

REPORT ON PROCEEDINGS BEFORE

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

**2021 REVIEW OF ANNUAL AND OTHER REPORTS OF
OVERSIGHTED BODIES**

At Jubilee Room, Parliament House, Sydney, on Friday 28 May 2021

The Committee met at 10:35.

PRESENT

Mr Dugald Saunders (Chair)

Legislative Council

The Hon. Trevor Khan (Deputy Chair)

The Hon. Adam Searle

The Hon. Lou Amato

Legislative Assembly

Mr Paul Lynch

Dr Hugh McDermott

The CHAIR: I declare open this hearing for the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission's 2021 review of annual and other reports of oversight bodies. Before we commence, I acknowledge the Gadigal people, who are the traditional custodians of this land on which we meet at Parliament. I also pay respect to the Elders past, present, and emerging of the Eora nation, and extend that respect to other Aboriginal or Torres Strait Islander people who are present or viewing the proceedings via the internet. I thank the witnesses who are appearing before the Committee today.

ELIZABETH TYDD, CEO, Information Commissioner, Information and Privacy Commission, sworn and examined

SAMANTHA GAVEL, Privacy Commissioner, Information and Privacy Commission, sworn and examined

The CHAIR: We will start with our first witnesses from the Information and Privacy Commission [IPC]. Do you have any questions about today's proceedings?

Ms TYDD: No.

Ms GAVEL: No.

The CHAIR: Thank you for being here today. You both have the opportunity to provide an opening statement, if you would like to. Ms Gavel, would you like to start?

Ms GAVEL: Certainly. I am pleased to have this opportunity to appear before you to assist with your review of the exercise of my functions as the New South Wales Privacy Commissioner during the 2019-20 reporting period. As I noted in the IPC's most recent annual report, it is not possible to reflect on the year without considering the significant impact that the COVID-19 pandemic had on government agencies and citizens. The onset of the pandemic accelerated trends that were already occurring in relation to the greater use of digital technology, and heightened privacy and cybersecurity risks. The pandemic also highlighted the significant value of digital technology and data, which enabled people to work and learn remotely, and provided data-driven insights to government to inform its pandemic response.

Along with the significant benefits gained from the use of data and digital technology by agencies during the pandemic, the privacy risks posed by a greater use of digital technology needed to be identified and mitigated. These included cybersecurity risks, as well as risks associated with the collection, storage, and retention of data, and the risk of re-identification of de-identified data. The Information and Privacy Commission consulted with agencies during the pandemic to ensure that the benefits of using digital technology and data were able to be gained without compromising citizens' privacy.

Turning to the New South Wales privacy landscape more broadly, the increasing pace of developments in digital technology means that government agencies can collect, store, use, and disseminate vast quantities of information about our citizens. This means that privacy risks are much greater than they were in the past, and the need for appropriate privacy protection is more important than ever. The government is looking to provide more seamless, joined-up digital services to citizens to make it easier to do business with government. Privacy-focused design and practice are key to building trust with citizens, so they feel confident to use and engage with these services. It is important to recognise that citizens must engage with government in order to access services and programs that are essential to their lives. The community expects that New South Wales government agencies will protect their personal information appropriately.

During the pandemic, cybersecurity risks have been elevated through the development of rapidly evolving technology and techniques by malicious actors. In March 2020 Service NSW suffered a cyber incident, which resulted in illegal access to the personal information of citizens. In this context, I welcome the recent announcement of the Attorney General and the Minister for Customer Service of the draft bill that will establish a mandatory notification data breach scheme for New South Wales agencies. The consultation period for the bill is now open and will conclude on 18 June. The introduction of the scheme will provide a significant contribution to privacy protection and cybersecurity management in New South Wales. There is an important link between strong and robust cybersecurity measures and the protection of personal information under the Privacy and Personal Information Protection Act and the Health Records and Information Protection Act. As Privacy Commissioner, I support the promotion and implementation of robust cybersecurity measures by agencies.

Privacy issues will continue to be a key consideration in the implementation of digital solutions by government agencies over the coming year. The IPC is increasingly focusing its guidance on digital service delivery by agencies. A recent example is the release of the *Transition to the cloud: Managing your agency's privacy risks* guide. In recent years the IPC has dealt effectively with year-on-year increases in its caseload, as well as in requests for advice by government agencies, particularly in relation to the government's digital agenda. This has been highlighted in the operational review of the Information and Privacy Commission, conducted by an independent reviewer and released in May this year.

In particular, the review found that when compared with comparable jurisdictions, the IPC resolves complaints and reviews in substantially shorter periods of time than its peer group. The report details that the IPC's legal and regulatory team has received a 30.8 per cent increase in requests from agencies for advice on

information access and privacy matters, seen a 27 per cent growth in tribunal matters in which the Commissioners are entitled to appear, and has provided advice on over 100 applications made under the Digital Restart Fund. It is expected that this workload will continue to increase over the coming year, in line with the trend over the past five years. I look forward to continuing to work with agencies and other stakeholders to ensure that agencies meet their privacy obligations under New South Wales privacy legislation, and that citizens' privacy rights are effectively protected.

The CHAIR: Ms Tydd, do you have an opening statement?

Ms TYDD: I do. In light of my colleague's capable assessment of the summary of the findings of the operational review, I will omit those comments from my opening statement to shorten it a little.

The CHAIR: Thank you.

Ms TYDD: Chair, Deputy Chair and Committee members, the opportunity to present on the exercise of the functions of the Information Commissioner and to assist you in your examination of the Information and Privacy Commission's annual reports, as well as other reports of the Information Commissioner, is appreciated. I would like to highlight our role as an integrity agency with an overview of current and emerging issues and issues arising from these reports. The IPC was established in 2010 to independently oversight government agencies' performance in upholding information access and privacy rights.

As a New South Wales integrity agency, our role actively contributes to accountability and transparency within government, safeguarding the right to access information and privacy rights. This year more than any other has seen the transformation of traditional government service delivery and decision-making into digital government. It is the most significant change that has impacted government, government agencies and importantly the IPC as an independent regulator of, broadly speaking, legislated information rights and compliance requirements. The IPC has this year secured funding of an additional \$700,000, which was sought to reflect the amendments to the Government Information (Public Access) Act [GIPAA] largely in 2018. The review, as my colleague has pointed out, has found that we have demonstrated an unparalleled performance.

Importantly, the report concluded that, given the government's digitisation agenda, and emerging risks in information access and privacy, the Commission's workload is unlikely to decrease, and more likely to continue on the current trajectory. In essence, the report recognises our unparalleled performance as a regulator and our relevance. However, the report also acknowledges that the Information and Privacy Commission would not be able to perform its vital functions absent the funding enhancement. In my view, this is a notable finding in the context of ongoing increase in work volumes and new functions.

Turning to those new functions, I am pleased to advise that, to mark Information Awareness Month, today the IPC has launched new advice from both Commissioners to reflect our insights, and some risks to information access and privacy rights that are presented when using these new technologies. Reflective of the IPC's practical approach to regulatory guidance, the advice provides suggested approaches to mitigate those risks that arise from technological solutions, upon both the right to access information, and the right to privacy. A proactive compliance program is also an essential feature of our contemporary risk-based regulatory approach. It is through these well-planned and more rigorous audits and investigations that we remain at the forefront of emerging risks to information access and privacy rights. This regulatory activity must be supported by expert guidance and resources to enable us to be an effective and relevant regulator.

This year marks 10 years of reporting upon agency performance in respect of the administration of the New South Wales information access regime—the GIPAA regime. I look forward to the opportunity that this occasion provides to review 10 years' worth of performance data, to gain and share insights, and to influence a contemporary agenda. That agenda must recognise the maturation of practices and deliver a demonstrable commitment to open government modelled by leaders. With this approach in mind, I recently met with the chairs of New South Wales audit and risk committees to highlight their role in overseeing risks associated with information access practices, and showcase the self-assessment tools that the IPC has developed. These tools enable agencies to self-assess against the IPC's regulatory guidance, identify compliance level and, through the provision of reports, plan to uplift lowered areas of compliance.

I am also honoured to advise the Committee that I am again leading the work of the Information Commissioners and Ombudsmen under the Australian Open Government Partnership. This is the third National Action Plan. The commitment I lead builds upon the expertise we have acquired in New South Wales, under our push model of information access, to develop principles to support a consistent approach to the proactive release of government information and, importantly, identify information that is valuable to citizens, important to the digital economy, important to government accountability and transparency, including transparency in government

decision-making where artificial intelligence technology is used and likely to affect the rights of, and services provided to, the public, and to which the public may be subject by government.

A further objective of this initiative is to drive a culture of information stewardship by government that encourages and enables access to information by citizens. This objective will be met through the issuance of guidance, signed collectively by all Information Commissioners and relevant Ombudsmen. The IPC's increasingly complex regulatory jurisdiction has required us to develop expertise internally and externally. This expertise is essential to preserve New South Wales citizens' right to access information and privacy, irrespective of the government contract, platform, or agency enlisted to inform and deliver its services.

The CHAIR: Thank you. I should introduce the Committee members. My Deputy Chair is the Hon. Trevor Khan. We are joined also by the Hon. Adam Searle; the member for Liverpool, Mr Paul Lynch; and the member for Prospect, Dr Hugh McDermott. I will open the floor for questions.

Mr PAUL LYNCH: The IPC furnished reports concerning record keeping within the Premier's office to the ICAC and the State Archives and Records Authority. What was the substance of those reports?

Ms TYDD: The reports were furnished under the power that the Information Commissioner has to furnish reports to other regulatory agencies, and there are specific provisions that deal with provision to ICAC and, likewise, provision to another agency. In providing those reports, as reported in the media, I was required to undertake an investigation into the practices that related to a complaint lodged with me, as the Information Commissioner, around allegations that an offence may have been committed in the office of the Premier relevant to the destruction of records. I examined through an investigation and did not make an adverse finding. An adverse finding is what triggers a public report or a report to a responsible Minister. In this instance I think the media has reported that the Information Commissioner did not make an adverse finding in relation to any member of staff. However, I did determine that, given the relevance of two other publicly reported agencies involved in that investigation looking at similar matters, it was appropriate—and met the legislative threshold, I should also say—to furnish both ICAC and the State Archives and Records Authority with a copy of my report.

Mr PAUL LYNCH: What was in your report?

Ms TYDD: My report dealt with the provisions around a commitment of an offence. You would be aware that under the Government Information (Public Access) Act the offences are between sections 116 and 120. Sections 116, 117, 118, and 119 deal with offences that relate to an information access application. It is only the offence under section 120 that goes to the nature of behaviour around information that is either required or authorised to be released, so the others all envisage an access application, and they link to that. This one is a broader offence provision and, following advice over a number of years, the interpretation of that provision lends itself to looking at what should be proactively released, and what could be authorised to be proactively released.

In respect of the media's summary that it was about the guidelines in respect of the community grants fund, there was consideration given if there was any requirement to actually publish those guidelines, because you would be aware that under the GIPA Act there is a requirement to publish guidelines that deal with rights affecting members of the public. The grants scheme, as has been publicly reported, dealt with grants provided to councils, and not strictly members of the public, so in that regard, the capturing of the type of information that was in question did not readily lend itself to a proactive or authorised release of information that may have triggered the offence under section 120 of the GIPA Act. My report canvassed those issues in relation to what might constitute an offence under section 120, as narrowed down to being the only relevant offence; what information would be captured by section 120, and in this case it was the community grants program; and therefore was there a nexus to demonstrate that a breach under the GIPA Act had occurred. I am able to report to the Committee, and certainly it has been reflected in my media statement, that I did not find that a breach of the GIPA Act had occurred.

Mr PAUL LYNCH: Did you get any response from either of those two authorities to whom you sent the report?

Ms TYDD: I do not believe that I have received a formal response from either of those authorities.¹

Mr PAUL LYNCH: When were you notified of the cyber attack and possible compromise of privacy on Accellion's file transfer appliance, or FTA, as I understand the abbreviation is, by NSW Health and Transport for NSW?

Ms GAVEL: I have not actually brought the exact date in, but I think it was early in the year, late January or early February, that we received those notifications, and we have been engaged with both Health and Transport on their response to the breach, and how they are notifying people affected by the breach since then. I have met with them both this week, in fact.

1. The Committee received correspondence from Commissioner Tydd providing clarification on these statements which is published on the Committee's [webpage](#).

Mr PAUL LYNCH: Do you know when it was that those agencies first found out about the breach?

Ms GAVEL: I do have the information, but I do not think I actually brought it with me. My recollection is that it was early this year.

Mr PAUL LYNCH: Could you perhaps take it on notice?

Ms GAVEL: I can take that on notice, yes.

Mr PAUL LYNCH: Are those the only two agencies that have notified you of an attack?

Ms GAVEL: We did have, from memory, I think, two other notifications from agencies. They were able to manage the breach and they did not have the same impact that occurred with Health and Transport.

Mr PAUL LYNCH: Which were the other two agencies?

Ms GAVEL: They were icare and the Crown Solicitor's Office. I might double-check that. I am sorry. When you put all your information together for estimates, I did not bring all that along with me.

Mr PAUL LYNCH: What was the type of information that was accessed at Transport for NSW?

Ms GAVEL: The information was in this secure file transfer system, Accellion. It was not Opal data. It was information, I suppose, held by the ministry. I am very aware that this particular cyber attack was brought on by a malicious actor who is looking to monetise the attack through the information that they acquire. While I want to make sure that I give you as much information as I can, I am very aware that I do not want to provide information that might be of assistance to someone who is trying to understand what information they have got in the dataset.

Mr PAUL LYNCH: Can I suggest you take that question on notice and give a confidential response back to the Committee so that it does not go beyond the Committee?

Ms GAVEL: Sure, yes.

Mr PAUL LYNCH: That is the way to deal with it. The FTA product that has been subject to this hack has been around for about 20 years. Accellion has apparently consistently emphasised that it was at the end of its life, and they had planned to end support for it as at 30 April this year. In terms of protecting the privacy of New South Wales citizens, do you think Transport for NSW and NSW Health should have been a bit more careful and a little less cavalier in their approach to this?

Ms GAVEL: I became aware that there was an issue with it when there was a breach of the system. It is difficult to comment on whether they should have been using something else. I know that once organisations became aware of the breach, because of course private organisations were affected as well, they immediately stopped using that system and they moved to, I think, Kiteworks, which is the most recent system that is provided on that platform.

The CHAIR: You mentioned some of the financial impacts that you have been and are concerned about for the future. Obviously, things have changed in this last reporting period with COVID and the impact of people working from home. How much of an impact do you think that will continue to have on the work you are able to do, as in financial restraint?

