament do consider the matters raised in the section 75 reports with a view to addressing, firstly, the procedures required to facilitate parliamentary consideration of new funding arrangements for the ICAC and, secondly, the appropriate model or mechanism for an independent funding model. Parliament has, of course, the capacity to fashion the procedures by which it can discharge its obligations to the Commission in respect of the funding and hence advance and protect the public interest.

I will make brief reference to the New South Wales Auditor-General's report. The Auditor-General's report contains a detailed analysis of the current funding arrangements for the ICAC. That analysis confirms fundamental problems exist with those arrangements. Since the Commission's establishment there have been many examples of complaints made by ICAC commissioners concerning Commission funding. I interrupt myself to say that should the members of the Committee wish to be provided with references on that matter by former commissioners of the ICAC, we will be happy to supply the same. History has revealed that such complaints by former commissioners are well founded for reasons well understood. It is appreciated of course in that regard that it is now, I think I am safe to say, universally accepted that annual appropriations for the ICAC cannot—and never

will, and never have—been able to forecast the work of the ICAC for a given year, given the inherent uncertainties associated with its work, of which I am sure the members of this Committee are well familiar.

The threats or the risks to the independence of the Commission have existed over the years but they did materialise very tangibly in 2016, when funding of the Commission was drastically reduced without known reason and without specified justification. This resulted in the only forced redundancies in the Commission's history, leading to the loss of a whole investigation team, and it took time for the Commission to recover and to rebuild itself. That same risk still exists. It remains as something of a Damocles sword hanging over the Commission, which can be used again should the Executive so choose.

Finally, the lack of transparency in the current funding arrangements of the Commission results in the rather concerning fact, as the Auditor-General has pointed out, that there are two institutions that have no insight and are precluded from knowing how or on what basis the annual appropriation funding is determined. Those two institutions are the Commission itself and the Parliament. The Commission's capabilities in corruption investigation and prevention, I believe, are well established. However, there must be revolutionary change in its funding system. This is primarily to ensure its independence but additionally to fulfil its statutory mandate. Given the required resources, the Commission would be less restricted in the matters that it is able to pursue and the time in which to complete investigations, had it the resources, could be drastically reduced.

In respect of the former, the resources required, the Committee has in earlier meetings been made aware of the fact that the Commission some months after the new three-commissioner model got going commissioned KPMG to do two investigations: firstly, a preliminary investigation and, secondly, a post-performance investigation. After the three commissioners had been functioning, overlapping inquiries and the pace of work had very substantially increased. The report of KPMG on 8 October 2018 set out the basis upon which that consultancy examined every aspect of the Commission's operations and determined, by reason of the marked increase in activity with the three commissioners all operating, that there was a decided need for an increase in a number of areas including staff. KPMG analysed the cost at something just short of \$4.1 million.

A parameter and technical adjustment [PTA] application was put to Treasury. It was refused; there was nothing granted. Apart from the additional funding for the extra two commissioners and the CEO position, there had been no actual funding model for the new expanded commission. The rejection of the PTA application did not in any way suggest that KPMG's analysis was wrong in any detail whatsoever. It was, however, a lost opportunity. The Commission has not been able to return to the full three-commissioner model operating in the way it was before, and that by reason of two things: The additional pressures that were being brought to bear on staff could not be permitted to continue and, secondly, we just simply have not had the resources to be able to get back to that level of operation.

In light of the Auditor-General's findings on the issues surrounding the absence of transparency of the processes employed under the current arrangements, I have available for the Committee by way of information, if the members are interested—and I refer in that regard to the 2021-22 Appropriation Bill, which is consistent with the Auditor-General's statement. In the interests of transparency, members of this Committee can see, for example, the business case that has been presented for the coming financial year, which is also supported by the external consultancy of KPMG once again. In other words, Treasury have had both our submission and an evidentiary foundation for the budget case sought. I thank the Committee for allowing me the time to make this opening statement.

**The CHAIR:** Thank you, Chief Commissioner. I will bring to the attention of witnesses that Ms Wendy Tuckerman, the Member for Goulburn, has joined us on Webex.

**Mr HALL:** If I could, I have the documents that I have just referred to here. If you wish, they can be handed up.

**The CHAIR:** We can get the secretariat to collect them. Thank you very much.

**The Hon. ADAM SEARLE:** Chief Commissioner, I was both interested and disturbed by that part of your opening statement where you said that given the resourcing constraints, you were not really able to effectively operate the three-commissioner model, as set out by Parliament. Could you step us through in a practical sense what the operational effect of that has been? Does it mean a reduction in the number of investigations and the number of hearing days? Tell us what the practical result of that has been.

**Mr HALL:** Mr Searle, I am unsure whether we have provided this Committee with the KPMG report to which I made reference before. We are in a position to supply copies.

**The Hon. ADAM SEARLE:** That would be most useful.

**Mr HALL:** Very well, we will make sure that is provided. I cannot recall exactly but over something of the order of 10 months—Mr Rushton might be able to better recollect—the existing matters were divided equally between the three of us. The public hearing programs for those matters were allocated and pursued. My recollection is that one public inquiry by one commissioner—perhaps by myself—would start up, and as it was well advanced the next one would start before that finished and then the other commissioner would also have one. It was more a question of being able to get through the existing work at that time in an effective and much more expeditious fashion. It worked well. The prospect was, of course, that with the development of SIRU and with the capacity of each of the commissioners to interface with our investigation prevention teams, as we grew there would be obviously a need to expand our operations.

In short, to answer your question, we are very discerning on what matters we pursue. We cannot pursue everything. There are some matters which align more and which you would want to pursue but without the resources the decision goes against, in many cases, us taking the matter on. It might be that we can refer it back to an agency for inquiry. The other is the question of the speed with which we can get through the work. Working as I have described, with the three commissioners all working more or less sequentially, obviously you get through the work much more quickly. The key performance indicators [KPIs] of the Commission for investigations has in recent time regrettably increased somewhat. That has been driven by the fact that the workload has increased enormously. The amount of electronic and other data that we seize or recover has grown to proportions where we frequently now encounter what we call "choke points", when downloading and analysing the material places enormous strain on our resources. Regrettably that slows the pace of investigations down, so we have had to extend the KPIs.

If I can depart from the detail, I know—as I am sure members of this Committee would know, anecdotally at least—that people who are subject to our inquiries also, in a sense, have a Damocles sword hanging over their heads. I know from anecdotal evidence that people say that the stresses on them and their partners are enormous. I am very concerned about the time it takes for us to complete an investigation, but some of them and their material are so intricate and complex that regrettably it takes the time it does. But plainly, if you had increased resources, you would have more people working on them. My aim would be to reduce the KPIs substantially if we had the resources to do so to be able to download all that material and have it analysed in half the time that it takes us at the moment. They are the sorts of things. Not being able to operate in the way we were operating has more or less gone back to the pace of things when there was a sole-commissioner model.

**The Hon. ADAM SEARLE:** To be clear, you have had to be, I think you used the term more discerning about what you investigate. It sounds to me like you are saying that there are matters that are worthy of investigation that you do not have the resources to investigate.

**Mr HALL:** That does happen, yes.

**The Hon. ADAM SEARLE:** Secondly, there are delays in the investigation because of resourcing constraints and that impacts your final reporting time. Is that a succinct summary of what you are saying?

**Mr HALL:** That is right. What I am saying on that second point, Mr Searle, is that our capacity to expand, develop and broaden our operations is constrained by the budget we get. The PTA report that I referred to for the \$4 million was to build the capacity of a three-commissioner model. That required a substantial increase in staff. We have very good investigators. We probably need twice as many as we have if we are going to cut those KPIs down. I am not suggesting we should have double that number but certainly we need to have an expansion capacity. At the moment the FTEs—and we have those statistics if you would like to see them—show that basically the FTEs for the Commission have not greatly changed over the years. But the work is so much more complex now and the data and so on, so plainly the FTEs should be greater than what we have.

**The Hon. ADAM SEARLE:** Just by way of practical example, I note that the final hearings in Operation Dasha ended in, I think, July or August 2018 and your report was fairly recent, in 2021. Is that an example of something that was impacted by those constraints?

**Mr HALL:** No. The delays in that matter were certainly not wholly due to funding.

**The Hon. ADAM SEARLE:** In terms of the matters that you have currently, and without compromising any of the details of those, are you able to give the Committee, either now or on notice, a list of the current matters that you have, your hoped-for completion dates and how they might be impacted by your resource constraints.

**Mr HALL:** Yes, we can do that and we will do it.

**Mr JUSTIN CLANCY:** With regard to the key performance indicators, comparing the 2019-20 reporting period to the previous year, can I clarify: In your funding envelope for that period, was there an increase in funding in 2019-20 compared to the previous year?

**Mr HALL:** I cannot answer that off the top of my head because our funding is a mix of appropriation funding, which varies, and grant funding. On that, I might ask Mr Reed, who is on top of the statistics in our place.

**Mr REED:** Can we just clarify those dates that you were talking about again?

**Mr JUSTIN CLANCY:** I have here that in 2019-20, the Commission received and managed a total of 2,416 matters compared to the previous year of 2,743 matters. That is correct?

**Mr REED:** They are being read out of the annual report, I think. Yes.

**Mr JUSTIN CLANCY:** The document I have here before me. That is correct. I would be interested in the funding over that same period.

**Mr REED:** In the 2019-20 financial year, we sought—this is what the Chief Commissioner has been referring to—as part of a request through the budget process in February 2019, \$4.065 million as additional appropriation because, as it has been detailed in other parliamentary inquiries, the efficiency dividends were starting to bite. We were going to find ourselves in a difficult situation. We did not get that funding, but we then picked up one supplementary funds—\$2.5 million—for the 2019-20 financial period, so we managed to continue the operations of the Commission. But the base funding did not increase at that point in time.

**Mr JUSTIN CLANCY:** Just for clarity, the overall funding envelope including all supplementaries, what was the position compared to the previous period?

**Mr HALL:** We do have an analysis of that.

**Mr JUSTIN CLANCY:** I am happy to take that on notice.

**Mr REED:** Maybe we will come back to it. I think I have got the figures here. The 2019-20 funding—the recurrent funding through appropriation—was \$24,099,000. We then had the supplementation that came through of \$2.5 million of supplementary funding.