Ms TYDD: I will take that, Chair. I am sure my colleague will assist me as required. In relation to the IPC's growth trajectory, the independent report demonstrates basically a 30 per cent increase. Looking around other like jurisdictions, there is an increase in workloads for similar commissions around Australia. That is probably not anywhere near the magnitude of the magnitude in New South Wales. Our switch in New South Wales to digital government is definitely driving that trajectory, and will continue to do so. We now have the independent report that demonstrates that around 20 per cent of one of our team, so four people, has been impacted by provision of additional advice. That is an ongoing impact. Effectively 20 per cent, one-fifth, of that team is taking on new work. That definitely is an ongoing impact. The Digital Restart Fund will continue for around three years, so we see that continuing.

Likewise, there are other budget pressures that arise in relation to new legislative amendments. Those amendments are necessary to respond to digital government but also the digital age more broadly. My colleague will be administering the mandatory data breach notification scheme. That will be associated with a reasonably significant increase in costings, and will be something that I will advocate for, with my colleague, to ensure that we are able to administer that scheme successfully. There are other internal pressures that occur. The rising cost of corporate services is an increasing cost that was not factored into our budget. In all, increasing work volumes that clearly are not going away, new legislation—and it is a privilege to be involved in administering new schemes

that uphold rights for New South Wales citizens—and increasing unpredicted overhead costs. I think those costs will increase, and it requires very close monitoring to ensure that we continue with the pretty outstanding level of performance that we have demonstrated to date.

The CHAIR: Ms Gavel, do you have some thoughts on that?

Ms GAVEL: I would like to add to what the Information Commissioner has said, that there will be resourcing requirements for the mandatory notification data breach scheme. I have provided advice to the Attorney General and the Minister for Customer Service on how important it will be that the IPC receives the funding required to enable us to manage the scheme well, so that the outcomes we want from the scheme are able to be achieved.

The CHAIR: There is a draft exposure bill that has now been set. What are your thoughts on that draft bill and how that looks from your perspective?

Ms GAVEL: I am very happy to have the bill in draft and out for consultation. The IPC has been part of the working group, which included the Department of Communities and Justice, the Department of Customer Service, and the Department of Health. The working group has given very thoughtful and careful consideration to all the issues that arise, in terms of bringing forward a model for this type of scheme, such as, what should be the definition of a breach that is captured under the scheme, where the threshold for the scheme should be, should there be any exemptions for the scheme, and what sort of powers does the Privacy Commissioner have. There is obviously a range of views on those issues. The working group has been able to consider all those views, distil them down, and come to an agreement on what we think is a good model to put out for consultation. It will certainly be important to have the information that we receive through the consultation to see whether there are other things that we need to consider as part of the scheme, before that bill is introduced into Parliament.

The CHAIR: Ms Tydd has talked about the impact that that will have financially. What do you see as the concern or the reality around what that might mean financially?

Ms GAVEL: Ahead of the scheme we will need funding to enable staffing, so that we can provide the guidance that will be needed under the scheme. There will need to be guidance given to agencies about how to implement the scheme. We will be drafting that, and we will need the staffing complement to be able to do that. We will also need funding ahead of the scheme for our tech systems, to make sure that we can record those notifications as they come in and keep the statistics, which is obviously an important part of any such scheme. Once the scheme comes in we will need additional funding, which we estimate at around \$750,000, to cover the additional staffing costs to manage the scheme going forwards.

Mr PAUL LYNCH: Are you happy with the draft bill in relation to the mandatory notification scheme?

Ms GAVEL: Yes. As I said, the working group has given very close consideration to the issues. There are quite a number of complexities with bringing forward a scheme like this that we have had to consider and balance as part of the scheme.

The CHAIR: If there are no further questions, thank you very much for your time today and for appearing before the Committee. We may send you some additional questions in writing. I note that you have taken some questions on notice. Your replies will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions if they come forward?

Ms TYDD: Certainly.

Ms GAVEL: Yes.

(The witnesses withdrew.)

FIONA ESTELLE RAFTER, Inspector of Custodial Services, affirmed and examined

The CHAIR: Before we proceed, do you have any questions about the hearing process?

Ms RAFTER: No, I do not.

The CHAIR: As Chair of the Committee, I am joined today by the member for Liverpool, Mr Paul Lynch, and other committee members, who are coming in and out presently. Would you like to make a short opening statement before we start asking questions?

Ms RAFTER: Yes. Thank you for the opportunity to appear before you today. Firstly, I would like to acknowledge the traditional owners, the Gadigal people of the Eora Nation. The Inspector of Custodial Services is an independent statutory office created in October 2013, pursuant to the Inspector of Custodial Services Act 2012. During the 2019-20 period we inspected six adult correctional centres, the Integration Support Centre, and three youth justice facilities. We also commenced a thematic review of inmate transport, inspecting four related sites.

During this period, the office also undertook 53 liaison visits to custodial facilities. We tabled four reports in Parliament relating to the inspection of 21 custodial facilities in New South Wales. Those reports are *Residential Facilities and the Compulsory Drug Treatment Correctional Centre, Programs, Employment and Education, Five Minimum Security Correctional Centres in Non-Metropolitan New South Wales* and *Women on Remand*. We also updated and published our inspection standards for adult custodial services in New South Wales in May 2020, and our New South Wales youth justice inspection standards in June 2020, both of which are available on our website. Since the 2019-20 reporting period we have tabled a further seven reports relating to 20 custodial facilities, and conducted five inspections of adult correctional facilities, those being Parklea, Lithgow, Goulburn, the High Risk Management Correctional Centre, and Emu Plains, with another four inspections scheduled for the second half of this year.

A significant focus of 2020 was, of course, responding to the significant threat posed by COVID-19 to the custodial environment. The Inspector of Custodial Services [ICS] responded to the challenges of the COVID-19 pandemic by implementing the *Inspector of Custodial Services COVID-19 plan*. The plan aims to ensure the safety of the inspector's staff and stakeholders, and ensure business continuity for the duration of the COVID-19 pandemic, respond and adapt to emerging issues in the custodial environment, and ensure the continuity of the Official Visitor Program. The plan was published on the ICS website in April 2020, and outlines how the Inspector's office operates for the duration of the COVID-19 pandemic, having regard to applicable legislative requirements, international human rights standards, NSW Health directives, and applicable workplace health and safety requirements.

I have adopted a "do no harm" approach to our activities throughout the pandemic. This included conducting our first remote inspection using technology, as well as postponing one inspection to allow the custodial centre to focus on their COVID-19 response. Scheduled onsite visits were postponed from 13 March 2020 until 25 May 2020. This decision was not taken lightly; however, I believed it was necessary to ensure the safety of my staff and, importantly, the staff, inmates, and detainees of New South Wales custodial facilities. Onsite visits recommenced on 26 May 2020, with a focus on monitoring COVID-19 policy and procedural compliance, and the treatment and conditions for inmates and detainees. Strict protocols were put in place to ensure the safety of my staff and that of inmates, detainees, and staff at the centres that we visited.

The Official Visitor Program has continued to operate during the COVID-19 pandemic, although necessary adjustments were initially made, so that official visitors could safely provide support to inmates and detainees. Prior to March 2020, many official visitors visited their allocated centre once a fortnight. In response to the COVID-19 pandemic, physical visits to each correctional centre were reduced to once a month, and official visitors attending custodial centres were required to practice strict physical distancing precautions, and with a focus on examining the general functioning and physical appearance of a centre, with particular attention given to places of quarantine, medical isolation, confinement, separation, and segregation. A free OV [Official Visitor] phone line and mail service was introduced by the office at all centres during this time, to enable contact to continue with the Official Visitor Program and complaints management. The frequency of visits for official visitors was reviewed in August 2020, resulting in an increase in visits to many custodial centres, and visits are now operating at the usual frequency.

The CHAIR: Thank you very much for that opening statement. I might introduce the Hon. Trevor Khan, who has arrived.

The Hon. TREVOR KHAN: The Inspector knows me well.

The CHAIR: I have a couple of facilities in my electorate and one thing that became apparent, particularly during the lockdown part of COVID-19, was the use of audiovisual equipment. Would you like to comment on how that worked, or the feedback you received around that during some of your inspections?

Ms RAFTER: Certainly. That is one of the silver linings that has come out of the pandemic, if there can be any, because there had been a hesitancy to use video visits prior to that. I have actually seen them in operation in a number of centres now, and I have made recommendations that they continue to be utilised after the COVID-19 pandemic, not as a substitute for in-person visits, because I think that is really vital and important, but as an alternative means of having family contact and visits. The response that I have received from staff is that they are supportive of it, but, more importantly, for the people in custody, it gives them an opportunity to speak to their family, to see their family within their own homes, and to see their children. Some even comment to me—and I have heard this mentioned in other quarters—that they get to see what the home environment is like and they even get to see their pets, and that does not happen with their in-person contact visits. They have been a really good introduction into the system, but they should not be a substitute for in-person visits, which are really important.

As part of our inspection process we generally stay in the weekend periods—we have done that this year with all of our inspections—and we see the face-to-face visits and also watch the audiovisual visits. One of the places in particular where it has really made a difference is the high risk management unit. There are obviously very strict protocols around visits to that unit, but I was there on a weekend, and there were two separate audiovisual links happening, and a number of visits during the course of the day, with two officers making sure that that was happening. There was also a non-contact visit happening, and a contact visit, in the two separate areas of that facility, but it has been a very positive thing to happen in the centres.

The CHAIR: The feedback I have received from some inmates is that in some cases it is less traumatic for the family—

The Hon. TREVOR KHAN: Particularly for kids.

The CHAIR: Yes, particularly for kids. They can talk to dad or mum on their phone, show them their homework, their artwork, their dog, their backyard—

Ms RAFTER: Absolutely.

The CHAIR: Whereas if they have to travel, in some cases for many hours, it is first of all expensive and hard to manage, and also quite traumatic for children at times, so I think that has been a really positive thing and I am interested to hear how that can continue into the future.

Ms RAFTER: I totally agree with your observation. A large part of the system in New South Wales is regionally based, and there are many people whose homes are in Sydney and they are in regional centres, so it is a long way to go for their families to travel out there, and because of COVID-19 and still the need for physical distancing in the visits area, some visits, particularly in the higher security places, will be 30-minute visits. It is a long way for a family to travel. I have spoken to those families coming in and out of visits as well, and it is not to say that families are not prepared to do that, to see their loved ones in person. But for many people, driving 2½ hours for 30 minutes, and then back in the car with the children for another 2½ hours, video visits are very welcome.

The CHAIR: Do you see any problems or concerns around some of the little red flags that pop up around the misuse of the equipment? It is normally supervised within certain boundaries, but are data hacks or the ability to do something like that something you look at and inspect as well?

Ms RAFTER: I am not aware that there have been any of those issues. The video visits are so important to the inmates. I am not aware that anybody has tried to get involved in any nefarious activities to undermine the use of it.

The CHAIR: I should clarify that I am not either.

Ms RAFTER: That is not to say that it could not be possible. Before there is any introduction of any IT systems, there is generally a great deal of scrutiny attached to that. It was done quite quickly, but there were security protocols put in place. Different centres have different platforms. For example, Clarence has a slightly different platform. They have the video visits, but they also have tablets provided to the inmates there, so that they can make phone calls through the tablets from inside their cells, well into the evening. That has been another communication improvement that has happened during COVID.

The Hon. TREVOR KHAN: Two things arise out of your last sentence. The first one is has there been an increase in the number of visits because of the availability of audiovisual links? If the answer is "I don't know", that is fine.

Ms RAFTER: I am not sure. It is more that it has enabled continuity of visits, from my perspective. Previously we would see visit rooms filled on the weekend. They have had to reduce that. Even with the video visits, they still have to be scheduled for 30 minutes or 45 minutes, and it is one at a time on the audiovisual link. I am not sure if it has seen an increase. It may be that people who were not getting visits before are able to get visits.

The Hon. TREVOR KHAN: Indeed.

Ms RAFTER: But there is still only a certain capacity of timeslots available to enable the visits to occur, because they still have to be monitored.

The Hon. TREVOR KHAN: My second question goes to what you raised with regard to Clarence. What are the differences between the privately run institutions and the Corrective Services-run institutions, in terms of their use of audiovisual equipment?

Ms RAFTER: Clarence has introduced a tablet system that has enabled contact with family.

The Hon. TREVOR KHAN: That is a privately run institution.

Ms RAFTER: It is a privately run one. Serco is running that centre. There are three separate areas. There is a men's maximum-security area, there is a women's centre, and there is a men's minimum-security centre. The people in custody at Clarence have access to tablets. One of the best things the tablets allow is to enable, particularly women—and it is valuable for men as well—to be able to speak to their families well into the evening, until 10 o'clock in the evening. I have had lots of positive feedback around that. It also enables them to watch movies. It is also a complaints management system. Instead of the mechanism that is used in many facilities, whereby you have to fill out a form, you have to give that to someone, and you have to rely on somebody to send the form to the right place, they can make the requests online, and then there is a record of making that complaint as well. They can request things. That type of device, I understand, is going to be rolled into the public system as well.

The Hon. TREVOR KHAN: Is that facility available, for instance, at Junee, which I think is also a Serco facility?

Ms RAFTER: Junee is a GEO facility. I was there recently, and they do not have the tablet system yet.

The Hon. TREVOR KHAN: What about Parklea?

Ms RAFTER: Parklea is MTC-Broadspectrum. We did the full inspection of Parklea at the end of last year. They did not have tablets at that time, but they were very keen to implement the tablets.

The CHAIR: Wellington, which is a Macquarie facility run by Corrective Services, has a similar scenario where they are looking at moving into more of a tablet scenario as well. Again, they are very keen. It seems like that is the way of the future, whether private or Corrective Services.

Ms RAFTER: Macquarie and Hunter have the same type of facility in the dormitory-style accommodation. They have a screen, and it is quite a large screen. It is built—

The CHAIR: It is bolted in.

Ms RAFTER: It is bolted in, yes. If someone is upset, there is less likelihood that it will be damaged. Within that, they can have access to their prisoner trust account funds, and they can also watch TV and movies. They do not have phone calls through that system because they do not need that. In that dormitory-style accommodation, they leave the phones on until 10 o'clock at night.

The Hon. TREVOR KHAN: When you talk about dormitory-style, is this at Cessnock?

Ms RAFTER: No, this is Macquarie and Hunter. Hunter is located within the broader Cessnock complex but it is a separate facility. The Macquarie centre, which is out at Wellington, and Hunter, were built by different people but they are essentially the same build.

The Hon. TREVOR KHAN: I am trying to wander back to which inquiry it was, but that is essentially low walls and supervised, but a large number of prisoners within the one area. Is that right?

Ms RAFTER: Yes. They have 25 people in each dormitory-style. They have their own cubicle with their own screen, and there are shared bathroom facilities, but it is not the old open style where everybody is in there together. They have a security door that closes behind them. It has been quite well done, in my opinion. They have a number of phones around the dorm. They also have access to the outside yard well into the evening as well. A number of people, when we did the inspections there, talked about the difference it makes them feel—and this goes to institutionalisation—about being able to go out and see the night sky, after having spent quite a period in custody, and also being able to speak to their families well into the evening.

The Hon. TREVOR KHAN: When these facilities were mooted and originally started, there was a lot of criticism about whether this was a retrograde step. I think Mr Shoebridge was particularly vocal.

Ms RAFTER: I was sceptical. I had a healthy scepticism about it.

The Hon. TREVOR KHAN: Has your scepticism been assuaged?

Ms RAFTER: In many respects, yes. In the report that we have tabled, in relation to the dormitory-style prisons, I found that there were many positives about the way that they were operating, as I have just described. But it relies on very careful classification and placement to make sure that they have the right cohort in there that are suitable for dormitory-style living.

The CHAIR: It is not suitable for every single inmate.

Ms RAFTER: No. If there is somebody who has institutional conduct issues, they are not suitable. There are any number of people within a custodial system who are there for serious offences, but their institutional conduct is good. They are certainly suitable for those types of environments. It comes down to the risks that they pose to others within the centre.

The Hon. TREVOR KHAN: Or the potential risk to themselves, I suppose. If you had, dare I say, a "rockie" in there, it might be potentially a problem—somebody who has a series of convictions which otherwise within the prison system might leave them vulnerable. Would that be right?

Ms RAFTER: Yes. Hunter actually has quite a number of those people, but they are all—

The Hon. TREVOR KHAN: In the same pod?

Ms RAFTER: Yes. One of the issues that I raised in the report was that they needed to be more careful about introducing people who were outside of that profile within that pod, because older individuals who have protection status may in fact become vulnerable, so they really need to maintain their vigilance, in my opinion. It is not a suitable environment for everybody, and they need to maintain their vigilance about who they place together in there.

Mr PAUL LYNCH: I think there was an overspend in the 2019-20 year. Your report commented that additional resources were required to meet statutory obligations. Is that a very polite way of saying you have not got enough money?

Ms RAFTER: I think I have said to the Committee on many occasions that more resources would be welcome. The overspend was to enable us to meet statutory obligations, and other obligations that arise. During that period there was the reinspection of the youth justice centres and I did allow someone in my office to go on a secondment. It was a secondment to an independent inquiry. That was not reimbursed, so then I exceeded the budget.

Mr PAUL LYNCH: I think you said that there was an overspend to meet statutory obligations.

Ms RAFTER: Yes.

Mr PAUL LYNCH: That means you have not got enough money, if you cannot fulfil your statutory obligations with the budget you have.

Ms RAFTER: Not if there are other matters that occur during a financial year that are unanticipated.

Mr PAUL LYNCH: As I understand the figures, during COVID there was a decrease in the number of inmates in the system?

Ms RAFTER: Yes.

Mr PAUL LYNCH: Did that have any consequences that you would not have expected?

Ms RAFTER: At the same time that those numbers came down, the new infrastructure was coming online, so it has enabled less crowding in the system. I would certainly like to see those numbers stay where they

are, and continue to plateau, rather than there be an increase again, despite the fact that there is additional infrastructure in the system. I think the additional infrastructure now gives Corrections the opportunity to reduce overcrowding, have less people sharing cells, and I hope that that is their future intention. I have written in some of the inspection reports that I would like them to look at decreasing the use of their aged infrastructure, and to also reduce the number of cells that are being shared. There are some circumstances where it is appropriate for people to share, and there needs to be capacity for that to happen in the system, because it is appropriate in some situations.

The Hon. TREVOR KHAN: Because of mutual support?

Ms RAFTER: Yes, absolutely, but for the vast majority, I have already said—and I have been on the record with this—that I prefer single cells. The population coming down, as well as the new infrastructure coming online, has created some opportunity for that, and I would like to see more of it.

The CHAIR: Could I ask quickly about the Official Visitor Program? Could you outline what that is, how it works and how you see that continuing?

Ms RAFTER: Sure. It is a really important program. We have the largest program in the country. At the moment, we have 91 official visitor appointments and, of those, we have quite a number of Aboriginal official visitors now. We have worked very hard to increase those numbers by a targeted recruitment, so 50 per cent of our official visitors in Youth Justice are Aboriginal official visitors, which is very positive from my perspective. In Youth Justice, official visitors attend the centres, and there is one person going in every week. That is important, because there is a very large remand population within Youth Justice. What is good is that a lot of young people who come into custody are released again quite quickly, but it is really important to have somebody there, in my opinion, frequently, to assist them and to address any complaint issues.

Throughout the adult system we have official visitors in every centre. We have them in some residential facilities. The latest new appointment that we have is at Balund-a. Balund-a is a residential program that was set up as a diversion strategy for Aboriginal people. We have done a report on that centre, and I recommended to the Minister that we appoint an Aboriginal official visitor there as well, because it is quite remote.

The Hon. TREVOR KHAN: Where is it?

Ms RAFTER: It is at Tabulam. It takes about an hour to get to Lismore, so when I think of going there it is sort of between Glen Innes and Lismore.

Mr PAUL LYNCH: It is very remote.

Ms RAFTER: It is very remote, and when places are remote, that means that there is not a constant flow of people through there, so I thought it was important for me to have somebody there on a frequent basis. We were fortunate enough to find an Aboriginal official visitor who was happy to take the appointment. They have been appointed to Clarence Correctional Centre as well.

The CHAIR: You mentioned Indigenous, but what about other multicultural official visitors? What percentage do you have in other cultural backgrounds?

Ms RAFTER: We have a number of people from different backgrounds. That would probably be the next thing that I would like to do, to increase diversity. We have an official visitor in Youth Justice who is Muslim, which has been a real asset for us because there is a number of young Muslim people in juvenile justice. We also have a Vietnamese official visitor, or someone with a Vietnamese background, and we have people with Pacific Islander background as well, but we need to increase that diversity, and that is something that we are continuing to try and do. We now have approximately 50 per cent of women as official visitors. Even though women in custody are 7 per cent of the total population, I think it is important to have a gender balance within the system as a whole for official visitors, because different genders bring different perspectives into the system.

The CHAIR: Thank you for appearing before the Committee. We may send you some additional questions in writing.

Ms RAFTER: Of course.

The CHAIR: Your replies will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Ms RAFTER: Of course.

(The witness withdrew.)

(Luncheon adjournment)

MICHAEL BARNES, Commissioner, NSW Crime Commission, affirmed and examined

MICHAEL WILDE, Executive Director, Corporate Services, NSW Crime Commission, affirmed and examined

The CHAIR: Welcome back to the hearing for the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission's 2021 review of the annual and other reports of oversights bodies. Do either of you have any questionings about the proceedings?

Mr BARNES: No.

Mr WILDE: No.

The CHAIR: Mr Barnes, would you like to make an opening statement?

Mr BARNES: I would. It is my pleasure to appear before this Committee for the first time in my capacity as Commissioner of the NSW Crime Commission. As I commenced in the role after the period covered by the annual report, I am free of the major constraints that usually impede persons in this position from speaking completely frankly. I refer to the burden of false modesty, which agency heads are usually expected to observe. As I am not claiming personal credit for any of the agency's achievements for the period before I arrived, I can give you the unvarnished truth. The facts are the Crime Commission had a remarkably successful year. Its joint investigations led to 118 arrests on 525 charges. Let me briefly mention the most significant matters.

The Crosslands reference involved the murder of 15-year-old Brayden Dillon, who was shot in his bed in his family's home in Glenfield. At the time the Commission was granted the reference, Conrad Craig was already in the frame for the shooting, but it was obvious that he was not the instigator or behind it. The Commission conducted 29 days of hearings with 20 witnesses, uncovering evidence not only relating to the murder itself, but also to an alleged perversion of the course of justice through the use of false affidavits. The Commission's investigation has resulted in Craig, having already been charged, being sentenced to 40 years' imprisonment. Abdulrahman Abu-Mahmoud has been convicted of murder, having contracted Craig to do the shooting. He is yet to be sentenced. Two lawyers acting for a person suspected to be the instigator of the crime have been charged with pervert the course of justice, participate in a criminal group, and unlawful bring things into a place of detention. One of the lawyers has also been charged with stalking, drug supply, and hinder. As neither of the lawyers has yet been tried I will not name them, as you can understand the investigation is ongoing.

The Urana reference relates to four murders related to organised crime activity. Since the reference has been granted, 48 days of hearings have been conducted, with 38 witnesses. Different people have been charged with four murders and other offences. One murder is yet to proceed to trial. As they are all interrelated, a non-publication order has been made in relation to them, so I cannot mention the names of the people who have been convicted to date. The Oban reference might be of interest to some members of the Committee. It relates to the Liverpool City Council arson that occurred in 2010.

Mr PAUL LYNCH: I am all ears.

Mr BARNES: It was a significant matter, which resulted in \$27 million of damage to the building. The police were getting nowhere. In November 2019 the Commission was granted the reference. As a result, in June 2020, a man who was 19 at the time of the offence was charged with destroy property by fire in company. He is yet to go to court. Jetlag joint strike force—in August 2018, the Commission commenced a joint investigation with police into one Matthew Doyle, concerning importation of cocaine. As a result, Doyle, and two co-accused, were charged with supplying a commercial quantity and several charges of deal with proceeds of crime, in connection with their attempt to import 300 kilograms of cocaine. All three pleaded guilty to drug supply. Doyle also confessed to deal with the proceeds of crime. He has been sentenced to eight years. The two others are yet to come before the court for sentencing. The Henley-Armstrong reference kicked off in November 2018. It was an investigation into a Vietnamese money laundering syndicate. It was a long-term and protracted investigation that demonstrated the validity of the following-the-money strategy. It has resulted in 15 individuals being arrested on 68 offences, and approximately \$2.3 million in cash and 610 kilograms of illicit drugs have been seized.

I will turn to the activities of the Financial Investigations Division [FID]. During the year ending 30 June 2020 the FID resolved current proceedings against 92 defendants, securing confiscation orders valued at a shade under \$31 million. An amount of \$40 million was collected during the year, from orders made during 2019-20 and previously. As at 30 June 2020 there were 259 Supreme Court proceedings brought by the Commission under the Criminal Assets Recovery Act. They will roll forward throughout the year. As members would appreciate, confiscation proceedings are civil in nature. It is not necessary that a defendant be convicted or even charged with

a criminal offence. It is interesting to note that the defendant against whom the highest value confiscation order was made during the year under report, with an estimated realisable value of \$3.254 million, has not been charged with any criminal offence, but is currently the subject of an ICAC corruption inquiry. The Human Sources team manages a carefully identified stable of informants. Some are high-level organised crime figures, others are simply relatives or associates of such criminals. As a result of gleaning information from those sources, 733 intelligence reports were disseminated to other law enforcement agencies throughout the year.

As you know, Mr Bodor, QC, the Assistant Commissioner (Legal), was the only person who could preside over hearings during the interregnum of Acting Commissioner Cotter. Bodor presided over 57 such hearings in 2019-20, which was considerably fewer than the previous year, on account of the COVID shutdown. However, with the impact of the pandemic from our perspective largely over, and now with two of us able to preside, this year we have far exceeded that number already. Approximately two-thirds of the hearings relate to organised crime matters, and one-third relate to homicides.

The technical operations team, as the name suggests, undertakes technical deployments. There were 547 in the last financial year, relating to the installation of trackers, listening devices, optical surveillance devices, drones, et cetera. They also completed 226 forensic examinations, downloading data from mobile phones and examining seized computers, CCTV systems, et cetera². They are a very expert group, with access to sophisticated technology. I see from the transcript of last year's proceedings that some members of the Committee had an intense interest in the People Matter Employee Survey results for the Commission. I am pleased to advise the Committee that the 2020 survey saw very significant improvements in key indicators. I note that the survey was administered only two months after I took the chair, so Mr Cotter and the extant executive are responsible for and deserve credit for those improvements. I mention only a few of the headline results. Employee engagement, favourable, 71 per cent, up 5 per cent and 4 per cent above sector wide; job satisfaction, favourable, 81 per cent, up 10 per cent and 11 per cent above sector wide; wellbeing, health and safety, favourable, 81 per cent, up 15 per cent and 5 per cent above sector wide; teamwork and collaboration, favourable, 73 per cent, up 9 per cent and 4 per cent above sector wide; risk and innovation, favourable, 78 per cent, up 12 per cent, and 3 per cent above sector wide.

Notwithstanding those very favourable results, there are obviously plenty of opportunities for improvement, so we convened a working group to address some other areas where we think we can do better. I will report on the results of that next year. The last thing I will mention is the statutory review. As members would be aware, that was completed, and the report was tabled in Parliament on 15 December 2020. The review concluded that the policy objectives of the Act remain valid, and that the Act overall works. Neither the review nor the stakeholder submissions concluded that major amendments were required. The review made nine recommendations, none of which are controversial. I mention only recommendations (7) to (9) because they will make it easier for the Commission to confiscate abandoned property. The proposal is for an administrative forfeiture regime, rather than having to file an application in the Supreme Court. I am pleased to note that the department has advised that drafting of the legislative amendments necessary to give effect to the recommendations is underway. Those are all the remarks I wish to make. Thank you.

The CHAIR: Thank you, Mr Barnes. Mr Wilde, do you have anything to add?

Mr WILDE: No, sir.

The CHAIR: Thank you for being here today. I think there is a fair bit of interest and obviously, being in the role for only a shortish period of time, the first question is how have you found your transition? What are you seeing that is working within the commission and what are you seeing that maybe you can alter the direction of and improve?

Mr BARNES: The transition has been made much more easy in light of, and as a result of, the cooperation I have received from the executive and staff at the Crime Commission, for which I am very grateful. The organisation runs in a very smooth and well-organised fashion, from my perspective. The sad fact is that there is so much crime occurring in the state that there is no limit to the amount of work that the organisation can address. The challenge for the organisation, it seems to me, is identifying which jobs it should take on. We have, obviously, criteria that must be met before the organisation has jurisdiction—it has to be sufficiently serious, it has to be a job that cannot be advanced by traditional policing methods, and it has to be in the public interest—but even applying those fairly high-level threshold criteria, it is still the case that the police come to us with more jobs than we can possibly accept.