**Mr JUSTIN CLANCY:** I suppose the point of the question is I am interested in that whole funding envelope and the comparative period given that there were less matters received and managed over that same period and the average time to assess and close was increased over the last period compared to the period before that. I suppose, as a parliamentarian—and I appreciate the Commissioner's report about the separation from the Executive—I would be interested in how we measure KPIs if we are receiving less matters and the time increased and how we then make an assessment around funding in that regard. As a parliamentarian, I also step back and look at size of agency.

Commissioner, you have said ICAC would like to expand and broaden operations. You speak of twice as many investigators. As a parliamentarian, I have got to say resources are finite and a growth in agency does seem to me to be a challenge at a point where—are we growing an agency for the sake of growing that agency? I appreciate the importance of the work and, undoubtedly, the importance of this particular body for the good of the community. But as a parliamentarian, when we are dealing with finite resources, expanding is still something that I would look at. I would look through history and expanding of agencies. There should be limits placed around that. That is more a comment, but it is a concern that I look at as a parliamentarian.

**Mr HALL:** With respect, I understand exactly what you are saying. I understand the finite limits and scarce resources. Could I just clarify one matter? I think I did indicate that we could double our investigators to work and get those KPIs down, but I think I qualified it by saying that I am not suggesting that we would double it. What we do need is some form of assessed increase in the number of FTEs if we are going to expand. If we do not expand and we stay as we have been for the last five years, so be it. We realise that with an independent funding model who is chaired perhaps by one or more experienced, qualified, respected and independent persons who let all stakeholders have their say and understand the macro-economics, that system might come back to bite us. We may not get as much as perhaps we would have got by some other system, but that is not the point. Whether it is more or less, it has got to be assessed.

I respectfully embrace what you have said. Parliament has got to have the comfort that this assessment is real, that it is needed and that it is worthwhile. Whether Parliament or the eminent person or persons who assess it agree that it should be that amount or some lesser amount, again, is something that has got to be dealt with on an evidence-based approach. It is not just a plea for help. It cannot be that way. I understand a member of Parliament must be able to be comfortable in exercising the powers of a parliamentarian with integrity and responsibly. It can only do that if it has got the information. At the moment, the Parliament has no information, as we have discussed. We have in fact extracted the history of funding and FTEs for the last decade. I think that would be true.



**Mr REED:** Well, for the whole period of the Commission. It was published in the Parliamentary Legislative Council Public Accountability Committee report, 5 March 2020. We put in our submission to it, and it has been referred to in that report. Our submission was dated 6 November 2019. If you look at that graph that is of FTEs that go back to the inception of the ICAC, which is on page 35, you will see at the end of it that the forward estimates as they currently stand necessitate a reduction in overall FTE numbers of the Commission through to 2028-29 without either supplementation or additional appropriation. That is just the reality of government forward estimates. It is probably a graph that you might wish to look at.

**Mr HALL:** We are happy to provide that documented material which probably answers your questions, some of them much more effectively than I can. Madam Chair, we will undertake to provide the analysis.

**The CHAIR:** Thank you.

**Mr RUSHTON:** Can I just raise one matter in relation to KPIs? The Chief Commissioner has already mentioned the fact that a lack of resourcing may lead to matters that perhaps should be investigated not being investigated. But there is another problem too, and it is this: Because of a lack of resourcing we necessarily have to prioritise matters and, in doing so, resources are concentrated upon those particular matters. There are other matters that we know are going to be investigated but have to be put on the backburner. That can lead to a highly undesirable situation where matters that occurred five years ago, by the time we can actually investigate and report on them, are further years apart. Sometimes during the investigation priorities have to change. Resources are taken off one job and put onto another, which is very difficult for us.

**The CHAIR:** Colleagues on Webex, please indicate if you have a question to ask.

**Mr DUGALD SAUNDERS:** Just on the same line at the moment then, is there, from the panel, an idea of what the optimal is? When we are talking about needing more, is there a point in time where one [inaudible] applies to be topped up again? What is the optimum time frame that ICAC would need [inaudible] to grow indefinitely and indeterminably?

**Mr HALL:** Sorry, just to clarify if I may, when you say "the optimum", you are talking about what is the required increased amount on an annual basis that would be necessary to effectively work at a satisfactory level.

**Mr DUGALD SAUNDERS:** Correct, and staffing-wise for that to consolidate.

**Mr HALL:** I have to say that it is not a question I can answer at the moment. It depends on an evaluation of our existing matters, some of which, as has been said, are being worked on full time, others are being placed on the backburner. They have been on the backburner because we have to take investigators from one team to work on what, in the immediate future, has to be brought to a position of completion—at least completion before a public inquiry, if there is one.

I am happy to undertake to provide some form of analysis of more precisely the range perhaps as to what would be a preferable, satisfactory budget case for the Commission for the next year or two. The moving parts include the fact that though Parliament gives us an appropriated amount, it then takes back over the incident year and in forward estimates a slice of that by way of efficiency dividends. If you look at the appropriation amount, what is not appreciated—and Parliament may not even appreciate it—is to what amount as assessed by perhaps Treasury has been deleted before it gets into the Appropriation Bill.

Our contention of course is that there should be no efficiency dividends on an organisation which is a relatively small agency such as the Commission. There is no justification whatever for it. We cannot absorb it as larger agencies can in the back office, so to speak, and that is usually the test as to what is fair and reasonable. Will it affect people in the front line of operations, which will go directly to cutting its capacity, or not? And the answer is: We have a very small back office and, as happened in 2016, if there are going to be compulsory redundancies, it will hit the frontline troops. And it did; we lost a whole investigation team. I am sorry to be perhaps unable to give you a number. I am happy to do some modelling to suggest what, on current estimates of our work going forward for the next 12 months, would be required to undertake the work without having to put other matters on the backburner.

**Mr REED:** If I could add to the introductory comments of the Chief Commissioner, he did indicate that as part of the transparency process or the lack thereof that had been identified by the Auditor-General that we have provided you today the budget case that we put to Treasury for the next financial year and forward years. That in part deals with I think the question from the honourable member there, and included in that is a further review that was done by KPMG on workforce and process reviews of the organisation. It gives you an understanding of what we would be expecting or seeking to get from Government into the forward estimate period

to be able to deal with a maintenance of effort—is probably the best word to describe it—without the additional funding that is being sought.

The Commission's staffing will need to reduce, as we said to the Public Accountability Committee last year, were we not to have received the funding that we did receive during the lead-up to this financial year and then through the financial year in the November budget, we would have had to reduce staffing by about a quarter. We are back at that point at the end of this financial year based on the forward estimates. The business case that has been put forward is to try to address that but also pick up on the earlier October 2018 KPMG review which was looking at where there were funding staffing issues to deal with the three-commissioner model. We reprised that work in this additional KPMG report you have been given today and it comes up with a number of additional staffing positions that the Commission has now come forward and asked Government for. I think if you get an opportunity to look at the budget case that was put forward and the KPMG work, it may well answer some of the questions that have been raised without having to do further modelling because it is in effect there.

What we need to take into consideration is everybody was affected during the COVID period and most agencies, if they were given additional funding, were only given it for 12 months. We asked last year for it to be through the forward estimates we be given 12 months' worth of funding. All it did was delay again the decision that needed to be taken as to whether we were reducing our staffing significantly or being able to continue and maintain an effort of activity that we believed was in effect the baseline of activity that we as ICAC should be doing.

**Mr DUGALD SAUNDERS:** Could I interrupt very quickly? Part of the reason for my questioning—I hope you can hear me okay; my microphone is not great apparently—is that, given we are trying to look at ways of stamping out corruption, how do you justify that that would actually achieve that result? Because that is what we are trying to do. Is there a budget connection and a staffing connection that you are saying will—I do not know if you can guarantee it—set it on a better course if it has not been working up to this point?

**Mr REED:** Do you want me to address that or would you like to?

**Mr HALL:** Perhaps before you do, regrettably, like crime, you never get rid of it all. As the Committee is well aware, one of the principal rationales or central rationale for the establishment of the ICAC was to restore and maintain trust and confidence in the community in our State institutions. That can be achieved by activity that is designed to prevent corruption occurring. Our corruption prevention wing does incredibly valuable work for the public sector which I have no doubt reduces the risk of corruption in a number of agencies principally by reviewing the nature of the activities of the department, the corruption controls that have to be shaped and tailored to minimise if not eradicate the risk, and investigations. It is I think important that the commission be seen to be able to track down corrupt conduct, how it occurred and who was involved. It does require painstaking detail, reconstruction of past events, but the detection and the exposure even in a handful of cases would have, we believe, significant effects on the public sector and the relevant part of the public sector when people are exposed for engaging in corrupt conduct.

I cannot say that the Commission if fully and properly resourced would cut corruption by 50 per cent for example. But I think it is true to say that the volume and the nature of the work we do sends a clear message both to people who work in the public sector and others who wish to contaminate people who work in the public sector—more risk-averse. If I say so humbly, the ICAC is one of the lead agencies in this area in the country and I do believe that our work does have an effect but it is an immeasurable effect regrettably as to how much it does reduce corruption and the risk of corruption. That was not a very satisfactory answer. I would like to be able to put figures around it but unfortunately it defies that sort of analysis.

**The Hon. TREVOR KHAN:** Can I just ask a follow-up question to that?

**The CHAIR:** Yes.

**The Hon. TREVOR KHAN:** Chief Commissioner, you have obviously participated in and had the opportunity of reading the report of the Public Accountability Committee. At least Adam Searle and I were on that. That report identified a number of agencies that fitted into the concept of independent agencies—the Law Enforcement Conduct Commission [LECC]; the Ombudsman's office; I think there might have been a bit more conjecture, but the Electoral Commission; and the Crime Commission. In light of your opening comments with regards to the responsibility of Parliament, I am just wondering if we look at ICAC as being one of the suite of independent agencies, how do you see the Parliament balancing the demands of each of those agencies, each seeking a different funding model, as we saw when, picking up Mr Clancy's point of view, there is a scarce resource—money—and everyone has got their hand out and nobody is happy? I am just wondering how the Parliament prioritises between all these agencies.

**Mr HALL:** I suppose that is partly a political exercise. Minds differ on what is a fair thing. All I can say is that we share in common with the agencies you have mentioned a character that needs to be independent, each of those for different reasons. But we are different, very different from the other agencies you have mentioned. I do not for a moment suggest that the work that they do is to be seen at a lower level. I do not suggest that at all. I am aware of the valuable work that each of those agencies does for the community, and the community owes each of those agencies a great debt, in my view.