It is the same on the confiscation side. There are hundreds of smaller confiscation targets that the police put up to us on a regular basis that we simply cannot take on, because there is so much work involved in each case. Identifying those jobs, both on the investigation side of the agency, and on the financial proceeds confiscation side, is the challenge, to identify those which will best advance the strategic direction of the

2. The Committee received correspondence from Commissioner Barnes providing clarification on these statements which is published on the Committee's [webpage](#).

Commission and which will best enable us to maximise the impact that the organisation might have on reducing, deterring, or disrupting organised crime and other serious crime.

The Hon. TREVOR KHAN: Can I ask a follow-up question?

The CHAIR: Yes.

The Hon. TREVOR KHAN: What is a smaller matter in the confiscation of assets?

Mr BARNES: Anything under \$100,000 we will not look at, but there has been pressure to push that up to \$250,000 because, as I indicated earlier, at the end of last year we had 259 applications to the Supreme Court. We are now up to 300. Each of those applications has to be attended to on a regular basis. The registrar has call-overs, he or she wants to know where they are going, and we simply cannot take on more matters because we will not be able to advance them. The administrative forfeiture regime will help to some extent. We anticipate that between 10 and 15 matters will be able to be dealt with under that, and that will be less resource intensive. If the police go into a storage unit and find a pile of drugs and a pile of money, we do not usually get the criminals rushing forward and saying, "That is my money, give it back to me", but we still have to make an application to the Supreme Court, currently, to forfeit that money and all the steps involved. The civil forfeiture regime will say that we take the money. You might have an interest in it, as you were seen to be coming—sorry, Mr Lynch, I am not suggesting you.

Mr PAUL LYNCH: I have had worse things said about me.

Mr BARNES: Giving notice to the person who might appear to have an interest in it, and inviting them to contest ownership if they wish to, we anticipate that, in circumstances like that, they will walk away from it, and we will not then have to go through the steps. But \$100,000 is the short answer to your question, in relation to forfeiture currently. It is harder on the crime side. For example, the NSW Police Force at any one time has between 400 and 500 unsolved homicides. Obviously any unsolved homicide would meet the criteria of serious, unable to be advanced, and in the public interest, but we cannot do 500 homicide investigations a year, or we would not do anything else, so identifying which of those we should apply the agency's power and resources to is not easy.

The Hon. TREVOR KHAN: In terms of the forfeiture application, have you got an average cost figure that you apply in budgeting for it?

Mr BARNES: We try and balance how much we are likely to get, and how easy it will be to get there. When it is cash, the lower end is \$100,000. When it is property, it is \$250,000, because property is harder to pursue and it is more likely to be contested. With cash you tend to find they fall over.

The Hon. TREVOR KHAN: They disappear.

Mr BARNES: Yes.

The CHAIR: That is the role of the Management Committee essentially, is it not—to decide what you do or do not proceed with?

Mr BARNES: Yes, and they have given us guidelines about, for example, when we should settle matters, when we make a claim and say that we want all of that property, and we frequently settle matters because if we try to litigate 300 matters, we will spend all our money on legal fees. Settlement is a large part of it. We are obliged to be a model litigant, so obliged to consider compromise of actions whenever we bring them, and the Management Committee has given criteria for the agency to consider when resolving matters, for example. It is harder for them to give guidance as to which criminal investigations we should undertake, and that is no-one's fault, because at the outset it is very difficult to know where it is likely to lead. If there is some intelligence that a large-scale shipment of drugs is coming in, you can set the limit by weight, if you like. Some of them now are getting up into the multiples of tonnes—people are trying to bring in two tonnes of drugs at a time—and clearly that is going to meet any criteria, but when you are told that there is only some tens of kilograms, depending on the individuals involved, it might be worth going after, because the intelligence indicates they are serious operators who have done this on multiple occasions. It is difficult to make precise criteria.

The CHAIR: Do you think there is a need to either refine or expand? Expanding would need more people and more capabilities, and refining would keep it manageable.

Mr BARNES: I doubt you will ever hear an agency head say, "Don't give us more resources", so we will take that as read. Certainly, double the size and we will more than double the take, but I understand that there is competition for resources, and they are decisions that government has to make. We will keep doing what we are doing to the best of our ability with the funds we have got. I think we can get more focused. I think we cannot

just go after big lumps of drugs and money and we need to rely on the police to make a fair fist of that. We have completed the drafting of a strategic plan that calls on all of the business units to identify the impact of their investigations on organised crime, not just by saying that we took more drugs off X or Y, but that in doing so we had a major impact on a criminal syndicate, or on organised crime generally. I think that is the way we have to seek to maximise our impact.

The CHAIR: I guess that is a way to hone in on exactly the achievements you are making, not just kilograms of drugs, but impacts further down the line for whatever reason?

Mr BARNES: Yes, I hope so.

Mr PAUL LYNCH: Is it fair to conclude from what you say that because of the resources you currently have there are quite significant and serious matters that you are not able to pursue?

Mr BARNES: What we more tend to do is drop matters off the bottom if a bigger case comes in. The fact that we have already started a job means that at the time we accepted it we considered it met the threshold and it was sufficiently serious, but it is always a matter of prioritisation. When we pull out of a job it does not mean nothing happens to it; it means it goes back to the police, and they need to rely on their own capacity and capabilities to pursue it.

Mr PAUL LYNCH: Yes, but it was sent to you because you have the extra capacities that they do not have.

Mr BARNES: Yes.

Mr PAUL LYNCH: In relation to the Liverpool Council issue, is it anticipated that there will be further arrests?

Mr BARNES: No, I do not think so, but I can check that. My understanding is that we only ended up with one defendant, but I will check that for you, Mr Lynch—I knew you would have an interest in that.

Mr PAUL LYNCH: Yes.

The CHAIR: You mentioned some of the areas that have seemingly improved around staff engagement and management engagement with staff. Do you want to tell us a bit more about what is included? I know you were not there for all of that period, but is there feedback on those figures?

Mr BARNES: I think there was real concern in the agency about some of the results from the year before. For that reason there was an effort to address it. I think COVID, to some extent, gave everyone a common enemy and brought people together. You would be familiar with things like the reduction in suicide during times of war. It is that sort of impact, I think. The agency was very effective in skilling up and provisioning their staff with the technology to work from home. For example, we have seen almost no downturn in most areas of operation, even though a high proportion of the workforce was out of the building for the period covered by that report. There was a focus on areas of concern. There was a concerted effort to address the concerns that had been raised in the earlier report and the impact of COVID, and the demonstration from management that they were taking all steps necessary to address the needs of staff during that period, I think, were appreciated.

The CHAIR: You mentioned COVID-19 and one thing that went down significantly, I think, was money laundering activity. Has that changed now that we have moved out of the more serious lockdown due to COVID?

Mr BARNES: Yes. I think we are getting back to where we were. A major impact was people coming in from overseas, and that is still not happening. The big operators would fly in what they call "shore parties", to manage the shipment when it arrived, and to manage the money out of the country as a result of the transactions. That has not been able to happen. They have needed to rely on locals, and the old saying, "honour among thieves" has no validity, because if the locals were involved, they start stealing each other's drugs and/or shooting each other. To that extent, it has become a little bit more unstable and more precarious.

The CHAIR: Going back to staff briefly, in 2019-20 three complaints were made about the Commission and/or staff that were investigated and closed. I think the Law Enforcement Conduct Commission [LECC] was also notified of the complaints. Do you have any details of those complaints and where they ended up?

Mr BARNES: Can I ask Mr Wilde to tell you about that?

The CHAIR: Sure.

Mr WILDE: In terms of complaints to the LECC?

The CHAIR: These were ones that were on page 56 of the report: "relevant to Commission and/or Commission staff". The LECC was notified also of the complaints.

Mr WILDE: Standard process for us if we receive any formal complaint is that it is referred to the LECC, even if we investigate it within our own resources. The complaints were mostly grievances between staff, none of which were considered serious, and none of which led to any form of misconduct. If there was misconduct, that would be referred to the LECC for them to potentially investigate. Those were basically grievances between staff.³

The CHAIR: Can I ask you about the National Cooperative Scheme on Unexplained Wealth, which has been operating for a couple of years? This question may be for Mr Wilde. Can I get an update on how that scheme has been working? It is obviously targeting unexplained wealth—where people are getting money from. Is that a scheme that has been worthwhile? Does it continue in its original form?

Mr WILDE: I do not work in financial investigations. Unfortunately I would have to take that as a question on notice.

The CHAIR: If you could take that on notice, that would be great. Mr Barnes, as I mentioned earlier this is obviously a new role for you, but is there opportunity for someone like you in that role to look for different opportunities than have maybe seen before?

Mr BARNES: It would be immodest of me to say I have any insights that other people do not have. I think fresh eyes always see things slightly differently. It certainly is the case that ramping up our hearing powers, now that Mr Bodor and I can both preside over hearings, gives us the capacity to use those in ways that perhaps they have not been used before—use them to debrief informants, use them to explore possible confiscation activity. That is one area that I think will change. We have a project on foot that I have not mentioned today, because it is not in the report. It will be in the next year's report. The Act provides for the conducting of public sittings, and the provision of public reports to advise government on matters relevant to our scope. It does not seem it has been utilised previously. We have underway a joint project that I initiated as a result of conversations with government. The project will be between the Australian Criminal Intelligence Commission [ACIC], the Crime Commission, and ILGA—the Independent Liquor and Gaming Authority. It will look at aspects of money laundering in a particular domain. It is likely to result in recommendations in a public report. That is a mechanism that has always been in the Act, but for some reason has not been used before. That is an example.

The Hon. TREVOR KHAN: I am not being rude when I say in terms of the dynamic of your hearings, are you dividing up your hearings on the basis of matters or do you do it by individual witnesses?

Mr BARNES: Primarily by matters. I regret that I am being typecast. As a former coroner, I do most of the homicides. Bodor seems to like the organised crime matters. We have only been working in tandem for the last five or six months, so that will not necessarily remain the case. I would hope, and I anticipate that we will tend to keep matters once we have allocated them, because obviously, you learn things from one witness that you might want to put to another witness. The ACIC, on the other hand, uses their hearing powers differently. They wheel in an examiner, as they call them, put the witness before, and wheel them out. They do not really use their examiners as part of the investigation; they use them just to preside over the hearing. I am not supportive of that model.

The Hon. TREVOR KHAN: It has interested me. In the ICAC circumstance, I am interested in how compulsory examinations are done, compared to the public examinations. I am agnostic as to whether that is necessarily the only way that it could operate, I suppose. I am not being presumptuous when I say your appointment was interesting, in a sense, in that it broke the mould in many ways. Now having experienced the role, has it lived up to the expectations of what you anticipated before you got there? That is perhaps badly framed.

Mr BARNES: It has certainly lived up to my expectations. The more interesting question might be whether I have lived up to the expectations of those who appointed me.

The Hon. TREVOR KHAN: Perhaps you are not the right one to ask.

Mr BARNES: That is the harder question. I would never claim to have been as accomplished a lawyer as, for example, Peter Hastings.

The Hon. TREVOR KHAN: I was not making a criticism of anyone.

Mr BARNES: Prior to his appointment, Mr Hastings probably had a shared secretary. I am not sure if he had managed any more people than that. I think that is the difference I bring to the role; I have managed other agencies before, a number of times.

3. The Committee received correspondence from Mr Wilde providing clarification on these statements which is published on the Committee's [webpage](#).

The Hon. TREVOR KHAN: That is a valid observation. It is an interesting role in terms of the skill set you bring to the role. I know in terms of your role now we have gone a particular way. I think some of us did wonder whether it was necessarily the right way for the government of the day to have proceeded.

Mr BARNES: The argument would be that they have got an Assistant Commissioner (Legal); you have got Peter Bodor—a very experienced criminal QC. Do you need another one in the Chair position or do you want a different skill set in that position?

The CHAIR: That is a fair question.

The Hon. TREVOR KHAN: The answer is better than the question.

Dr HUGH McDERMOTT: I would argue that you need a law enforcement person with law enforcement experience, and you do not have that.

Mr BARNES: It depends what you mean by law enforcement experience.

Dr HUGH McDERMOTT: Exactly.

Mr BARNES: If you mean putting on handcuffs, that is right.

Dr HUGH McDERMOTT: No, I do not. It is the Crime Commission, it is not a local area command. It is a very different organisation.

Mr BARNES: That is right. Not many law enforcement people have that either. They tend to work in local area commands.

Dr HUGH McDERMOTT: I am not talking about the NSW Police Force, but there is somewhere else where we will have that discussion and argument in the future.

Mr BARNES: I would enjoy that, Dr McDermott.

Dr HUGH McDERMOTT: Indeed.

The CHAIR: Thank you, Mr Barnes and Mr Wilde. We may send some additional questions in writing. Your replies will form part of your evidence and be made public. There was one question taken on notice. Would you be happy to provide a written reply to any further questions?

Mr BARNES: Certainly, of course.

Mr WILDE: Yes.

The CHAIR: We very much appreciate your time.

(The witnesses withdrew.)

(Short adjournment)

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

LEA DRAKE, Commissioner for Integrity, Law Enforcement Conduct Commission, affirmed and examined

CHRISTINA ANDERSON, Chief Executive Officer, Law Enforcement Conduct Commission, affirmed and examined

GARY KIRKPATRICK, Executive Director of Operations, Law Enforcement Conduct Commission, sworn and examined

The CHAIR: Before we proceed, does anyone have any questions about today's proceedings? If not, would you like to make a short opening statement before we begin questions, Mr Blanch?

Mr BLANCH: Yes, thank you, I will make a short statement. The Commission has changed to some extent since the last time we were here. The two-commissioner model has been working well. You are no doubt aware that the problems with the Commission previously were the fact that there were silos in the Commission, because of the three-commissioner model, which caused problems. The two-commissioner model is one that has worked very well, and of course I need to thank Commissioner Drake for that, to a significant extent. As a result of that, legislation has been forwarded to the Parliament in order to regularise that situation. By having two commissioners, both commissioners are involved in all the work of the Commission, which helps bring the Commission together.

In addition to that, we have in the past 12 months established a position of Executive Director of Operations, which Mr Kirkpatrick occupies, and the purpose of that, again, is to make sure that the Commission is together and not in silos, because he is in charge of the operations of the whole Commission—both the integrity and the oversight functions—and that has also worked very well, so that I think I can now report that the Commission is one Commission and working properly. The only other observation that I would make is that the Commission has been well within its budget every year since its commencement. The Government, some years ago, established a program of cuts that would apply to all the integrity agencies over a period of time. That has not in any way adversely affected this Commission.

The cut for the next financial year, however, is a cut of some \$660,000 I think, and of course, in Commissions like this one, any cuts really have to come out of the salaries, because there is no other part of the budget that you can take the cuts from, and we have had to organise the Commission on the basis of coping with that. But I can report that I am quite confident that the funding for the Commission will enable the Commission to maintain its workings for the following financial year, and thereafter the cuts that are programmed in are much smaller. In short, budgeting is not expected to be a problem.

The CHAIR: Does anyone else want to make an opening statement?

Ms DRAKE: No, I do not think so. I think the functions of the Commission are outlined properly in our report. I think it reveals a different approach to relations, with the Police Commissioner and the police force generally, a more collaborative joint project kind of approach, but I think that is all I need to point out to you in our report. I think it is demonstrated in the report, and I think that view would be supported by the police. It is a collaborative arrangement that seems to be working quite well. That is all really, but that is all in the report already.

The CHAIR: In relation to what you have said, Mr Blanch, around the two-commissioner model, obviously that has been something that has attracted a bit of attention and, Ms Drake, you have been there as part of the three as well. You have said that you are very confident now that this will be a good model going forward. I am interested in hearing where the benefits really are. Is it streamlining? Is it the fact that silos will not occur, and that has been the main problem? What do you see?

Ms DRAKE: Mr Kirkpatrick is the Executive Director, and he looks at the operations from the point of view of both sorts of work. What we have done—and I manage most of it—is have Prevention and Education, which is a very significant part of our work, and working with the police, have those officers working with Integrity investigations, and within Oversight. The way we have managed it is to move people. If we have an investigation that is involving areas of interest for Prevention and Education, they sit in on the Integrity meetings, they are part of the planning for the investigations, and make contributions, as does Legal Services. If there is a solicitor who will be counsel assisting who is involved in a particular investigation, they sit in the Integrity meetings.

We have set up a themes committee which involves every single area of the Commission, from Registry to Investigations and Corporate, who go through the areas of investigations and make suggestions, so that

everybody is informed. So if something comes up in Oversight that might be relevant to an investigation, they communicate. It avoids a situation where one area of the Commission might be looking at an area and come across some conduct that they follow down a rabbit hole, but they do not tell somebody in Integrity. The Misconduct Themes Committee and the merging of Prevention and Education, Legal and Integrity and Oversight into cross-fertilisation, working together more, still doing different tasks, but focusing on the type of misconduct in particular investigations, and contributing rather than just following their own rabbit hole—does that make sense?

The CHAIR: Yes.

Ms DRAKE: That is what we have been doing, and it is working quite well—and I think everyone is more engaged by it. When there is a hearing, everyone follows it, because they have been following the issue, instead of, "I wonder what they are doing." So it is working, and I am pleased with that, and I think it comes from having a Chief who is the boss, and a Commissioner who is working together with that person, and having one Executive Director who keeps making sure that the cross-fertilisation is occurring. As a management tool, it was something that I used in the Fair Work Commission, and it is working well here.

The CHAIR: Mr Blanch, from your perspective, coming in with fresh eyes, this is now the recommendation, and you have been a supporter of it, and you see this as the way that it can and should operate in the future?

Mr BLANCH: Yes, I think the problem was that the organisation is an amalgamation of the Ombudsman's function in overseeing complaints against police and the Police Integrity Commission's function of dealing with corruption and integrity. Putting them together was a good idea, but the problem was that, with a commissioner for one and a commissioner for the other, they still tended to work apart, so there was a silo effect. By doing things the way we are doing them now, we are operating on the basis that Commissioner Drake, for example, whose title is the Commissioner for Integrity, as it presently stands, is involved in all aspects of the Commission, as I am, and because of that it brings everyone together.

Mr PAUL LYNCH: In the inquiry into NSW Police Force strip search practices, the Law Enforcement Conduct Commission [LECC] said that you would evaluate, by way of an audit, the impact of changed instructions and new quality assurance processes that the police have implemented. Has the audit happened? Has the evaluation happened?

Ms DRAKE: It is in the process of happening. They had 100 different Standard Operating Procedures for strip searches, and they have now got one. There has been a period during which this new operating procedure is working. It is up for review by us. We are continuing to keep an eye on it and monitor it. One of the things that came out of it was the need to change the way they educate police officers for exercise of powers. After talking to the Police Commissioner, we decided to introduce a new teaching method. We do not get to introduce it; that is a bit impertinent. But we suggested a more Socratic kind of—examples, rather than online learning. It came out of one of our cases, where stripsearching just was not applied in any appropriate way at all to a young Aboriginal boy.

And so, we had a trial of that recently, in Newcastle, where we had somebody paid by the Commission. We paid for this first trial, and told the Commissioner he gets one free from us. We had a sergeant in Newcastle, and a barrister employed by us, who did the first case in a regional town. We had examples of conduct and scenarios played, questions and answers, interaction, et cetera. Mr Kirkpatrick and I attended and talked. The local area commander attended and spoke to them. It was very successful. Next week, in fact, the first real application of this to an area is going to happen, in Lismore. Two Deputy Commissioners and the Professional Standards Command Assistant Commissioner are going. I am going, and we are going to put it in action in an area where there are a lot of young probationers, to see how it goes. That has arisen directly out of the stripsearching report, and then we are going to leave it.

We do not tell them how to do their business, but it is an example. The materials are theirs, and they are all interested, and they think it might work as a way of making these new Standard Operating Procedures be more effective. So, we are going to Lismore next week to do that, and then we are going to leave it to the police to see if they want to take it up. I think they will, if they think it is successful. They will not be able to do it, funding-wise, across the whole Police Force. But they will be able to do it in areas where they think there is a problem, where there might be a lot of young probationers, and where they might have perceived some conduct issues that arise out of not applying the search powers properly. So, it might be a "bring it in when you need a fix". That is one of the things that has arisen from it, and we are leaving a final report on that until we see how that goes and what they do with it. That is where we are up to.

Mr PAUL LYNCH: Have you got any sense of when that final report will be?

Ms DRAKE: October is my guess. I have got to do it. I want to see how this goes, and I want to see what the Commissioner's reaction to it is, and give it a little bit of time. I thought October is when I would probably say, "Well, this is the outcome. This is where we've got up to." They have responded positively to, I would think, almost every single recommendation in the original report. There is a bit of push and shove over some things, but no more than is the usual. Some of that is funding related, but a vast effort has been made, I think.

Mr PAUL LYNCH: Moving on to another topic, Operation Monza revealed some pretty appalling and outrageous behaviour by members of Strike Force Raptor. What is it that will stop that behaviour occurring?

Ms DRAKE: What happened was that I had conferences with the superintendent and with the Commissioner. In the course of doing that work, the superintendent who was in charge when that conduct occurred retired, and they put in place a different person. That was not entirely a happy arrangement for everybody who had been operating under the old process; lots of changes were introduced. I did not put the changes in my report, because they are operational matters that I did not think the public needed to have in detail, but I was satisfied that they were a good go at fixing what was, in my view, an assumption of elite powers that they did not have.

That person has now moved on. They have sort of split the function. A new superintendent altogether—I think it is a superintendent; I have trouble with rank—has been put in place. There has been follow-up action of a disciplinary nature arising from that, and the person in charge does not have the same attitude to legal powers. I cannot say whether everything that has been put in place will alter that assumption of elite powers because you are doing the right thing and—that kind of chest-out conduct. But I think as much effort as can be made has been, and it is on review for me to call in the superintendent from that area, and to look at what is happening, towards the end of the year.

Mr PAUL LYNCH: So there is effectively some ongoing monitoring?

Ms DRAKE: Absolutely, ongoing. It is too big a problem to just say, "Oh, well. One report—it's done." But a lot of people who did have the attitude exhibited by the officers in Monza have moved on, been moved out, and are doing other work. I am sure that the superintendent who is now in charge does not have the same attitude to—"It's okay." But it is an ongoing task; it has been there a long time and, of course, you don't want to throw out the baby with the bathwater. It has done some amazing work in relation to outlaw motorcycle gangs and other criminal activity. So, we'll see.

Mr PAUL LYNCH: Another topic: According to media reports, LECC has received a complaint about the leaking of material concerning ex-Minister Gareth Ward. First of all, have you received a complaint?

Mr BLANCH: Yes.

Mr PAUL LYNCH: When do you think your consideration of the issue is likely to be completed?

Mr BLANCH: It is difficult to say. The complaint is one that has been made to the Commissioner of Police. The letter from Mr Ward's solicitors is the form of the complaint. The particular problem with it is that there is no nomination of how any leak occurred, so it is not going to be possible for the Commission to embark on a wholesale inquiry to try to find out what happened. If anything can be nominated as to how it occurred, then it would ultimately be a matter for us or ICAC.

Mr PAUL LYNCH: I would have thought a complaint like that might more usually have gone to the Professional Standards Command. Does anyone have any idea why it has gone to LECC rather than the Professional Standards Command?

Mr BLANCH: I think simply because Mr Ward's solicitors believe there was a problem, a leak, and accordingly they wrote to—I am sorry. I cannot remember who all the recipients were to the letter, but it was initially directed to the Commissioner of Police. I think I might have been the second person on the list, and there might have been others as well.

Mr PAUL LYNCH: Turning to something else, how is LECC monitoring the working of the updated Suspect Target Management Plan?

Ms DRAKE: That is me. Prevention and Education have an ongoing project for that. There is an officer in charge of that, whose job is to see how the Suspect Target Management Plan number three, which is the latest one, is operating. We are getting a very high level of cooperation from Deputy Commissioner Hudson and we have arranged to meet with him in June to look at some of the statistics. There has just been enough time now, we think, in June, to say, "There has been a period, how's it going?" and look at the work. So, an officer who did that first report, and most of the work, is now in charge of looking at the review. We are meeting with Mr Hudson and

his staff in June, and then we will see. If we do not think it has made a difference, we will make further submissions, and publish a supplementary report.

There are about five reports where we did the work. Then we have to see how it goes, and we will publish—someone will—a supplementary report. But you just cannot leave it, and say that this is what you should do. You have to check it happens, because everybody gets busy with day-to-day work, and reform work can just go on the backburner, unless you are a nag. I am a nag, so it will get done, but you have got to give them time to have the statistics, and look at the figures to see how it is going. There was a whole committee for that work who took up the suggestions. But you have got to remember that our work was only confined to youth—young offenders.

Mr PAUL LYNCH: Chief Commissioner, I note your comments about keeping well within the budget, but your annual report says that in 2019-20 you assessed 3,452 complaints. The report says that you conducted 57 full investigations. That is 1.7 per cent of complaints being fully investigated. You have not possibly got the resources you need to do the job you want to do.

Mr BLANCH: The reason that those figures look that way is because a very large number of complaints that come to the LECC are assessed as being appropriate to be investigated by the police in the first instance, and the police unit that specialises in that. We oversee what they do, so that the vast majority of complaints are ones that we assess as being appropriate for this special police unit to investigate and to provide us with the results of their investigation and their reports. It is a more limited number of cases that are assessed as being appropriate for us to investigate. The sorts of cases that we choose to investigate are cases that involve, particularly, the compulsory powers of having a hearing, and bringing witnesses in, and examining the witnesses.

It would be impossible to contemplate having such a hearing in relation to every complaint that the LECC receives. We do have a significant degree of confidence in the police unit that has been specially set up to do it. From my observations, since I have been in the organisation, the matters that are appropriate to be examined by us, as opposed to the police, are being properly assessed. I have not seen anything to cause me to worry about the police's own investigations of matters when we forward those complaints on to the police. But, as I have said, when we do that, it is done on the basis of monitoring what happens.

The CHAIR: Just to follow up on that, around costings, is it actually cheaper to run with a two-commissioner model or are there other ancillary things that you have had to bump up to work it?

Ms ANDERSON: It is definitely cheaper, or more cost-effective. Part of the savings that we have been able to make—or been able to make the savings that have been imposed on us—is because we now have two commissioners. If we had to stay with the three-commissioner model we would probably be looking at three operational people that we would need to not have.

The CHAIR: Interesting. Chief Commissioner, you mentioned the assessment as well—maybe this is a question for Mr Kirkpatrick—around the new methodologies of assessment. I am interested in what those new methodologies are, and whether there is feedback on that and how it is working.

Mr KIRKPATRICK: There are a couple of things around the process. The benefit of bringing the Commission together as one operational functional unit is that we have an assessment process that takes complaints directly from members of the public, judiciary, and others, and we are also able to monitor live-time complaints that the police are receiving. Once the assessment process is dealt with, decisions are made as to what should be done with that complaint—should it be referred to police, or should it be dealt with as a complaint under part 6 within the Law Enforcement Conduct Commission Act? If it is referred to police, we then have an option, if we are concerned about the subject matter to a high degree. But if it is not high enough, as the chief indicated, where we might think that we want to use powers to compel, it goes to the police. But we can monitor the investigation. We can see in live time how police are handling that investigation.

Alternatively, if it is done in routine oversight, it will be reviewed at the completion of the police investigation. The LECC has some powers where it can give some feedback to the police, as to recommendations, as to what other things might be considered. So the assessment focus is a key function of the Commission, because it is the gateway of information that comes into the Commission. We have introduced an option for people that may wish to pass information electronically to the Commission, by way of a complaint, or to provide information. So if someone does not specifically want to make a complaint, but they want to provide information about something that they think might concern the Commission, they can do that.

The process of the assessment regime has been enhanced insofar as how our staff deal with a complaint. They triage a complaint, and then they will make the complaint material available to a complaint assessment panel, which consists of the two Commissioners, myself, the two directors of Integrity, Investigations and

Oversight, and the team leader of the assessment function. We will consider what should happen to the complaint—as I said earlier, whether it should be referred to police, or whether it should remain with the LECC—so that we can ensure a proper triage and assessment of those individual issues.

The CHAIR: You mentioned that if it is handed back to police you can still monitor and keep in touch. Is that you who does that or staff, or how does that work?

Mr KIRKPATRICK: It is done within the Oversight section or the Oversight division. Oversight officers will be informed through a formal process that this particular matter is for monitoring. We advise the police that we are going to monitor this matter and it allows us, as I said earlier, to do that in live time.