You have used the word "prioritising". What we seek is, in essence, an impartial, thorough assessment of what is reasonably required for the ICAC going forward. We are happy, as I have indicated, for that to be put into independent hands. Whoever comes up with the numbers, they are not working for us; they are working for the Parliament. They would be the assistants to Parliament, independent themselves, and the Parliament could safely rely upon whatever the range, for example, of funding recommended for the ICAC for the following fiscal year. When one looks at the budget amounts for the different agencies you can see a great variation in the actual numbers. For example, I recently looked at the figures for the Electoral Commission; they dwarf us in terms of the budget, but that is understood because of the nature of their work.

So it is very hard to say that you have got to prioritise one—give more money to one than the other. It is an outcome that is derived from a fair and proper, sound evaluation of questions of need for operation. Inevitably, the Electoral Commission are always going to end up with a greater budget than we will ever have, but that is in the nature of things. So I do not see that as a priority listing. It is a matter for government to properly look at the needs as assessed through expert evaluation and if there is a need for a cut across the board because of the macroeconomic factors, so be it; we have all got to live with that.

Mr Khan, I am not sure if I am answering your question, but I do not see it as a priority listing, as it were, as to how Parliament is going to say this year the Ombudsmen have been performing so well that we should give them a reward of some kind. It is really just a factor of the assessment process that we have suggested, which would be of great assistance, I think, to the Parliament to have a specialist assessor assessing machinery to be able to guide Parliament, and those assessors, presumably, would be given some guidelines as to what factors they have to take into account to ensure that the budgets recommended are realistic, taking into account all the factors.

**The Hon. ADAM SEARLE:** Madam Chair, I have got a couple of questions in due course.

**The CHAIR:** Yes, I am aware. Mr Khan, do you have any further questions?

**The Hon. TREVOR KHAN:** Not on this topic, thank you.

**The CHAIR:** Mr Searle?

**The Hon. ADAM SEARLE:** Two things, Chief Commissioner. I think in your evidence to the Public Accountability Committee last year, or maybe a little bit earlier, you were saying in order for ICAC to simply maintain, in terms of its general funding, where it had been, it needed an additional \$7.3 million in the 2019-20 year. Obviously that money was not forthcoming. Presumably there is a compounding erosion effect year by year. Perhaps if not now but could you on notice tell us what is the equivalent figure to 30 June this year that would represent an amount that would bring ICAC's general operation budget back to an even keel, if you are able to identify that?

**Mr HALL:** Certainly, Mr Searle. That will be done.

**The Hon. ADAM SEARLE:** My last question on this is really a query. You have got the KPMG report; you have seen the Public Accountability Committee reports. I think this Committee has, in principle, supported an independent funding model. Last year, when debating the budget bills, the Legislative Council voted to increase the ICAC budget by the \$7.3 million, but that was, frankly, ignored by the lower House, and I think the lower House itself might have recently considered legislation around independent funding for ICAC, which has yet to find majority support. Faced with these sorts of obstacles, do you see a practical way forward for advancing the independent funding model proposals?

**Mr HALL:** It is a matter to which I have given quite a deal of thought, but I have to admit that I do not have the command of parliamentary procedures such as you have. But it seems to me that there needs to be frank consultation between the independent agencies directly with members of Parliament. How under the standing orders that can be arranged is beyond my understanding, but it seems to me that a consultation of that kind would map out a program whereby all, call them stakeholders, can make submissions to the Parliament. Parliament may need some assistance in determining both the model and the mechanics that go with it as to how it would operate in practice. I think a constructive dialogue needs to take place. I think it has now moved to a point where it has been recognised that, as you say, there is a need for a new independent model. The question is: How should the consultation take place to reach that end?

We have put forward the elements of what we, with respect, would conceive any decent model would contain. They are designed with common sense in mind to allow Treasury and other stakeholders to be around the table with the independent assessor to provide information as the assessor requests. In other words, the actual procedures for the assessment process would be very worthwhile discussing and, I believe, at the end of the day members of Parliament would all agree it is not rocket science; it is really a question of being able to sit down and work through the steps that are required to evaluate different alternatives in terms of the way forward. There has been discussion in the literature of various kinds as to the way in which Parliament has this relationship with such bodies as ours. I have described it as a statutory relationship. I believe it is. I believe we do the work of Parliament; that was the intention when it was set up.

The Parliament, in order to be able to supervise the public sector and those who deal with the public sector, does not, of course, itself have the capacity to perform its constitutional oversight function over the Executive, and hence the establishment of the ICAC to do that oversight work, which is the constitutional responsibility of the Parliament. I think there is absolute need, as the Auditor-General has said, for there to be real consultation between the members of the integrity agencies, the members of Parliament—Government and non-government—to be able to sit down and work through what I contend is, I would hope—perhaps I am being idealistic—a public interest issue and not a partisan issue. With goodwill—a word used, indeed, by Mr Walker himself in his second opinion—it is achievable.

**The Hon. ADAM SEARLE:** Thank you. Do we have copies of the two Walker opinions, Madam Chair?

**The CHAIR:** It was sent via the reports, yes.

**Mr HALL:** If I could answer through you, Madam Chair?

**The CHAIR:** Sure, Mr Hall.

**Mr HALL:** My recollection is there was a copy of each of Mr Walker's opinions attached to the two section 75 reports.

**The CHAIR:** Correct, yes, thank you. Chief Commissioner and colleagues, I am cautious about the time. We have been ventilating the subject matter of the independent funding model, which is very important, but we have less than an hour to go, and I know the Committee has other questions. If Committee members have further questions in relation to funding, they may be able to put them to the Commission in writing. I would like to move on to other topics now. Mr Parker?

**Mr JAMIE PARKER:** Thank you, Madam Chair. I can put some questions in writing. We need not only goodwill but also a little bit of political will around that matter. Hopefully, that is something that we as a committee can progress with our in-principle support for the independent funding. Obviously the next step is the quantum of funding. Obviously transparency is an issue. I think your points highlighted that quite powerfully to the Committee, especially when you produced the KPMG report and the response did not provide anything useful in terms of understanding why the funding was not provided. That is something I think we should take up. But I want to put that to one side.

Putting funding to one side, I want to address the issue of the way the Government deals with submissions that ICAC makes. I am particularly interested in protections for people who make voluntary disclosures. It is something that I have been pursuing in the Parliament. I asked the Premier a question—I have been asking the same question every year for the past three years—about when the bill that the Government committed to, which was originally proposed by the ICAC in a 2014 submission, to address public interest disclosures will be introduced. In her answer the Premier outlined the steering committee, which has been established to address these issues. Chief Commissioner, you indicated that you are a member of that steering committee. What is your assessment of that process and your sense of its progress? I am particularly interested in seeing that come to fruition. I know the Premier does not oppose it. In fact, I am very grateful that she allowed the Committee to inquire into that. I am interested in what your role in that has been over the past year and in how you think that steering committee is progressing.

**Mr HALL:** You are really referring to protected disclosures?

**Mr JAMIE PARKER:** Yes.

**Mr HALL:** The statutory provisions and the principles around that are very carefully implemented in relation to information we receive to ensure that the disclosures can be secured and that the identifying information around them is protected. The actual work on the bill that you refer to is something I have not been directly involved in, but the question of disclosures is, I think, working well at the moment from the commission's point of view. We get many, both anonymous and also identified, complainants coming forward to provide information. We have also encouraged people to come forward in devising our witness cooperation policy. There is clear

evidence that is working and that is encouraging people to come forward and disclose under that procedure. The importance of it is both to, obviously, establish fact and truth, but disclosures also can mean that the length of our investigations can be considerably shortened. Particularly persons who are involved—perhaps not to the highest levels but perhaps medium levels—for them to be able to disclose matters can save us months of investigations. I am not sure if this is what you are specifically interested in.

**Mr JAMIE PARKER:** That is interesting information. I know that you may not be directly involved; you may have a delegate that sits on the steering committee that has been established to examine the development of the bill. Has ICAC been involved in that process? Is there a delegate that you send to represent the Commission when they are considering the development of the bill?

**Mr HALL:** Perhaps Mr Waldon is in the best position to answer your question more directly.

**Mr WALDON:** Thank you, Mr Parker. I am the delegate. I think the steering committee has been largely engrossed in looking at various iterations of the bill. I think the last meeting was a couple of months ago. And my understanding is the current draft of the bill is getting to the stage where it should be introduced to Parliament shortly.

**Mr JAMIE PARKER:** My interest is how we progress submissions made by ICAC in these cases and the process that has been developed to implement that submission. It is quite an unusual process because it has, technically, the chiefs of so many different organisations on it. It has taken several years. I am not so concerned about the time but the process. What is your sense of the process that has been put together to implement the submission that was originally put forward by the ICAC?

**Mr WALDON:** I think the steering committee works very well, and I think the process overall has been quite a positive process.

**Mr JAMIE PARKER:** That is good.

**Mr WALDON:** There have been no major disagreements. Issues arise from time to time. They are discussed and they are resolved.

**Mr JAMIE PARKER:** That sounds great, thank you. I have one other question. It is a very different one about corruption prevention advice. I note that the provision of that advice has decreased significantly since the last reporting year from 180 to 142. Could someone give us an insight into why that might be the case?

**Mr HALL:** Mr Rangott, who heads up the corruption prevention wing, is here somewhere.

**Mr RANGOTT:** Thank you, Mr Parker. That particular time series does jump around quite a bit, so if you trace those numbers back into the past, it is not one of those times series you can easily describe. It is quite fickle. Sometimes it depends on things like—for instance, the Treasury introduced a new government policy around fraud and corruption control in 2018. I think that might have bumped up some of the incoming inquiries that particular year. It also sometimes seems to hinge a little on the public inquiries. Sometimes that generates more interest in our work and the phone rings a little bit more. But I am loath to commit to some specifics about what makes these numbers go up and down each year. It is difficult to determine.

**Mr JAMIE PARKER:** I would have hoped that it was a reflection of the understanding that agencies have around corruption, so there is less need for that. But your sense is that there is still an ongoing need, that this does not reflect anything apart from just the issues that you raised?

**Mr RANGOTT:** I think so. I might just add a couple of comments. It is the case, I believe, that the private sector is often turned to for some of this advice. There is a healthy consulting community out there, and agencies can turn to those organisations to seek advice. I think perhaps the maturity of the advice that comes from the private sector has improved gradually over the years. I think it is probably also the case that an individual agency, for instance, might be subject to some sort of machinery-of-government change or redundancy, or even an individual who has a lot of acumen around dealing with that agency's procedures might leave and all of a sudden they might have to go back to square one, for instance. So their own maturity can bump up and down based on intra-agency factors.