Ms DRAKE: Some matters come to the attention of the Committee as the Chief Commissioner, myself, Mr Kirkpatrick, and the directors. It is just something that catches your attention. Often, not only do we monitor, but one of us will say "I want to know what happens in that" and the assessments team will bring it directly to the attention of the Commissioners when it is done, just so that we can look at it—just in case. So there is always feedback from the assessment, where it turns up on your desk and shows that this is what they have done, and you form a view about whether you are happy with that, whether it was enough, whether they did or did not interview everyone and do everything you think, or whether all issues were dealt with. The Oversight team often say, "Thanks for that. I know you looked at X, but what about Y?" and the police usually say, "Okay. We will do Y." So it is sort of layered.

The CHAIR: So that works quite well? You are happy with how that works, basically?

Ms DRAKE: I am very comfortable.

Mr KIRKPATRICK: I might say, too, that it is an opportunity, within those processes that I have described, for the Commission to be best informed, not only of the individual complaint, but of what I would call intelligence that we realise or pick up along the way. It might relate to a particular type of conduct, or it might relate to a particular region where that conduct is occurring. So we can start to focus on areas of concern as they are happening, rather than as a reactionary thing.

The CHAIR: Thank you all for coming in today. We really appreciate it. We may send you some additional questions in writing. Your replies would then form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions we have?

Mr BLANCH: Yes.

Mr KIRKPATRICK: Yes.

The CHAIR: Thank you. Once again, thank you for being here and have a good afternoon.

(The witnesses withdrew.)

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

CHELSEA DELAHUNTY, Acting Principal Legal Advisor, Office of the Inspector of the Law Enforcement Conduct Commission, affirmed and examined

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

The CHAIR: Are there any questions before today's proceedings commence?

Mr McCALLAN-JAMIESON: No.

Mr BUDDIN: No.

Ms DELAHUNTY: No.

The CHAIR: Before we start with questions would you like to make a short opening statement?

Mr BUDDIN: Yes, thank you, Mr Chair, in relation to two matters if I may. First of all, the Office of the Inspector of the Law Enforcement Conduct Commission's [OILECC] inspection functions. So far as this aspect of OILECC's activities are concerned, there are a couple of matters that are worthy of particular mention. The first concerns the recommendation from the Richardson Review of the Legal Framework of the National Intelligence Community, that the "Commonwealth Ombudsman shall have oversight responsibility for the use of Commonwealth electronic surveillance powers by all agencies other than ASIO". In its response the federal government has indicated that, subject to consultation with the states and territories—I emphasise those words—it agrees that the Commonwealth Ombudsman's oversight shall be extended to state and territory agencies that use Commonwealth electronic surveillance powers.

The proposal will have implications, so far as OILECC's inspection powers in relation to telecommunications intercept records are concerned, and I am simply wanting to advise the Committee that OILECC has already been in contact with the relevant Commonwealth authorities, including the task force established within the Department of Home Affairs, which has responsibility both for implementing the Richardson report, and which is engaged in the consultation process with the states and territories. When that process is further advanced, hopefully, I would be in a better position to update and advise the Committee as to where things are at. What I am particularly anxious to do is to ensure that the communications are not solely with relevant departmental agencies within New South Wales, and that they come directly to those who have got the inspection powers. That is the undertaking. That is the first aspect.

The second aspect relates to an issue of staffing within the Secure Monitoring Unit [SMU] of OILECC. Although this is not a matter that will affect me personally, given that my term of Inspector will end in the middle of next year, it is a matter that will impact on my successor. The Secure Monitoring Unit consists of two full-time officers who, members may recall, came across from the Ombudsman's office when OILECC was established. I have been informed that each is intending to retire in the not too distant future. These roles are highly specialised, and the occupants have been performing them for many years. Mr McCallan-Jamieson, who is sitting to my left, whose departure could be as early as the end of next year, has nearly 25 years of accumulated experience in this space. His expertise in the area is unparalleled and, somewhat unusually, he brings to the table his considerable legal skills as well.

Accordingly, it is essential in my view that his replacement be on board for a number of months prior to his departure, to obtain the required on-the-job training to occur that will enable a seamless transition, so far as the work of the SMU in the future is concerned. To that end, OILECC is currently in the process of updating its standard operating procedure manuals for each of the five pieces of legislation in respect of which it has an inspection function. That is obviously designed to provide the new officers with essential information about what the roles entail. What I am saying is that people need to be on notice that this is going to occur, and that people are under no illusions of what needs to be thought about some time in advance. That is the first thing.

The second thing, and to some extent this replicates what the Chief Commissioner addressed, is the not unimportant question of the current status of the leadership at the Law Enforcement Conduct Commission [LECC]. So even though there is some repetition, I am coming from a different perspective. As members will well recall, when the Committee convened in February last year, LECC had just been through some somewhat turbulent times with the recent departures of the inaugural Chief Commissioner, and the Commissioner for Oversight, whose position has remained vacant since that time. At that time I expressed the view that the arrival of the Hon. Reginald Blanch, AM, QC, to assume the role of Chief Commissioner—albeit that he was in an acting capacity at that time—and the continuation of Commissioner Drake in her role, would hopefully provide room for very

considerable optimism for the future. Subsequently, in my Annual Report I observed that Mr Blanch—who by then had been appointed to the position of Chief Commissioner on a full-time basis—together with Commissioner Drake had been "most effective in leading the Commission" and that they had been doing so "in a highly professional and collaborative manner". I can advise the Committee that from my observation that remains the case.

It is a matter of public record that this Committee in its Annual Report published in August last year suggested a couple of legislative amendments, in order to clarify the structure of LECC's leadership group. In doing so, it made—if I may respectfully say—the eminently sensible suggestion that the statutory review of the Law Enforcement Conduct Commission Act "would be an opportune time to consider" those amendments. As members of the Committee would be well aware, the government recently completed that review, which was then tabled in Parliament. The review addressed a couple of the issues about which this Committee had expressed an interest. As members would also well appreciate, the government has introduced legislation which is proposed to give effect to the contents of that review. The first proposed amendment is to remove the position of the Commissioner for Oversight, which, as I have said, has been vacant since its previous occupant vacated it in January 2020. Undoubtedly, that decision reflected the fact that the two remaining commissioners clearly had demonstrated the capacity, not only to handle the existing workload, but also to work together harmoniously in order to lead the organisation. Furthermore, the decision will, no doubt, have the additional benefit of providing considerable ongoing financial savings.

The second proposed amendment concerns LECC's own decision-making process. It proposes that, in relation to the important decisions which need to be made pursuant to section 19 (2) of the Act, the Chief Commissioner is required to only consult with the other Commissioner, rather than there be a requirement for unanimity. I might say, however, from my observation that the two current commissioners are able, as it happens, to reach agreement on important decisions. As the review recognised, a requirement for unanimity would, in the event of a disagreement, inevitably cause considerable disruption to the effective functioning of the Commission. I am gratified that the proposed legislation recognises that reality, especially insofar as it may affect the operations of LECC in the future at a time after the terms of the current commissioners expire.

That short synopsis of events over the past year demonstrates that the oversight process, of which this Committee is an integral part, is also performing its role. I can further advise Committee members that the rest of the Executive Team is now settled with the positions of CEO and the newly created position of Executive Director of Operations, who oversees both the Integrity and Oversight divisions, having been permanently filled. Moreover, each of the occupants of those positions—they were both internal applicants—are well suited to the roles that they now occupy. I have had the opportunity of recently meeting with each of them, and I have had the benefit of their views about the direction of LECC and their roles in it.

The creation of the role of Executive Director of Operations is a particularly positive move, and one which will undoubtedly help to reduce—you have heard this expression already today—the silo effect, which may have been the unintended consequence of having two separate divisions. In any event, it is a matter about which I had been somewhat concerned for some time, and I am very pleased that it has been addressed. In short, the structure of the Executive Team which is now in place, together with the personnel who constitute it, have provided, and will no doubt continue to provide, a significant measure of stability for LECC's operations. Finally, the Executive Team is well served, in turn, by the support it receives from a number of very proficient team leaders in various parts of the organisation. In order to better inform myself about the LECC's activities, I endeavour to conduct face-to-face meetings on a reasonably regular basis with key players at the operational level, including those team members.

The CHAIR: Excellent. Does anyone else want to make any opening comments? No. Mr Buddin, that was very informative and good to hear. I note you were in the room for the LECC's presentation as well, and it is good to hear that you are pleased with the direction things have headed in. One of the things that we did talk about was budgetary. You noted that the Chief Commissioner and the other Commissioner have both expressed a belief that they are functioning well and the three-Commissioner model being removed down to two provides more flexibility and financial availability. Do you think budget is a concern or could be a concern in the future?

Mr BUDDIN: I have no doubt that reducing three to two has been of considerable benefit in a number of respects, not just structurally, but perhaps as a result of change of personalities. That said, the LECC is obviously in a much better position than I am to understand what their requirements are on a daily basis, and if they say that they can run a lean and mean operation, so be it.

The CHAIR: What about on your budget and your performance within OILECC; you are in the fourth year now of your five-year term?

Mr BUDDIN: Yes.

The CHAIR: What are your thoughts on the structure of how your operation runs, and if there are any improvements that you could see that could come into effect maybe after your departure, by the time they would happen?

Mr BUDDIN: One of the things that I have come to understand is that one cuts the thread to suit the cloth. It is a very lean organisation. I am part time, and I have responsibility for two full-time people who do the inspection role, and I have got half of the Principal Legal Officer position which I share with the Inspector of the ICAC. It has meant that there are a couple of things that I have not been able to do that I would particularly like to do. I suppose what is top of my wish list is to come up with a purpose-built audit plan for an organisation like mine. That has been the biggest challenge, in the sense that I would like to understand what a best practice audit function looks like. There is one that has evolved, but I am sure that there are better ones out there, even given that it is a small organisation. What that means is that we have limited resources and a fairly narrow skill set. That is a reflection on me.

Of course, coming from a legal background, I am used to reacting to things, so being proactive is not within my immediate skill set—although it is interesting, attractive, and challenging, and I like doing it. But, in the short term, one tends to get blown away by dealing with things such as responding to a complaint. My lament would be that that is something I have not been able to do. The second thing is that when you are in a small organisation, whether it is running a one-person business or whatever it is, there is not much fat to deal with a crisis that arises, let alone the ordinary ongoing vicissitudes of trying to run a business or agency when someone goes on leave or is indisposed. I certainly think that we could consider a structure that takes those things into account.

Mr PAUL LYNCH: One of the things that has exercised the minds of members of this Committee, and a couple of other committees in the building, is the Auditor-General's special report, *The effectiveness of the financial arrangements and management practices in four integrity agencies*. I am wondering whether you have a view about that, and about appropriate funding mechanisms for the LECC.

Mr BUDDIN: I am not sure I can really add much to what the Auditor-General and—was it a joint committee?

Mr PAUL LYNCH: No. It was an Upper House committee.

Mr BUDDIN: It was an upper House committee who seemed to be almost in lock step. I hope that is not an unfair characterisation. I am not sure I can add anything to that. I do not have a solution to the second part of your question and a lot wiser people than me have not been able to come up with one either. I know that is not very satisfactory, but without getting into a Diceyan analysis of the executive as against the legislative dynamic, I am not sure that I can come up with anything. I think there is something to be said—this is off the top of my head—for looking for analogous mechanisms. I suppose the most obvious one would be the Statutory and Other Offices Remuneration Tribunal. As I understand it, the limitation of that is it has lots of gravitas but at the end of the day it only has powers of recommendation. I might be wrong about that. I should know because in a different life I was amenable to it. That is my understanding. But I am not sure that one is going to be able to find a solution much beyond that.

Mr PAUL LYNCH: You were in the room when I asked the Chief Commissioner some questions about budget and so forth, and 1.7 per cent of the matters that are referred to them are actually properly investigated. He very valiantly tried to justify the current position and say that there were no difficulties. Do you get the sense that there are some matters that would be usefully dealt with by the LECC that they do not have the resources to do?

Mr BUDDIN: One of the things that I have come to realise about what they do best is in fact look at systemic issues. The composition of the Prevention and Education team is terrific. I do not know if you read the very comprehensive report a year or two ago now about the child offenders registration.

Mr PAUL LYNCH: I did.

Mr BUDDIN: That was state-of-the-art, in terms of the quality of the work that they do. It recognised a litany of problems, and I suspect we have not seen what the consequences of those are yet. That is what they do best, and I have actually come to appreciate how important that is. It is true that individual complaints can inform the process of determining where audits should be directed. But I think that is a really useful way in which to use their resources in any event if what one is trying to do, in big-picture terms, is to effect cultural change.

In terms of priorities, I think the way in which they allocate those is pretty good. There is one area that I have had a concern about for a while, and it is in the oversight area. But I am gratified to have found out fairly recently—because I have been talking about this with LECC for quite a while—that they have embarked upon an audit of that entire division. The way in which they do the sort of work that I think you are hinting at will be contemplated by that audit. I think I am authorised to say that the audit is going to be conducted externally, so I think we will be much better informed about whether their triage processes are working as well as they might. Does that give you a sense of it?

Mr PAUL LYNCH: Yes, thank you.

The CHAIR: Mr Buddin, you mentioned one of the things that concerned you is the future. The gentleman to your left is somebody with over 25 years of experience. Is part of what you are saying—that you need to get people into those roles earlier to get that benefit—a financial concern? Is that the concern about doing it?

Mr BUDDIN: It is going to require people to be on the ground, so there are going to be some staffing implications, simply by dint of the fact that you need to have a second person there to actually have the opportunity to be exposed to the on-the-ground training.

The CHAIR: What would you say, Mr McCallan-Jamieson, around what you need to provide to somebody?

Mr McCALLAN-JAMIESON: I think the point is that it is not the sort of role that you can just pick up a book or look at a document; it is a very hands-on approach. It involves getting experience. You really need a six month or so lead-in for someone to be able to actually pick it up. If I left and someone came in, it would be a very difficult thing to do. I think that is what the Inspector is looking at: the forward planning way of getting people in who seamlessly can run through that—and develop relationships with the agencies. That is a very important part, as well.

The CHAIR: I guess you do not know the exact timings, but if your term is due to finish and Mr Buddin's is as well that would be a bad scenario, too, would it not?

Mr BUDDIN: Absolutely. Can I say, more generally, that I flag for the Committee's consideration that when it comes to consider the question of terms, wherever it happens to be, including at LECC, that insofar as you can have any impact on this process, that the terms of the Commissioners be staggered. Having all the expertise walk out the door at the one time, I think, has real risks attached to it. But coming back to the local problem, if I might, Mr McCallan-Jamieson has established very good relationships with the Covert Applications Unit within the NSW Police Force, which is basically the central agency for dealing with the applications for warrants. He has also established good relationships with the newly created position of the Surveillance Devices Commissioner. Those relationships take time to be created, fostered, and nurtured. That is really what I am suggesting, and I am just putting people on notice. I appreciate that it might not be within your gift to be making such determinations, but I thought you should be aware of it.

The CHAIR: I appreciate that.

Mr PAUL LYNCH: Can I just pick up on something? In terms of all the expertise walking out the door at the same time and that being a problem, do you see then a potential problem at LECC with the Chief Commissioner and Commissioner Drake's terms expiring at about the same time?

Mr BUDDIN: I would if that was the case. I was under the impression that there was some gap between the two.

The Hon. ADAM SEARLE: I think Mr Blanch's commission ends in January, and I think Commissioner Drake's is April. Yes, they are three months apart but, gee, that is a pretty short time gap to lose all of that corporate knowledge and collective experience in the organisation, I would have thought. You would agree with that?

Mr BUDDIN: Yes, in general terms I would. I suppose an enormous amount depends on who is going to replace them.

The Hon. ADAM SEARLE: And how soon that is sorted out.

Mr BUDDIN: I am sorry? I did not hear that.

The Hon. ADAM SEARLE: And how soon that might be determined.

Mr BUDDIN: Quite so.

The Hon. ADAM SEARLE: If it is determined in January or April of next year it might present some continuity difficulties.

Mr BUDDIN: Yes.

The CHAIR: Thank you all for appearing today. We really appreciate your time. We may send you some additional questions in writing. Your replies will then form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr BUDDIN: Of course.

The CHAIR: Thank you very much. We appreciate you being here. Have a good afternoon. The Committee will now take a short break and return at 3.30 p.m.

(The witnesses withdrew.)

(Short adjournment)

PAUL MILLER, NSW Ombudsman, affirmed and examined

DANNY LESTER, Deputy Ombudsman, Engagement and Aboriginal Programs, sworn and examined

MONICA WOLF, Acting Deputy Ombudsman and Assistant Ombudsman, Projects and Systemic Reviews, affirmed and examined

NICOLE LAWLESS, Acting Deputy Ombudsman and Assistant Ombudsman, Complaints and Investigations, affirmed and examined

AINSLEE SCOTT, Director Corporate, affirmed and examined

The CHAIR: I welcome our next witnesses. As part of the 2021 review of the annual and other reports of oversight bodies we are now joined by the team from the NSW Ombudsman. Before we start, has anyone got any questions about what we are doing here today?

Mr MILLER: No.

Ms SCOTT: No.

The CHAIR: Would you like to make a short opening statement before we move to questions?

Mr MILLER: Thank you, Chair, yes I will. Without wanting to be difficult, I should probably point out for the Committee's benefit, that I understand, under our legislation, that the quorum for the Committee is four members, whereas for most other—

The CHAIR: We have got a fourth member coming in now. I should point out we have a member on the phone as well, so we actually do have four members.

Mr MILLER: Thank you. I will make an opening statement, Mr Chair. We would like to begin by acknowledging the traditional owners of all the lands and waters of New South Wales, in particular the Gadigal people of the Eora nation, on whose land we meet today. Particularly as we mark Reconciliation Week, we pay our respects to all Aboriginal Elders past and present, as well as to the young Aboriginal people of today who will be tomorrow's leaders.

Of course, the 2019-20 year was an unprecedented and challenging one, and many of the changes wrought will be long lasting. As highlighted in our annual report, like many, COVID-19 had a significant impact on our own office. The most immediate was the need to move at very short notice to a remote working environment. This significantly disrupted the continuity of many of our business operations, primarily as a consequence of outdated legacy IT infrastructure and systems that were not designed for, or capable of, supporting non-office-based operations. That said, through a set of hastily put together manual workarounds, the rapid deployment of new technology, and the prioritisation of our frontline work, we were able to maintain continued complaints-handling operations throughout, including within the correctional and youth justice centres. Our staff have worked more or less remotely between March 2020 and March 2021 and I would like to acknowledge their resilience and agility in delivering our services in accordance with our statutory mandate during this time.

I am particularly pleased that despite the challenges that COVID presented in terms of even maintaining our 'business-as-usual activities', we have also made important strides in implementing the longer-term strategic and business improvement actions that will support our longer-term effectiveness and sustainability. The Committee will be aware that in late 2019 we completed a major whole-of-office restructure, following a comprehensive strategic review the year before. In the 2019-20 financial year and since, we have continued to work to embed the new organisational structure. A major focus of our office in 2020 was the development and implementation of our five-year strategic plan. That plan was launched on 1 July 2020 and clearly articulates our vision, mission, and purpose, as well as reaffirming our core values. The strategic plan identifies over 40 initiatives to be pursued over the life of the plan. The plan has been published, including on our website, and I have a copy here if the Committee would like me to tender that now.

The CHAIR: Thank you.

Mr MILLER: The plan is deliberately ambitious. It is not, like some plans, merely a description of the business-as-usual things that we already do. Rather, it prescribes initiatives that will be necessary, as we approach our fiftieth anniversary, to ensure we remain relevant and provide real outcomes for the people of New South Wales. The plan recognises, however, that we cannot do everything at once. Each year we are developing a 12-month action plan, with input from staff across the office, and are reporting back to staff on a quarterly basis about how the implementation of those actions is progressing.

From this year, our annual report will have a somewhat different look and feel as it will focus on reporting publicly about our progress in implementing these strategic plan initiatives. Our upcoming annual report will, of course, also outline the significant work we have undertaken in the current financial year. One of our identified strategic outcomes is to be an employer of choice with a workforce that is highly engaged, capable, and bound together by shared vision, values, purpose, and culture. To that end, we were pleased to see significant improvements in our 2020 People Matter Employee Survey results. Pleasingly, 100 per cent of our staff completed the survey. This provides an indication of the level of staff engagement.

It also means we can have confidence that the survey results reflect the views of all staff across the office, so we have a clear understanding of what is working well, and where attention needs to be focused. To that end, following the survey results, we called together a working group of staff across different units and at all different levels to develop and drive a response to the survey results, which we are currently implementing. I want to take this opportunity again to thank the staff of the Ombudsman's office, and we are happy to answer any questions Committee members may have of us.

The CHAIR: Thank you again for being here. Obviously it is only a couple of months into the full role for yourself.

Mr MILLER: Not even one month.

The CHAIR: Yes, I guess by the time you have actually started in it. From that perspective, you have got history, clearly. What do you see as the role of being the Ombudsman as opposed to what you were doing before? What level of increase of power but also—

Mr MILLER: Power?

The CHAIR: —responsibility has that been?

Mr MILLER: I was appointed Acting Ombudsman from August 2020, and prior to that I was Deputy Ombudsman. The difference between the role of Deputy Ombudsman and Ombudsman is obviously quite significant, both in terms of the statutory functions that are invested in the role, but also the additional mantle, as head of agency. I suppose that has probably been where the biggest effort has been required for me over the last 12 months. As I mentioned, in late 2019, we completed our strategic review restructure. Following that, there was a need to design and implement a new strategic plan, and to set a vision for the office over the next five years. I would say that one of the things that I have observed on coming in as Ombudsman is the challenges that the office has faced, both because it is a small agency—and there are certain different challenges that apply to small agencies—but particularly to a small agency that has struggled, particularly in recent years, with the level of funding that is being provided for our services.

One of the consequences of that—and these are all identified in our strategic plan—is that there has probably been a legacy of underinvestment over a significant period of time in our core infrastructure, by which I mean both our information technology infrastructure, cybersecurity, and our case management systems, but also in our systems and governance. I think a lot of the focus that I have applied since I have arrived as Acting Ombudsman is to try to, where I can, focus some efforts on refreshing and modernising in those areas, while still concentrating on achieving our statutory functions day by day.

The CHAIR: With, for example, upgrades to IT, functionality and systems, do you see there are savings that investment in that will actually help longer term, not just with savings but actually functionality and improving staff ability to deal with things?

Mr MILLER: The latter, and not the former, in the sense that the types of modernisation that we are talking about will inevitably lead to efficiencies, but they will be demonstrated in better and more impactful outcomes rather than bankable savings. If I take, for example, data analytics; as part of the restructure in 2019 there was a decision to stand up a data analytics function, which is something we had not done before in a dedicated way. If we get that right, what that will mean is that we are better able to target our investigations and better able to target our systemic projects where they will have the biggest systemic impact, in terms of public sector improvement. It is unlikely, though, that investing in data analytics in that way is going to result in any sort of bankable savings, in terms of a need for fewer staff.

The CHAIR: No, it is more about the actual outcomes, and achieving that with the help of more technologically advanced solutions.

Mr MILLER: Turning to things like cybersecurity, the investment is really required to address a risk that otherwise exists, rather than to necessarily achieve an efficiency.

Mr PAUL LYNCH: Mr Miller, you are the chair of an esteemed body called the Public Interest Disclosure [PID] Steering Committee.

Mr MILLER: Yes, I am.

Mr PAUL LYNCH: That is meant to be rewriting the whistleblower laws. When is it actually going to report? I have been asking this question for about five years.

Mr MILLER: The PID Steering Committee is not rewriting the PID Act. The government has committed to rewriting the PID Act in response to, I think it was a 2017 report of this Committee. I think it was a Committee recommendation that, in redrafting the bill, the government consult with the PID Steering Committee. That has been happening for the last two years. The way the process has tended to operate is that I think the government is now up to draft 27 of the PID bill. That does not mean that the PID Steering Committee has seen 27 drafts because there are internal drafts within government.

The PID Steering Committee meets on average four times a year. On average, a new version of the bill is presented to the PID Steering Committee prior to each of those meetings, usually one or two weeks prior to the meeting. The draft of the bill is discussed at the meeting and the PID Steering Committee, which comprise all of the oversight bodies as well as police, the Department of Premier and Cabinet [DPC] itself, and the Public Service Commission, usually have about two weeks to respond. They do that, and then the government goes away and considers that and any other issues they wish to consider in the drafting of the bill.

The upshot is that it is not the PID Steering Committee that is determining the timing of the preparation of that bill. As Chair of the PID Steering Committee, I wrote to I think it was DPC in the second half of last year as, at that stage, we had not seen a new draft of the bill for something like close to 12 months. I appreciate that last year presented significant challenges, particularly for DPC, and particularly for the area of DPC that is responsible for legal policy. But I was concerned that it had been that length of time before we had seen the latest iteration of the draft bill. I also appreciate that it is a very complex bill, and I am sure the government will tell you that it has been a complex drafting exercise, and I do not deny that that is the case.

In my letter to the government what I was keen to point out, however, was that as well as it having taken a significant period of time to get to this point—and I am hopeful that we are at a point where there is a close to final draft of the bill—there will need to be a period of time, even after Parliament has considered and passed the legislation, before it can be implemented. The changes are significant. There will need to be training across the entire public sector. There will need to be guidance prepared and issued by us. We have not, at this stage, been provided with any resources to prepare for the bill's implementation, which is fair enough. It is reasonable that you would wait to know what the legislative scheme is before you fund the body that is responsible for issuing guidelines and training. What it does mean is that you are probably looking at, even if the bill were introduced and passed today, at least another six to 12 months before that bill can commence.

Mr PAUL LYNCH: I would settle for it being implemented, passing through the Parliament today.

Mr MILLER: Yes. In terms of the role of the Steering Committee, I might add one thing. As far as I am aware, the bill itself has not been to Cabinet. The bill itself is still a Cabinet-in-confidence document. The way that I understand the process will work is that when the government is happy it has a bill the Minister wishes to take to Cabinet, the government will invite the members of the PID Steering Committee to provide advice to government on the bill. That advice will go to Cabinet, together with the bill, and then presumably the government will then introduce a bill into Parliament. At that stage, we as the Ombudsman's office will table our advice to Parliament, as to our views on the bill. When I say our views on the bill, primarily what we will be doing is assessing the bill against the recommendations of this Committee and against the current Act.

Mr PAUL LYNCH: You said that you are moderately hopeful that they are close to a final draft?

Mr MILLER: Yes. We have seen a full draft of the bill, so we are hopeful that it is close to the final.

Mr PAUL LYNCH: You have made the point in the annual report that the current funding allocation is insufficient to deliver your required statutory obligations. What are the things that are not being done or being done too slowly as a result of inadequate funding?

Mr MILLER: I will give a very straight answer to that question. Last year in the annual report I did point out my view that we are underfunded to deliver our core statutory functions. Since that annual report was tabled, we did receive temporary additional funding during 2020-21 from Treasury. I think it was about \$3 million. There is a question in the current budget process as to whether that funding will continue. Even aside from that funding, there are three issues from our perspective.

The first is that baseline funding. In terms of our statutory functions, where the gaps appear are those statutory functions where it might be said we appear to have greater discretion. My colleague Ms Lawless, who is in charge of the area that receives complaints—we have no discretion. People have a right to make a complaint to us, so we have an obligation to receive it. Where we have discretion is what we then do with the complaint. It is much more pronounced in areas such as community services oversight, where our function is to monitor. It is areas like community services where I think we have significant resourcing gaps. At the moment, and notwithstanding the additional temporary funding we received from Treasury last year, apart from my colleague Ms Wolf, the area that is responsible for that proactive monitoring of community services comprises three staff—two ongoing, one temporary staff. Given the size of the community services sector—and that includes DCJ, or the FACS part of DCJ—my view is that is inadequate for us to discharge what Parliament expects, what the community expects, when we are given a legislative function of monitoring that sector. PID oversight is probably the other area of obvious deficiency. Again, it is because our functions—we have functions of auditing compliance by government agencies and local councils. There are hundreds, probably thousands, of them. I think in this annual report just gone we noted that we had conducted one audit. I do not think that is consistent with the Parliament's or the community's expectation when the function of auditing was conferred on us. Those are the kinds of baseline statutory functions.

Probably of more concern to me, particularly coming into the organisation new, is that as a small agency, and as an agency that has struggled with those sorts of issues, it is very tempting then to continually push whatever funding, whatever resources, you do have to the front line—to say, "Well, we have limited funding. We can't invest in training and development for staff. Yes, our cybersecurity is not up to scratch, but we have not had a major incident last year. We probably won't this year. Let's put that off. Our case management system is 20 years old. Sure, it takes a day or two to even generate a basic report, but our complaint handlers can live with it." What it means is that we end up spiting ourselves in the long term, by undermining our long-term capacity to deliver on those statutory functions. One of the consequences of that is that, this year in particular, we are coming to a head with a number of those significant areas, like cybersecurity, like the need to upgrade our case management system, and even the need to upgrade our finance system, which I do not think it would be putting it too inaccurately to say is, effectively, an Excel-style finance system. Because we do not have the ongoing resources to perform our statutory function, we are never going to be able to fund that sort of work.