**Mr JAMIE PARKER:** That's great, thank you. I know there are other people who would like to ask questions, so I will hold back, but if there is time at the end I might ask a few more questions.

**The CHAIR:** Thank you very much. I do have a question. In relation to page 25 of the annual report under the heading "The assessment process" you indicate that:

Staff analyse all matters received, taking into account:

- whether or not corrupt conduct is involved ...

I am curious to find out: How is it that when you are assessing a proposed scenario you can at that point determine whether or not corrupt conduct is involved?

**Mr HALL:** Madam Chair, I am happy to address it, but I think the person who is dealing with this every day through the assessment process might be better.

**Mr GARCIA:** Could you please restate the question?

**The CHAIR:** Certainly. In the annual report on page 25 under the title "The assessment process", the first dot point reads:

Staff analyse all matters received, taking into account:

- whether or not corrupt conduct is involved ...

My question is: How is it that ICAC staff are able to determine whether corrupt conduct is involved at the assessment stage?

**Mr GARCIA:** Of course. A determination is made whether corrupt conduct is likely to be involved; perhaps that is an omission in the annual report. We consider the nature of the allegations that are made in the complaints, and we receive all sorts of allegations. They can involve Federal government agencies. They could involve other State government agencies. In fact we do, from time to time, receive allegations involving agencies in other countries. And so, for those types of allegations we can determine quite quickly whether they are likely to involve corrupt conduct or not. For those matters where there is the possibility of it involving corrupt conduct, that is considered and assessed further.

**The CHAIR:** Thank you for that. I want to draw your attention to the findings in Operation Avon and Operation Mezzo in relation to water management. I read that the ICAC's findings in those operations were that there was no evidence of corrupt conduct that you discovered. However, you certainly had produced a significant report and produced a significant number of findings and recommendations. My question is: If at any stage of the ICAC investigation you determine that there is no corrupt conduct, would it be of value and is it worthwhile for this Committee to consider that that scenario or the amount of information and the evidence that has been gathered is essentially referred to a different agency or organisation, whether they exist or not at the moment, to conduct what could be a business improvement assessment or an integrity assessment of what you have discovered thus far, thereby releasing your organisation from looking into a matter where there is no corrupt conduct so you can, in a sense, move on to the next inquiry with your resources?

**Mr HALL:** Yes. Avon and Mezzo was a very unusual investigation for us, for reasons I will try and very briefly mention. Coming to the point of your question, we certainly do. As Mr Garcia would be able to explain in greater depth, if we assess a matter as involving perhaps a form of misconduct—sometimes it is hard to see whether it falls on the line of maladministration or misconduct. If for particular reasons we think it should be referred to the agency to deal with by way of investigation or inquiry and report and then to report back to us as to whether or not the facts do establish that there was misconduct of one kind or another. If it becomes clear that it is misconduct rather than corrupt conduct, or maladministration, then we leave it to that agency to deal with. It is important to do what you say. We do not want to burden the resources we have and those who have to deal with these matters with complaints or notifications that would be better dealt with elsewhere.

That is really fundamental to our assessment approach as to whether or not, applying the assessment filter, this is a matter that we could investigate but given the resources—we are ever mindful—we would prefer the agency under some supervision from us to do it. Avon was the inquiry called in respect of the ABC program *Pumped*. It raised a number of matters and we had to categorise it into a number of allegations. Coming to the issues that led to no corrupt conduct findings, there was a culture, if you like, at governmental levels which might be described as favouritism and which we were unable to establish reached the level of corrupt conduct. There were individuals who did the wrong thing but on examination, applying the requisite standard of proof as to whether it amounted to corrupt conduct, we were mindful of the fact that these people were contaminated or exposed to a culture where they were expected to act in certain ways, and they did. There was no personal benefit to them.

They thought they were doing the right or smart thing to, as it were, pursue this culture to show their superiors how effective they were in achieving what seemed to be—in their mind, anyway—the desired outcome in terms of the issues associated with the very important issue of the Darling Basin. They were difficult matters to determine whether or not people who were deliberately feeding information to the irrigation sector, which the community was not party to and not provided with any equal treatment, should be the subject of corrupt conduct findings. For the reasons expressed in the report, ultimately I determined that they should not be, but it was a case where there were both issues of maladministration and misconduct of various kinds exposed. It really was not until you got into the nitty-gritty and the detail of that investigation that you were in a position to really make a

judgement call. Ideally we would have loved to have done what you suggested, Madam Chair, but it was so entangled with so many other factual scenarios that it took a huge effort to get through it.

**Mr JAMIE PARKER:** We have been discussing exoneration protocols and one of the issues that has come up is leaks to the media and how that is managed. Could you outline for us—obviously the report did not go into this level of detail—what the processes and procedures are internally to manage the potential for leaks to the media and how the commission deals with that sensitive information? I know that it has been something that has been raised over the last 12 months and so I am sure that it is relevant in terms of the report. Could you outline that or let us know what has happened in that area, please?

**Mr HALL:** Mr Parker, I might call on Roy Waldon in a moment just to provide a bit more detail around this. But I can say that information does not leak from the ICAC. The reason I am confident of that is the protocols we have in place, the way in which staff are instructed and the quality of staff, who without exception are highly conscientious people. They know their responsibilities and they know how confidential information is to be dealt with. But I will ask Mr Waldon to just address the protocols that we do have which protect against leaks—even inadvertent ones.

**Mr WALDON:** I just reiterate the Chief Commissioner's comments. In the entire time I have been at the Commission, I am not aware of any leaks from the commission. We have protocols in place, of course, in relation to staff selection, first and foremost. All staff are security vetted, and very thoroughly vetted, to make sure they are suitable to be employed at the Commission. Once they join the Commission, they are taken through our policies and procedures, including our security policy and procedures in relation to the use and dissemination of information and the importance of the confidentiality of our information. Our data systems are protected and restricted. In some cases where we are conducting particularly sensitive investigations, only those who are involved in those investigations have access to the relevant systems and information. Other Commission staff, including myself, do not have access to that information until the matter becomes unrestricted.

**Mr JAMIE PARKER:** I have one other question, which is about the Commission's new witness cooperation policy. Could you outline to the Committee the impact it is having and why it was developed? Could you give us some more information about that?

**Mr HALL:** Certainly. Very briefly, I always had the perception that even members of the legal profession were reluctant to approach us because they might be accused of approaching us improperly to do a deal. Of course, the ordinary layperson probably had the same fear. The idea behind developing a policy of cooperation I think originated in my mind from discussions I had with the Australian Securities and Investments Commission [ASIC] and the way they proceed. We developed this policy because, as I said a moment ago, if people are prepared to make admissions, even against themselves, that can lead to a very effective investigation that would have taken perhaps a year. You can get right to the heart of it very quickly—in a matter of months. The policy was designed to encourage people to come forward to make admissions, to tell us the facts, and there could be some potential benefit for them in doing so, such as the Commissioner's discretion not to make corrupt conduct findings against that person, discretion not to refer it to the DPP, matters of that kind.

I know for a fact that it was extremely effective in the Operation Aero matter relating to the New South Wales branch of the Labor Party. A number of members of a family group and witnesses who worked for that family had given evidence that was false in the compulsory examinations. The thing that tipped it over the edge was that one of the family members, for reasons of the stress this matter was causing to the family, decided that he would become cooperative, but in doing so he was represented by a senior counsel to whom we provided the copy of the cooperation policy. I am reliably informed that it was because of that policy, once it was explained to that person, that he decided it was all too hard and that he would cooperate. One of the submissions that we have received is, in effect, that there should be some consideration of his position because of the cooperation policy. In other words, he is seeking some sort of concession or some benefit from it. It is an important policy. It will not work in every case, of course, but it certainly—I also, I should add, I circulated it in draft to the DPP to get his views as to whether he saw any difficulties with it, and he did not. He was happy to see it come into being and it was brought into being.

**Mr JUSTIN CLANCY:** I ask a follow-up question to that of Mr Parker; it might go to Mr Waldon. The Chief Commissioner pointed out that leaks do not occur, but over the past 12 months we have seen material that was inadvertently published. I note the inspector is in the room and he looked into that matter. But from the Commission's point of view, has that led to any changes into standard operating procedures or has there been any processes changed as a result of that?

**Mr WALDON:** Yes, there have. We set up an internal working party to look at that and how that inadvertent leak occurred, and we have put together new policies and procedures that address that and change the

systems that are in place so that that will not occur in future. Those new systems are currently in place in relation to the present public inquiry Operation Paragon.

**Mr JUSTIN CLANCY:** I note that it was inadvertent but I note too that lots of organisations in various ways—workplace health and safety and things like that—even when something is inadvertent there is a level of sanction taken against the entity. That has not been the case. I note that apologies have been made, that ICAC suitably recognised the gravity of the situation and responded to that.

**Mr WALDON:** That is correct. There were no sanctions taken against the individual. The matter was looked at both internally and, as you say, by the inspector. Our internal investigation established that it was an oversight and it was inadvertent. For those reasons, no particular action was taken against the officer involved. I should say too—and just to reiterate what the Chief Commissioner has said—it is also a question of resources. Where you do not have a lot of money, your resources are limited. Sometimes you can put in place better systems if you have better resources to engage more senior people in undertaking particular tasks. In this case—and this was the first and only time that I am aware of where there has been that sort of breach and that sort of disclosure—it was a relatively junior officer. As I have said, we have now changed the procedures. One of the people who is now involved in undertaking the process is a person who, because of funding, is currently at the Commission until 30 June. Whether that position is still available after 30 June will largely depend on the level of funding we get in our appropriation or supplementary funding for next financial year.

**Mr HALL:** If I could just add to that, this was a one-off situation but we are accountable as well. I think to date we have provided all relevant information to the Inspector. We are accountable to the inspector and I hope that he has been satisfied with the information. In other words, it is not a question of just changing protocols. We have included, as is necessary, the involvement of the Inspector for him to be satisfied or not as to the steps that have been taken.

**Mr JUSTIN CLANCY:** Thanks, Chief Commissioner. I make the comment that being accountable—and I appreciate the apology—for something like that, I do not think we would want to bring it back to just resourcing as an issue in that regard.

**Mr HALL:** No, it should never happen.

**The CHAIR:** I just have a couple of follow-on questions from Mr Clancy's question. In reading the report on that matter and also the Inspector's report, my understanding was that the individual known as Ms AB in those reports failed to open up her email to read the instructions contained in the email. I do not think that could be linked to a claim of lack of resourcing in relation to that. It was simply a matter that she did not fully open the email and read it. Under the requirements of the ICAC Act, section 112, there are prohibitions linked to that. You cannot publish in contravention of a direction given under this section and it indicates the maximum penalty: 50 penalty units or imprisonment for 12 months or both. So it is quite a serious breach if you breach section 112. I understand the circumstances around that breach. I understand that there have been changes to policies and procedures in an effort for that not to happen again, but there are obviously penalties associated with breaching that section. Why has the ICAC not paid any penalty?

**Mr HALL:** That section was not involved, of course, in relation to the leak. I should not call it a leak—the inadvertent disclosure. I might just add that Mr Waldon's reference to resources, as I understood what he was saying and in my understanding of the matter, is that ideally if you had the resources you would have had a more senior person doing the function of that particular person on the day. We did not have the staff to be able to put somebody into that position that day and so the junior person was given the task—unfortunately, as it turned out. But why should the ICAC not pay a penalty of some kind? As I said, that provision, section 112, is regularly used on almost a daily basis in the Commission to suppress publication information. It does so when it recognises that particular information, if disclosed, would be or could be detrimental to its investigation or could be placing somebody at risk.

We do have disclosures in the course of our processes. For information we obtain from somebody which is very damaging against another person and which if it was put out untested and not a subject of evidence in the proper way—in a public inquiry, for example—it would be a very serious matter and would be treated as such as a breach if an order was in place to suppress it. The circumstance of the inadvertent material that ended up on the public website was not done in contravention of any order. It was a breach of the protocol of the Commission. That does not and did not at the time attract any particular monetary penalty or penalty of dismissal or anything of that kind. Those issues of misconduct, if there ever are any, would be dealt with as a disciplinary matter and certainly there would be sanctions applied to the person if found to be culpable.

I think the context of this matter includes the fact that it has never happened, ever, in the history of the Commission. It has not happened since, and I think that puts in context that we do have protocols that work and



do keep information that should be kept suppressed confidential. In the particular circumstance of this case, concerning the particular employee and what that employee did or did not do, the Inspector has been given all the information that we have about that. I do not think, from my recollection of my communications with the Inspector, that he has suggested that we should have taken disciplinary action against that individual in the circumstances that arose—notwithstanding, as the Commission does accept and did apologise for, the embarrassment that was perhaps caused and that material which would have otherwise or should have been kept confidential was exposed through that breach.

**The CHAIR:** Mr Khan, I recall you indicated a little while ago you had questions on a different matter. Do you still have those questions?

**The Hon. TREVOR KHAN:** I do. It relates to an inquiry undertaken by the Legislative Council Privileges Committee and the appropriateness or otherwise of establishing a role of a compliance officer. I wonder, Chief Commissioner, if you would like to comment on the appropriateness of such a role and the appropriateness perhaps of the Legislative Assembly investigating the matter with more enthusiasm.

**The Hon. ADAM SEARLE:** Do they have any enthusiasm?

**Mr JAMIE PARKER:** Not for that.

**Mr HALL:** I am sorry, Mr Khan, I was just distracted a moment ago. This would be a position of compliance officer in what context?

**The Hon. TREVOR KHAN:** The ICAC provided a submission to the Privileges Committee of the Legislative Council proposing that the gap that was essentially created by the defining of ICAC's powers be filled by the role of a compliance officer who would deal with relatively minor matters of breaches, for instance, of entitlements and the like, so that they did not have to go to ICAC.

**Mr HALL:** I see. You want my view about whether that would be a good idea.

**The Hon. TREVOR KHAN:** Yes.

**Mr HALL:** Okay. I am just reminded we have put in a written submission, Mr Khan, and I am just not in a position now to say whether we were in favour of it or against. But speaking now, off the top my head, I would think that there might be some merit in having a specialist compliance officer to deal with such matters. It is a field that the omission has ploughed in the past and I think, so far as the future is concerned, the principles that we espouse in those matters are well known. Sometimes that is a reason why we do not continue to investigate a matter where, for example in Corrective Services, the problem has already been looked at. The problems around, for example, supplying drugs in gaol have already been well and truly investigated by the Commission. There is not much point in keeping on doing those sorts of matters one after the other. I think the same follows—in my view, anyway—with matters such as entitlements that allegedly are said to be misused or abused. I would prefer to see those matters dealt with outside ICAC if possible.

**Mrs WENDY TUCKERMAN:** Commissioner, as we understand, the ICAC Act gives powers to the ICAC Inspector. A part of the section under the Act allows his access to record books of the Commission and to have copies made of any of them. Have there been situations or circumstances where ICAC has questioned the request of the Inspector for information?

**Mr HALL:** Firstly, we take the view that the Inspector is entitled to our records on request. There are well-known and well-accepted exceptions that require redaction of some of the material that we send to the inspector, who understands what those redactions are or the basis for them. There is only one case that I recall where I sought from the Inspector some information as to the purpose of seeking access to certain records, the details of which I cannot recall now. The Inspector responded to my letter. I think he reaffirmed that he has an entitlement and he had an entitlement to the records, and there was no requirement—I think I am quoting him correctly—for him to spell out exactly what the purpose was in making the request, although again my recollection is he confirmed that of course it related to a matter that was within his jurisdiction. Apart from that one case, I do not recall any other instance that I am aware of where there has been any dialogue with the Inspector about any request for information. Ms Tuckerman, I do not know if that directly answers your query.

**Mrs WENDY TUCKERMAN:** Thank you.

**Mr HALL:** Okay, thank you. I should add that the Inspector is present here. So if my recollection is wrong or faulty then he will straighten the record, I am sure.

**The CHAIR:** We will have time with the Inspector later. In your annual report on page 49 under the heading "The Commonwealth Ombudsman", the Commonwealth Ombudsman indicated that there was a slight

error in the report that you did provide to the Minister and he asked whether you could provide an addendum correcting that error. You indicated that you would do so. Has that been done?

**Mr HALL:** I am sure it probably has, but could I take that on notice?

**The CHAIR:** Sure, yes.

**Mr HALL:** We will respond, of course, to that question.

**The CHAIR:** That is fantastic. My other question is in relation to the third paragraph on page 57 under the heading "Risk Management" on page 56. It states:

In 2019–20, the Commission conducted risk assessments for all public inquiries to determine risks associated with witnesses and the level of security services required.

You are currently developing protocols for the conduct of compulsory examinations and public inquiries. Could you provide the Committee with an update on the findings of your risk assessment and those protocols?

**Mr HALL:** Certainly, Madam Chair, that will be done.

**The CHAIR:** Are you taking that on notice?

**Mr HALL:** Yes, if I may.

**The CHAIR:** Thank you. On page 58 you identify under "Information management and technology" a range of technological things. I do not really know how you would describe them. Technological projects—there you go.

**Mr HALL:** Yes.

**The CHAIR:** Querying the functionality of the ICAC in its operations, do you have document-tracking methodology so that when a person is logged into your system and they open up or forward a document that is tracked in terms of the IP address?

**Mr HALL:** Again, if I could take that on notice, we certainly will provide you with the information.

**The CHAIR:** For sure. Thank you. I have a couple more questions in relation to your financial statements. On page 76 under "Employee-related expenses" there is an item indicating a redundancy of \$95,000.

**Mr HALL:** Yes.

**The CHAIR:** Without disclosing anything confidential, are you able to provide information on what happened in that scenario? You can take that on notice as well if needs be.

**Mr HALL:** Yes. I might be able to provide some information at the moment if I can just check one detail.

**The CHAIR:** Sure.

**Mr HALL:** I am just being told—I thought it might have related to a particular employee but it does not, it relates to another. Perhaps if I could take that on notice also and provide the information about that.

**The CHAIR:** Yes, that is fine. Knowing that we are near the end of our public hearing, I am also keen to get some further details on the make-up of the "maintenance" and "other" budgets. The maintenance budget is \$883,000 and everything that falls under "other" is over half a million. If I could get some more detail as to what made up those sums of money, I would appreciate that.

**Mr HALL:** Yes, certainly. Madam Chair, I will take that on notice and we will provide the information.

**The CHAIR:** Thank you very much for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within two weeks to any further questions?

**Mr HALL:** Yes, that will be done.

**The CHAIR:** Wonderful. Thank you, Chief Commissioner. Commissioner Rushton, Mr Reed and colleagues, thank you for your time. We will now have a short break and we will reconvene at 3 o'clock for the Inspector's public hearing.

**The Hon. ADAM SEARLE:** Madam Chair, before we do, something has arisen that I need to attend to. I will not be present for the afternoon session. I want to place on record that no discourtesy is intended to the Inspector.

**(The witnesses withdrew.)**

**(Short adjournment)**

**BRUCE McCLINTOCK**, Inspector, Office of the Inspector of the ICAC, affirmed and examined

**CHELSEA DELAHUNTY**, Acting Principal Legal Advisor, Office of the Inspector of the ICAC, before the Committee

**The CHAIR:** Welcome, Mr Inspector. Do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

**Mr McCLINTOCK:** None whatever, Ms Davies. I probably should introduce Ms Delahunty, who takes over from Ms Zekanovic. As my Principal Legal Advisor you met her on many occasions, and she had her baby about three months ago.

**The CHAIR:** Wonderful.

**Mr JAMIE PARKER:** Well done.

**The CHAIR:** May I ask, boy or girl?

**Mr McCLINTOCK:** Boy. So she has one girl and one boy now.

**The CHAIR:** Perfect.

**Mr JAMIE PARKER:** Nice balance.

**The CHAIR:** That is very nice. Welcome, Ms Delahunty.

**Mr McCLINTOCK:** I am sorry for interrupting.

**The CHAIR:** Do not apologise. This is really important information that we all need to know. If you speak to Ms Zekanovic, please pass on our congratulations.

**Mr McCLINTOCK:** I will.

**The CHAIR:** Thank you. Ms Delahunty, will you be taking the oath or making an affirmation?

**Mr McCLINTOCK:** I would prefer that Ms Delahunty not be sworn in. She is still relatively new and the questions really are for me. Ms Zekanovic, in fact, was not sworn in either.

**The CHAIR:** No problem, that is fine. I would still like to extend a welcome and I trust that you are enjoying your time with the Inspector. Mr Inspector, would you like to make a brief opening statement before the commencement of questions?

**Mr McCLINTOCK:** There is very little I really want to say. The period since 30 June and the period dealt with in my annual report has been interesting and has had some challenges. Some of the issues that would have come up I heard you asking the Chief Commissioner about. I suppose the prime one was the leak of the transcript of the examination of Mr Maguire concerning the Premier and so on which, as you know, I dealt with via a report to Parliament presented to the Presiding Officers. It was inadvertent but it should not have happened. I hope my report made clear why and how it happened. It was a junior employee who did not have the ability to know immediately that that material had been done in closed session and therefore was not for publication. It was also compounded by a side effect of the virus because she was working from home in circumstances where perhaps if there had been other people around it would not have happened. But still, that said, it should not have happened.

I have been considering further steps prompted by that and I have not come to, so to speak, a landing about it. I have I will not say a concern but I have an interest in whether the Commission's risk management procedures are sufficient, and I may do something about that. There have been a number of other issues that I have dealt with in the period since 1 July. I have an outstanding complaint from Dave Sharma, the Federal member for Wentworth, which I am waiting for some legal advice on. I have a view as a lawyer as to what the right answer is, but it is the sort of situation where it is important for me to be independently advised. So I am waiting on legal advice from the Crown Solicitor on the particular issues. That involved the making public of a transcript of a conversation between Mr Maguire and the Japanese Consul.

**Mr JAMIE PARKER:** Yes.

**The CHAIR:** Correct.

**Mr McCLINTOCK:** I have done various things. The report will be prepared, I imagine, within the next month, depending on when I get the legal advice, which is the last thing I am waiting for before it is finalised. That is really about all I wanted to say by way of updating you on the things that have been going on. I do not think there is anything else that I need to raise with the Committee at this stage. It has been interesting. It has

perhaps been less intense in terms of the complaints that I have had this financial year than previously. The two big ones are the two that I have mentioned so far. But other than that, I keep an eye on what the Commission is up to. We monitor their activities; we read their reports. Some of them I leave to Ms Delahunty; others we both read to keep an eye on what is going on.

I should say, just to pick up on something that came up in relation to the Chief Commissioner, I regard myself as having an absolute entitlement under the legislation to any document or information that the Commission holds. In the letters that we exchanged that the Commissioner mentioned, I was making the point that that is my entitlement under the legislation and that when I ask for documents I expect of them to be provided without any questions. It could of course—I am not saying it did in that case, it did not; I was making a point—hamper any investigation that I was carrying out to disclose why I was seeking the documents.

There are two significant provisions in the legislation—I cannot remember the section numbers, and they do not matter—one of which does give me, the Inspector, that entitlement to anything the Commission has. The other one is the provision that says that the Inspector is not in any respect subject to the Commission. That does mean that I am unsupervised myself. I believe that if I were to do something wrong myself, the agency that would investigate me is the State Ombudsman. You could not have an Inspector who was subject to—the system simply would not work. Of course, I would never wish myself to be completely without controls.

**The CHAIR:** We may agree on that. I think the section of the ICAC Act is 57C.

**Mr McClINTOCK:** Yes.

**The CHAIR:** I did refer to that. That was one of the questions Ms Tuckerman asked in the previous public hearing of the ICAC. I do want to note for the record that Mr Hoenig, the member for Heffron, has joined this public hearing via Webex. Welcome, Mr Hoenig. We have also been advised that Mr Adam Searle and Ms Tania Mihailuk have had to leave this public hearing due to unexpected circumstances.

**Mr JAMIE PARKER:** Good afternoon. It is great to see you again.

**Mr McClINTOCK:** Good afternoon, Mr Parker.

**Mr JAMIE PARKER:** Thank you for taking the time. We talked last time about the welfare of witnesses. It is something that we are very conscious of now as a Committee. I think that we have taken our concerns about the welfare of witnesses very seriously, and we have been offering support for witnesses coming to us as well. I know that you have committed to undertake an audit. Could you let us know the progress of that and any preliminary thoughts or findings you may have?

**Mr McClINTOCK:** There was one incident that gave rise to my concerns. You of course are aware of what it was—it was the suicide of a witness in one particular investigation. I have determined that nothing positive that the Commission did contributed to that. It still remains a little inexplicable. I need to be careful about this in what exactly I say. There was a further suicide of someone who was the subject of inquiries by the Commission who was not located in New South Wales, although the conduct was in New South Wales. It seems on my investigations that he was unaware of the fact of the investigation and unaware that there was any issue with ICAC, and that the reasons for his death were wholly independent. I will be honest with you, I am behind on that audit—although I have satisfied myself in relation to both of those two matters.

Part of the reason why I am behind is I am not sure I have the skills to be able to take that forward. I am a lawyer, with all of the limitations that lawyers have. I want to think a bit more about what I do and—I have said this before—whether I do need some professional advice myself about these things as to what protocols I should suggest the Commission adopt in relation to those matters. There are obviously people who are the subject of inquiries who will be caused a great deal of stress. That may be because they have engaged in corrupt conduct and they have been exposed. There are other people on the periphery of investigations—and the first person who committed suicide was really on the periphery—who may suffer themselves. It is really them that I am thinking of.

As I said to you on a previous occasion, I will never forget when I was counsel assisting at ICAC in the early 1990s having to listen to the recorded suicide message of a man who had killed himself completely unnecessarily. He was not even a subject of investigation. He had information; he was a solicitor. That is not something that you easily forget. I do have those things in mind. My term as Inspector expires on June 30 next year, and I will do something before then in relation to that—what, I do not know. If any member of the Committee had any views or ideas that they wanted to put to me privately—well, nothing would be private in that sense—I would more than welcome them. I really would. It is an issue, and I do not think there are easy answers for it.

It is never pleasant to be the subject of investigation. With a police investigation, no-one worries too much about the psychological effects on people there. But perhaps ICAC is different and perhaps it can be done

differently. I would welcome anything that any member of the Committee wishes to say about that myself. I have compared the issues with Victoria. They did a comprehensive inquiry into this. I do not know whether it assists the Committee if I was to send that along.

**Mr JAMIE PARKER:** That would be great if we could get a copy of that.

**Mr McCLINTOCK:** It was prompted by a much more serious issue. In that case, the particular witness attempted to committed suicide on the Independent Broad-based Anti-corruption Commission [IBAC] premises, which was obviously not the case in this situation. I think she was a police officer, from memory. I would be more than happy to forward it. It is a public document. I will arrange for it to be sent to the Committee staff.

**Mr JUSTIN CLANCY:** Just a follow-up to Mr Parker's question there. To your point, Inspector, that is really important work. Thank you for that. As part of that audit—obviously looking to derive some constructive recommendations there in that regard—as you said, there are two stark examples of the impact. Will you be reaching out to witnesses in a variety of circumstances to get a bit of feedback in other situations?

**Mr McCLINTOCK:** Perhaps not to the witnesses themselves because I would be very concerned about invasions of their privacy. I may reach out to some of the lawyers involved, many of whom I know—just by checking through the list of counsel and solicitors who have appeared—and ask them for input in relation to that. The privacy concerns would be real. I do not want to make it worse for any of these people who have given their evidence and have moved on with their lives. But it is not something I would reject out of hand. I would certainly consider it, Mr Clancy.

**Mr JUSTIN CLANCY:** Thanks, Inspector. As you said, there are two tragic examples, but there is probably a level of burden or stress across a greater subset in that regard.

**Mr McCLINTOCK:** Yes.

**Mr RON HOENIG:** Inspector, I noticed in your report that you referred to your audit function, and part of that is section 22 notices. Have you done any audits in relation to section 22 notices yet?

**Mr McCLINTOCK:** No, I have not. The major audit I did was the search warrants audit, which I chose because it—

**Mr RON HOENIG:** [Inaudible] annexed my correspondence to your report.

**Mr McCLINTOCK:** I did.

**Mr RON HOENIG:** I was pleased to see there was a way in which I could get the matters that I raised made public and tabled in Parliament. So that was convenient to me.

**Mr McCLINTOCK:** That was not my purpose, Mr Hoenig. My purpose was to give complete information.

**Mr RON HOENIG:** You have satisfied my purpose though.

**Mr JAMIE PARKER:** You are just a tool.

**Mr McCLINTOCK:** I am at your service, Mr Hoenig.

**Mr RON HOENIG:** When you do perform an audit for section 22 notices, I would just ask you to consider that during the Cunneen matter we discovered that ICAC investigators had been using section 22 notices requiring production forthwith, and they were using those notices to seize people's mobile phones. The Committee was given advice from a number of sources and formed the view that that was beyond the Commission's powers, that that was not the purpose of section 22 notices and a search warrant was required. I cannot remember how that matter was ultimately resolved, but when you undertake the audit, I would like you to look particularly at whether or not search warrants had been utilised for those purposes and not the section 22 notices.

**Mr McCLINTOCK:** I am happy to do that, Mr Hoenig, and I appreciate the point you are making. I think we may have discussed this before in one of the previous hearings, particularly in relation to the Cunneen matter. I may be wrong but it does strike a chord. But I am more than happy to take that on board and I am more than happy to take that into account into an audit into the use of section 22 notices. I do not regard them as involving as serious an infringement of the rights of ordinary citizens as a search warrant but they are still significant. With a search warrant, of course, you have the Commission investigators and police coming into people's private houses, for example, or into the headquarters of the Labor Party in Sussex Street, for example.

**Mr RON HOENIG:** Our concern at the time was that we do not want officials from ICAC going into people's houses with section 22 notices and not have gone through the semi-judicial process of obtaining search warrants on affidavit evidence and things of that nature. That was our concern.

**Mr McClINTOCK:** I understand completely, Mr Hoenig. As I said in my audit report in relation to the search warrants—perhaps this is my cynicism—I was pleasantly surprised by the attention to detail and attention to the appropriate processes that the relevant judicial officer had shown in relation to the issuance of the search warrant. Each of them had endorsed a note by the relevant magistrate or Local Court judge setting up the reasons why he was giving the warrant in relation to the matter. But that is only a way of emphasising your point, Mr Hoenig, that that is the reason why you want search warrants and not a process like section 22, that is only determined by the Commission itself.

**Mr RON HOENIG:** Yes. Because of the time period you conducted that audit and of course the changes from 2017 onwards in the way in which the Commission has changed its operation, I was reassured that with the audit that you provided that the process was working as fairly as it could possibly operate, bearing in mind the terminology within the Act.

**Mr McClINTOCK:** Yes.

**Mr RON HOENIG:** The other issue in relation to the volume of complaints you receive, that you are not getting that many, seems to coincide—because you also had to deal with all those legacy issues. The number of complaints seems to have diminished since the Parliament's 2017 amendments to the Act as well. It seems to be sort of consistent with the manner in which the Commission since 2017 has been discharging its functions.

**Mr McClINTOCK:** I agree. As you know, I had 22 to 25 complaints left over that had not been dealt with when I took over as Inspector on 1 July 2017 and, as you know, it took me over a year to resolve those because there was an immense amount of work involved. It may also be because I am a bit more experienced in the job too and I can perhaps recognise immediately the ones that give rise to serious issues, such as the one made by Mr Moses on behalf of the Premier in relation to the inadvertent leaking of that transcript. But in some ways, I would not say—while they may have gone down in number, they may not have gone down in significance. I regard that one and the complaint by Mr Sharma as giving rise to very serious issues, very serious issues indeed. The Sharma one involves the relations between Australia and a friendly government. They are significant.

Putting aside the vexatious complaints, and I do get a proportion of those, that is not to say that I regard any complaint I get as insignificant. I do not. They all deserve proper treatment and all of them, including the ones that might be regarded as vexatious, get a response, as you would expect. Parliamentarians will have the same issues. There is always the very small group of people who regularly make complaints. One of them even sent me her mobile phone—I am not sure why—and that was in amongst 30 separate packets of documents I received in one day from her. There was also a charger for the phone too.

**Mr RON HOENIG:** You also dealt with a complaint. I just want to raise this with you because I did not agree with your finding. You also dealt with a complaint relating to some people—there are pending proceedings before the NSW Civil and Administrative Tribunal in relation to accesses and documents. You dealt with a complaint by people who seemed to rely on Mr Walker's advice by asserting that there was something improper of the Commission discussing with the Premier or the Executive Government various issues in relation to a particular investigation. You concluded, I think as I told the Legislative Assembly yesterday—I mean clearly ICAC is an organ of the Executive branch.

There cannot be anything wrong, can there, with the elected Executive Government communicating to any independent statutory investigators a desire to pursue an investigation in a particular area—for example, if I could not use ICAC but use the police. If the Police Minister told the New South Wales Police Commissioner, who has got statutory independence, that he desires an investigation and he requires the Police Commissioner to deal with people being shot up in Western Sydney, there is nothing wrong with that conversation surely. So there is also nothing wrong with a conversation between the government of the day and the Independent Commission Against Corruption if the elected government says it wants a particular area monitored.

**Mr McClINTOCK:** There is definitely not. This comes back to something that I have been saying in one place or another since 2005 when I did my very first report into the ICAC legislation. The doctrine of separation of powers has a particular place for courts. They are, of course, independent, and it would be very wrong for Parliament or the Executive to try and interfere—except by making submissions and putting evidence before them—with the outcome of a particular case. But ICAC is not in that position. It is not a court. I did everything I could in 2005 by recommending the changes to the wording in the legislation to try and fix that misperception. I failed. It was obvious I had failed by the time I did the report with retired Chief Justice Gleeson in 2015.

But the fact remains, as he and I said in that report, ICAC is a specialist investigative arm of the Executive. It has particular powers that bodies like the police, for example, do not have. It can hold hearings and make findings, but it is still an arm of the Executive. It may have statutory independence, but in those

circumstances there is nothing wrong with communications from members of Parliament or from Ministers, including the Premier, to the Chief Commissioner and vice versa. The criticism cannot be of the fact that that occurs; it can always be of the content of the communication. For example—

**Mr RON HOENIG:** Or lack of scrutiny.

**Mr McClINTOCK:** Exactly. It is perfectly appropriate to query, for example, whether the legislative changes made after the Cunneen case were appropriate. I have a personal view on that, which does not matter, but there is nothing wrong with saying was it right to retrospectively change the law? There is nothing wrong with raising that. I do think the complaints about the communications themselves, as opposed to their content, are misplaced. I would have thought myself that it is perfectly appropriate for an agency like ICAC, when it needs legislative change, to say it. You can always criticise what they ask for, but that is a different issue. That comes back to what you actually raise, Mr Hoenig—a further complaint that I got from Mr Atkinson, which I dismissed again essentially for the reasons I have expressed to you, is the fact that it is a different kind of independence we are talking about.

**The CHAIR:** Colleagues on Webex, we are getting repeated hearing of what is being said in the room via the Webex. If you could just mute your microphones after you ask a question, that would help us in this room.

**Mr RON HOENIG:** I think there is something going on around the airport, by the sound of it, with all those things going by. The other thing I wanted to ask you is that you said that your view of we are dealing with hearings in relation to exoneration protocols and stuff, which is actually in the forefront of my mind. Your predecessor and the Commission, as it was then constituted prior to the 2017 amendments, found at various times maladministration, unfairness and failure, and the Commissioner, with the input of the Commission in some respects and in accordance with the Inspector's powers, made recommendations. If the Inspector makes those findings, what difference does it make? Nothing happens. The report goes to Parliament; nobody knows about it. What difference does it make? The report is still on the Commission's website. What is the value of an Inspector's finding if we look pre-2017?

**Mr JAMIE PARKER:** Be gentle.

**Mr McClINTOCK:** Mr Hoenig, there are people who regard me as a megalomaniac, and I could say facetiously that I would love much more power. But the point is that my powers themselves are limited. The point is that when the legislature brought the Inspector in, which, as I said to you before, through an anomaly it was as a result of my 2005 report—I never expected to end up as Inspector when I made that recommendation back then. But the point is that once I do that it is over to Parliament to take steps as a result of the findings made by the Inspector. Parliament's role in this is fundamental. It would be very wrong if I had powers to actually take steps to sanction, say, the Chief Commissioner because his responsibility really is to you, and through you to the people of New South Wales.

I do not see any problem in the way that that works. Sure, many of my reports get forgotten. On the other hand, there is no doubt that the report that you are referring to, Mr Hoenig, which is the one prepared by Inspector Levine, who was, in effect, my immediate predecessor as Inspector—although there was an Acting Inspector in between. He did have serious criticisms to make of the then Commissioner in relation to the Cunneen matter. I am not saying it was a consequence, but, ultimately, Parliament amended the legislation, went to the three-commissioner model and, as a result of that, the then Commissioner did not seek to have a further extension—did not seek to go on as part of the three-commissioner model. That is an example of how it can, in fact, work. In that case it was done through, in effect, legislative amendments, but it is not my job to—my job is to make the findings and express the views as to the criteria in section 57B, impropriety, misconduct, maladministration and so on, but it is up to Parliament to take it forward from that.

**Mr JAMIE PARKER:** First of all, I remember every single one of your reports, and they will be remembered for a long time, I am sure. I just wanted to ask two things. One is about the Department of Home Affairs. It has been a longstanding issue on the Committee about the Telecommunications Interceptions Access. You trying to have access to the evidence requires an amendment, I understand, to the Act. Last time we spoke you said you were having some communication about that issue. Could you maybe inform the Committee about the progress on that matter?

**Mr McClINTOCK:** I can. It is absolutely ridiculous and I think I have done everything I can, and if I am sounding frustrated it is because I am. As I said to the Committee before, it is great auditing search warrants but, of course, the Commission's main investigations are carried out by interception devices, and that comes underneath the Commonwealth legislation. I am entitled to see the information for the purposes of dealing with a complaint, but I am not entitled to see it under the legislation for carrying out an audit. I have made representations. I made them to the previous—I have forgotten what the precise title was but the holder of the office was James



Renwick, SC, who finished his role, I think, last year. I have made representations there and nothing ever seems to happen. I will probably wait another couple of months and continue crying in the wilderness for no purpose about this.

As you know, I am also an Inspector of the Northern Territory Commission. It is even worse up there because the Territory Commission itself has not yet been authorised to engage in that kind of interception under the Commonwealth legislation. It is one of those things that it actually requires legislative intervention. There are an awful lot of things to get done but it is very frustrating. If I had that power the first thing I would do is carry out an audit of the issue of the interception warrants under the Telecommunications (Interception and Access) Act, or TIA. I have been wanting to do that basically since the legacy complaints cleared. This goes back over 10 years to the first Inspector, or at least the second Inspector, Harvey Cooper, the retired judge, and it has been around since then. I know there is nothing that the Committee can do, but if you are ever talking to any of your Federal colleagues and it comes up, tell them to take some action.

**Mr JAMIE PARKER:** Maybe that is something we should consider outside of this hearing process, to see if there is anything else we can do. My other question is just in reference to the evidence that we heard earlier from the Chief Commissioner and the Commissioner and other staff from ICAC that there is a lot of discussion about funding, a lot of discussion about independence for funding. Is there anything you have seen in the last month, are there any observations you might want to make about funding that ICAC receives, about the level of adherence to their KPIs or any other issues that you think are relevant around the funding question?

**Mr McCLINTOCK:** It is not part of my function as Inspector to comment on the level of funding or anything like that. I do have a role in relation to general issues, although, I suppose, if I thought the level of funding was so low as to impact the proper performance of the Commission's functions, maybe that would be something that I have power to deal with. I have said before that, for the reasons that have been expressed, essentially, by the Auditor-General in that report, with which I agree, the present model, the present system, appears to me not to be appropriate and that something along the lines suggested by the Auditor-General of the State would be appropriate. The agency is independent. It seems to me inappropriate for an agency such as that to have operated in the way it has for years: really back to its foundation where they get, essentially, a basic grant and whenever they need a top-up they would go along to the Premier and ask for it. That does not seem to me to be an efficient or an appropriate way of funding a body such as the Commission.

The same applies for reasons the auditor gave to the other agencies, like the Ombudsman and the Law Enforcement Conduct Commission, and, indeed, the Auditor-General herself. But that is all I wish to say about that. I understand the Legislative Council Bill was dealt with yesterday in the Assembly and dismissed, so to speak, but I have nothing to say about the particular models. That would be inappropriate. I think, generally, there should be change so that the Commission's funding is independent but ultimately answerable to Parliament, though, because—again, I have said this before—it is Parliament ultimately who must decide these things. I do not regard the issue presently as—it is setting up an appropriate mechanism to take forward the values of the Commission. I know the Executive is always unwilling to give up any power, particularly funding powers, but for the reasons the Auditor-General gave I think it is time in this area for that to happen.

**The CHAIR:** Do colleagues on Webex have any questions?

**Mr DUGALD SAUNDERS:** Inspector, I have a fairly general question around your ongoing relationship with the Commission. How would you sum that up?

**Mr McCLINTOCK:** The Commonwealth Ombudsman used a phrase to me—he is actually the Inspector of the Australian Capital Territory ICAC through a strange legislative chain. The Commonwealth Ombudsman summed it up to me as the relationship should be cooperation but not capture. That is, you should cooperate with them—with the agency you supervise—but not be captured by them. I regard that as an accurate description of my relationship with the Commission. I have and will take firm steps to deal with any issues that I perceive come up. That said, it is important that you have a cordial working relationship with the people whom you are supervising—"supervising" is not the right word—or who answer to you as Inspector.

It was clear that the relationship of the previous Commissioner and the previous Inspector was dysfunctional, so much so that I think it was impacting on the ability of both of them to do their jobs. I have no doubt the Chief Commissioner would confirm this—he asked—that I will and do and have taken firm steps in relation to any issue that I think needs firm steps. Some of those issues do not necessarily end up in reports, but if, for example, I request information, I expect it to be provided, and I expect the Commission to provide me with information that they know is relevant.

It has not been mentioned in the last couple of hearings but there is, of course, a protocol, a memorandum of understanding, between the Commission and me—and the Inspector—which sets out the circumstances in

which the Commission is obliged to provide information to me. For example, I would expect them to provide any witness welfare information to me and they have—voluntarily, I might say. I would expect them to provide information to me about any complaints about their conduct that they receive, even though it may be made to them rather than me; they have. But that is to answer your question, Mr Saunders, I hope—that is, cooperation but not capture. But I have a job to do, and that job is set out in the Act, and I have tried to perform it over the past almost four years to the best of my ability. That has involved, as I said, on certain occasions being as tough as I thought was necessary in the circumstances.

**The CHAIR:** Does anyone else on Webex have any questions for the Inspector? Mr Khan is shaking his head.

**Mr McCLINTOCK:** Come on, Mr Khan.

**The CHAIR:** Now is your chance.

**Mr McCLINTOCK:** I just want to ask Mr Khan where he is sitting. Probably somewhere up in the Northern Tablelands much more pleasant than Macquarie Street.

**The Hon. TREVOR KHAN:** It has been a hard week, yes. I am quite happy to be home, to be frank.

**The CHAIR:** I have a question. It arises from the table of complaints that you have presented in your annual report. You have provided your determination of those complaints. I note that in a number of cases your determination was the phrase, "The complaint did not enliven the Inspector's jurisdiction." Given your jurisdiction is defined in the Act, based on the types of complaints that you receive, do you see a potential gap exists in the sense of your legislative jurisdiction under the Act? And should this Committee give some consideration to whether that should be expanded to capture some of the complaints that you are receiving?

**Mr McCLINTOCK:** I use that phrase in a number of different situations. One, for example, is people sometimes, presumably because they do Google searches on the net, come up with me rather than the Commission. So I get material that is clearly intended for the Commission. Sometimes I deal with it like that, sometimes I just forward it to the Commission, and sometimes I write back to them and say, "You should go to the Commission." On other occasions it is situations where, for example, it is a matter for the Law Enforcement Conduct Commission, not for ICAC or for the Inspector of that, and I may say that too. There are other situations where it has been a Commonwealth issue and there is no State jurisdiction at all. I think the legislation is satisfactory. I have a contrast in the Northern Territory. There are clearly defined limits here on what kind of complaints I can deal with: complaints of misconduct, impropriety and maladministration and so on.

In the Northern Territory legislation there is no limiting factor. It simply says "complaints about the Independent Commissioner". That leads to lack of economy in the sense that I have to consider issues that do not really involve conduct on the part of the Commission and explain why, whereas here at least I can say, assuming it is correct, "This does not enliven my jurisdiction because it does not involve the statutory criteria." As I said, my megalomania knows no bounds—I am willing to consider any extension of my powers—but I do not think it is necessary at the present time, Ms Davies. I have noticed no inhibition on the things that I think I should deal with and, as a result of the legislation, believe I can deal with. There are, of course, many things that I deal with informally, either by sending the information to the Commission and saying, "What do you think about this", and so on. I think it is working okay. If there was any particular gap that any member of the Committee had in mind, I would be happy to take it on board.

**The CHAIR:** Thank you. Colleagues on Webex, any questions?

**Mr JAMIE PARKER:** This might be a world-record finish.

**The CHAIR:** Thank you very much, colleagues. I think that wraps up the public hearing.

**Mr JAMIE PARKER:** We are all very satisfied, seemingly.

**Mr McCLINTOCK:** Well, I hope this is not my last appearance before the Committee. As I said, I finish my job as Inspector—and I cannot be reappointed under the legislation—on 30 June next year. I imagine I will be back sometime in February or March next year, which is usually—

**The CHAIR:** Correct.

**Mr McCLINTOCK:** I would hate not to have the opportunity to say goodbye to you.

**Mr JAMIE PARKER:** We look forward to seeing you again.

**The CHAIR:** We hope you will be back.

**The Hon. TREVOR KHAN:** Could I just ask: It is an issue which some of my colleagues will know that I have taken an interest in, in regard to another independent oversight body, and that is the prohibition on reappointments of various officers. Whether in the light of not just your personal experience in that regard but now what you have seen with regard to the operation of ICAC, do you think that prohibition on reappointment remains appropriate?

**Mr McCLINTOCK:** Mr Khan, I am sure it remains appropriate for the Commissioners of ICAC. I strongly believe that an agency like that should—the precise period does not matter, but I am quite sure that an agency like that should turn over the senior people because if you do not, they do end up being captured, so to speak. I say that with great respect to the present Commissioners of ICAC, all of whom I regard as colleagues and friends. This will probably sound like special pleading, but the position of an Inspector may be different, although there should be absolutely no automatic right of reappointment. It may be different.

Like a lot of jobs, it takes you a little while to start feeling comfortable with it and realise that you can actually do it. It took me maybe a year and a half to feel like that. It is very different from being a barrister, clearly. I do not know, really. It is never a bad thing to have a completely fresh mind come in, on one hand; on the other hand, you do lose the experience and someone else has to pick it up. That said, I have to say that when I do finish up I really am going to miss the job. I have enjoyed it greatly. I do not want to sound too sooky about this but I have actually felt I have made a contribution to the people of New South Wales.

**Mr JAMIE PARKER:** Absolutely.

**Mr McCLINTOCK:** It is so very different from being a barrister, where you focus on individual cases. Sometimes people may think that is not a terribly constructive way of life. I have to say I will miss presenting my reports to the Presiding Officers and I will miss appearing before the Committee.

**Mr JUSTIN CLANCY:** It raises a really interesting point though, Inspector, in the transition of roles and informally or formally mentoring or passing on some of that corporate knowledge that you have a wealth of in that regard.

**Mr McCLINTOCK:** I will do that. I have been lucky in that the three principal legal advisers I have had have all been outstanding. I say that in Ms Delahunty's presence. The first one was a woman called Susan Raice, who is now working as a senior employee at the Law Enforcement Conduct Commission. She had worked for Mr Levine, my predecessor, so there was continuity there. I got no mentoring from him; by the time he finished up as Inspector, he was a very ill man. As you know, he died just over a year ago. His memorial service was earlier this week at the State Library on the anniversary of his death, in fact. I got no mentoring from him.

Assuming the Government appoints a successor to me prior to 30 June, and indeed after, I will do everything I can to assist in the process, and I always would. For example, in the Northern Territory the previous Commissioner has resigned and they have just appointed a new Commissioner. I am going to offer the same kind of thing in relation to him just to help him get into the job, because you can give a perspective as an inspector that the staff, for example, do not have. You can give warnings, too. But the answer is: Yes, assuming I am able to and I have the opportunity, I will certainly do that. I will tell him or her where all the bodies are buried. I might say, all the Inspectors have been male. It is about time that a wider net was cast.

**The CHAIR:** I do have a follow-up question from an answer you gave to Mr Khan's question relating to a turnover of the senior management of ICAC—otherwise there is that risk that they become captured by the organisation. Have you given thought to and do you have an opinion of how much further down the seniority ranks within ICAC there should be that forced turnover of staff to refresh the culture of the organisation and to bring new blood into that organisation? Have you thought about that as a functionality of the way ICAC operates and, if you have, what level down the organisational structural tree should that apply?

**Mr McCLINTOCK:** I have thought about that, Ms Davies, and over a considerable period of time. I would leave it as it is, where it is the Commissioners who have the term limits. I would leave it to them to make decisions about the staff below them. You are talking about the senior staff. There is always a tension between the desirable effects of the turnover and loss of expertise. I think the only way of dealing with that tension is to leave it to the people who are actually running the organisation. I do not believe it would be wise to make it mandatory any further down. Perhaps if there were longer limits—five years would clearly be far too short. I generally think it should be left as is.

I think in relation to the Director of Public Prosecutions the present term is 14 years—I stand to be corrected—but that is a different agency with a very different history. There is only one person of the relevant kind left in New South Wales who is not subject to term limits and that is the Solicitor General who, under his legislation, can go until death or voluntary retirement. That was the position with the Director of Public Prosecutions before the amending legislation was passed, I think, by the Carr Government. This is purely a

personal opinion, not one I am entitled to have as an Inspector. There should always be limits on how long one individual can fill the roles of Director of Public Prosecutions or Solicitor General and so on, if only because—well, I will not say any more but the reasons are obvious.

**The CHAIR:** Thank you. Colleagues, any more questions? We have not quite made a world record this time. Thank you very much for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. The replies to those questions will form part of your evidence and be made public. Would you be happy to provide a written reply within two weeks to any further questions?

**Mr McClINTOCK:** By all means, Ms Davies. By all means.

**The CHAIR:** Thank you very much, Mr McClintock and Ms Delahunty. It was lovely to see you. That concludes our hearing for today. Again I place on record my thanks to the witnesses who appeared today. In addition, I thank the Committee members, Committee staff, Hansard and the facilities team for their assistance in the preparation for and conduct of the hearing today.

**(The witnesses withdrew.)**

**The Committee adjourned at 15:59.**