The third area is new functions. When the new PID bill comes in, it will confer new functions. Mandatory disease testing—I think it has passed both Houses, but I am not sure whether it has gone back to the Legislative Assembly yet—will confer a new function on us. If a new function is conferred on us, and we do not receive the resources needed to perform that function, that is the equivalent of a budget cut across the rest of our business. We have repeatedly made the point that if we are to get new functions, the funding must follow.

The CHAIR: Mr Lester, obviously you are in charge of the engagement and Aboriginal programs. We heard from you last year about some plans. You had some expansions and that sort of thing. In general terms, how is your sector going?

Mr LESTER: In terms of the Aboriginal programs, our part 3B is OCHRE. As we know, OCHRE is a commitment by the New South Wales state government to work directly with Aboriginal people and communities to ensure that at the heart of that engagement is the respect around local culture, the way by which service improvement needs to take place and, importantly, the way by which outcomes are more efficient and effective. Since we met last time, and since our tabling of the report in October 2019, the 69 recommendations from the New South Wales government—they either approved or in-principle approved the majority of those recommendations. For us that is really pleasing, in understanding the breadth and depth of the work that my team went through to deliver that specific report. That was five years in terms of a comprehensive overview in relation to whether or not the initiatives within OCHRE were being delivered effectively and efficiently and working towards the way by which outcomes were being derived.

What was most noticeable over those five years and clearly demonstrated many factors, but in particular what can be achieved when individuals have significant authority and delegating of decision-making to deliver on the required outcomes. In particular, the solution brokerage initiative brought about some significant outcomes in that area, most notably the Bowraville outcome. The second area is the critical need for robust governance arrangements across agency. That is to deal with both systemic strategic and operational frameworks that we see across the gamut of OCHRE as it currently stands. The other aspect, too, is the importance of systemically capturing information and data integrity of that information as well, not only in terms of informing decision-making or the ability for senior public officials to understand whether or not certain programs or services are being made effective and efficient and delivering on the intent but where applicably required and the opportunity to share that information back to community is vital as well.

Lastly, the New South Wales government sector and the public servants—the ability and the growth and the opportunity to be more culturally competent in terms of dealing with and working with Aboriginal people and communities is really critical as well. What we found is part of that review and if Government endorsed our recommendations, notably what we indicated was the continuation of OCHRE, and as part of that, the next iteration was to ensure that those key recommendations, some of which I have just highlighted, actually are taken up by government for the betterment of the government's intent to work and deliver on what OCHRE is.

The other aspect is the engagement, and again as Mr Miller indicated, through COVID it was damn difficult to engage with community. But I can say that we, as an organisation, really adapted extremely well. The ability to engage with community via videoconferencing and telecommunication was an added advantage in relation to engaging and keeping that level of arrangements in terms of us fulfilling our vision, which is ensuring rights services and fair treatment for all. The other aspect, too, in that regard is that for us with technology and the ability for us to build internal capabilities through technology would only enhance, in terms of that continuation, post the pandemic. Our ability to engage with community will continue in person, in terms of the physicality, as well as, where applicable, via videoconferencing and telecommunications.

The CHAIR: We have talked about this in different scenarios today before. The audiovisual and the use of being able to do it on your mobile phone and be anywhere in a paddock, in a car—does not matter where you are—has that changed and actually added some value to the work you can actually do now as well?

Mr LESTER: It can, because in an instant you can certainly engage with a number of key members of the community at any given time. In the past, the physicality of going to certain locations meant that you had to allow for travel time, and in some regards I certainly will find that it is going to be more efficient and more effective, in terms of the utility of videoconferencing. However, that said though, the physicality of engagement cannot be taken away as well. The communities that we deal with, especially Aboriginal people and communities as a whole, want to see the physicality of the presence of our office, and that we certainly are embarking on. Certainly since February/March this year, we have reinstated our community engagement schedule going forward.

The CHAIR: I was going to ask you about that. I know you did a lot of kilometres in the past couple of years. Is that something that is back to full throttle now?

Mr LESTER: At the moment it is not back to full throttle, but it will be, because the realisation is that the appetite of community needs to be considered, as well in relation to us going to them, considering what COVID-19 provided, in relation to some fears, in terms of safety. But I can say to you that our commitment is to reinstate that community engagement schedule to pre-COVID-19. That said though, outside of my area of functionality, we have also got the work that Ms Lawless does too, in relation to complaints, and visiting corrective centres and Youth Justice centres as well, and that is certainly starting to be reinvigorated and commence as well.

The CHAIR: Excellent. I know you were also looking at a range of programs and strategies around Aboriginal recidivism rates. How is that going?

Mr LESTER: One area that we have committed to as an organisation via our major projects is looking at the way by which OCHRE has either impacted or provided a pathway for impact to reduce Aboriginal imprisonment. Through the prism of OCHRE and the initiatives that it runs, in particular, the economic prosperity framework, that is certainly an area that we are looking at. We are on track to provide the findings of that particular project, and certainly by the end of this calendar year I am hoping that that can be shared, if or when applicable.

Mr PAUL LYNCH: Just arising out of that, if you are looking at recidivism rates, has your office given any thought to the desirability of a Walama Court?

Mr LESTER: In relation to the recidivism rates, what we are actually looking at is the effectiveness of OCHRE programs and services, and the ability of whether or not those services or programs are having an effect on reducing imprisonment. That is the angle that we are looking at. In terms of the opportunities for court or other opportunities within court, that is certainly something that we may consider.

Mr PAUL LYNCH: Can I just go back to Mr Miller. I apparently incorrectly said that you were responsible for drafting that bill. You might want to have a look at the answer the Premier gave in Question Time on 12 May 2021, in answer to a question from the member for Balmain. She talked about the bill and the Steering Committee and went on to say:

We are waiting for them to provide us with the final bill so that we can present it to the Parliament.

You might want to convey to DPC that they need to understand what is happening.

Mr MILLER: DPC is a member of the Steering Committee so, to be generous, perhaps the Premier was referring to one member of the Steering Committee, rather than all of us.

The CHAIR: I have a question for Ms Lawless. I note with the restructure there has been some new things; so you now actually have an Investigations Unit. Is that the unit that reports to you or that you are at the top of?

Ms LAWLESS: Yes, that is correct. We stood that up when we restructured in 2019. Up until that point, the office had not had a dedicated investigations team. We have taken the past 18 months or so to build, basically from scratch in some ways, the processes and procedures and build in some efficiencies to have a fully functioning investigations team.

The CHAIR: How is that working?

Ms LAWLESS: We are just starting to see, or to realise, the benefits of having a dedicated Investigations Team. We undertook, quite recently, a review of efficiencies. Those recommendations have been presented. We have a steering committee or a board that looks at investigations and major projects. That efficiency review was presented to that committee, with a number of recommendations, some of which had already been implemented, others which are still outstanding but will be implemented within this financial year, to ensure that going forward we have got best practice, processes, and procedures to start delivering scalable investigations. Not just necessarily massive investigations, or very large investigations, as has often been the case before, but also more sharp, focused investigations over the coming future.

The CHAIR: Is that big change or just a bit of a shifting of the way things are done internally?

Ms LAWLESS: I think it is actually quite a significant change to the way that we have done things before.

The CHAIR: Do you want to tell us a bit about how you are doing things, without going into Broad-Church but just an idea?

Ms LAWLESS: Yes, certainly. There are 11 staff members currently who are dedicated to investigations. Most of those are ongoing; two of those are not. There is a manager. There is a senior report writer. That is a new position; we have never had that dedicated resource before, to ensure that we have got a professional and error-free report writing approach. We have been investing in training for staff in what is best practice as far as investigations go. We have been taking a slightly different approach, so that there is consistency amongst the investigations that are coming out of that team. Previously, there were different ways of doing investigations across the office. We are taking a much more thorough approach.

I mentioned a moment ago about the investigation Major Projects Committee. That committee oversees and approves investigations. We are taking a more consistent approach to the kinds of matters that we are investigating, so that they either are systemic, or they are raising really serious issues, and that committee has visibility of what is being approved, and ensuring that there are the resources to complete them in as timely a manner as possible. We have developed a pipeline, so that there are matters that come from the complaints part of the branch that I lead, so that there is a more efficient way for those matters to flow into consideration for investigation, and go to the committee and get approval.

As Mr Miller mentioned before, there is a data analytics function, but separate to that, we have recently set up a portfolio holder area, again mostly within my branch but also touching on other parts of the office, where we can use the intelligence that those portfolio holders gain from their liaison meetings with agencies to inform once again what kind of matters we investigate. There are a number of initiatives that are sort of starting to come together and land so that over the next coming 12 months we should start to realise the benefits of having a dedicated investigations team.

The CHAIR: How do most complaints normally come in?

Ms LAWLESS: Do you mean as in what mechanism?

The CHAIR: Yes. Is it a phone call? Is it now mostly a digitised version?

Ms LAWLESS: It is still mostly by phone, although after COVID we saw a rapid drop in the numbers that were coming in by phone, partially because we did not have a phone—

The CHAIR: Were not answering the phone?

Ms LAWLESS: —system for quite some time. That is going back up, but it is not back up to pre-COVID levels. That said, we still get quite a lot of complaints coming in by email, or by our online complaint form. That has pretty much remained steady. Otherwise, we do—believe it or not—still get some that come via fax. We do, occasionally, get some by post, and we do have a couple of people who walk in.

The CHAIR: We have seen things like QR codes develop, whereas people were not aware of them at all. Looking into the future, do you think there is an opportunity to look at that, maybe, to help as a pipeline that smooths the way things actually come in?

Ms LAWLESS: Yes, absolutely. Again, as Mr Miller has touched on, subject to appropriate funding, we are very keen to use technology, automate processes, and improve the way that people can access us, and to use technologies such as virtual assistants, otherwise known as chatbots, or apps, or an online complaint portal, as opposed to a form, to make ourselves more accessible, more visible, and more approachable for people, particularly younger cohorts that would not necessarily think to pick up a phone.

The CHAIR: Yes, exactly, or fax.

Mr MILLER: Could I just add two points to that? The first is that people complain to us, generally speaking, because they are unhappy about government, so by the time they come to us they are already dissatisfied with the organs of authority. For that reason, if for no other, we should be at least as easy to deal with, if not easier, than government agencies. One of the concerns that I have is with us falling behind when, particularly young people are used to, now with Service NSW et cetera, contacting government agencies by apps. I do think we have some catching up, and some opportunities there. On the other hand, we are a universal service provider and one of our focuses needs to be on the most vulnerable members of the community. So as we move to new technology and new modes of interacting with the public, we need to remember that a significant and important part of our customer base is people who will still need to call us and expect to speak to a human being. During COVID when we had no-one in the office for a relatively short period of time, there were still people—rough sleepers—who came directly to our office, so I think we do have to think about the different modes through which we maximise our accessibility.

Ms LAWLESS: If I might just say one other thing as far as how we get the complaints, another way is obviously when we do visits. In particular, I am thinking of custodial visits. As an example, as Mr Lester alluded to before, we have a custodial program that was not as vigorous as we would have liked during COVID, but we have picked that up again now, and we are on track to have visited 30 adult jails, as well as Youth Justice centres, by the end of the financial year. But, as an example, this financial year we have seen about 300 inmates, and approximately 80 to 90 per cent of those inmates would have made a complaint to us—actionable complaints—and we would take action on probably about half of those. That is another really important cohort in that vulnerable category that we will always need to—they do phone us as well, of course, but it is the face-to-face visits that are so important to them and to us.

The CHAIR: Thank you very much. It has been great to have you in today to run through a few of those things. I am looking forward to seeing where things can head in the future. We may send you some additional questions in writing. Your replies will form part of your evidence and be made public. Would you be happy to provide any written replies as required?

Mr MILLER: Yes, we would.

The CHAIR: Thank you again for your time and have a good afternoon.

(The witnesses withdrew.)

MONICA WOLF, Acting Deputy Ombudsman and Assistant Ombudsman, Projects and Systemic Reviews, NSW Ombudsman, Child Death Review Team, affirmed and examined

PAUL MILLER, NSW Ombudsman, Child Death Review Team, affirmed and examined

The CHAIR: Thank you for being here. We are joined today by the NSW Ombudsman, Paul Miller, once again, and the Acting Deputy Ombudsman and Assistant Ombudsman, Projects and Systemic Reviews, Monica Wolf, as we look at the 2021 review of the annual and other reports of oversight bodies. Before we proceed, do you have any questions about today's proceedings? No? Thank you. We are looking at the Child Death Review Team [CDRT]. Mr Miller, would you like to make a short opening statement?

Mr MILLER: Thank you, Mr Chair. I will make a short statement, just briefly outlining the Child Death Review Team's main areas of focus since our last meeting. Before doing so I would like, firstly, to acknowledge the members of the team and to extend my sincere thanks to each of them for their ongoing contribution to this very important work. As the Committee would be aware, the CDRT is a team of independent experts and senior-level agency representatives. The Ombudsman is the convenor of the team, and Ms Wolf leads our death review staff, who support and assist the team. Each member brings individual expertise to the table, as well as a strong commitment to the overall goal of the team, which is of course to prevent and reduce the likelihood of deaths of children in New South Wales.

As a team, we recently reviewed and refreshed our charter. Again, I would be happy to tender a copy of that if you would like. The charter articulates our vision and purpose, and clearly outlines our legislative powers, authority, values, strategic priorities, and operational imperatives. The team's vision is a society that values and protects the lives of all children and in which preventable deaths are eliminated. Our corresponding purpose is to eliminate preventable deaths in New South Wales by working collaboratively to drive systemic change based on evidence. I will quickly turn to the activities of the CDRT referred to in our annual report that was tabled in October 2020 and provide some information by way of updates.

As the Committee would expect, our main area of focus this year has been the preparation of our biennial report of the deaths of children in New South Wales. Our last report, published in mid-2019, covered the two calendar years of 2016 and 2017. Our current report will examine the deaths of the 989 infants and children aged zero to 17 who died in 2018 and 2019. It will also report on trends over time. We intend to table this report by the end of August 2021. While we are still in the process of finalising that report, some key trends are apparent. First, consistent with previous years, the majority of deaths of children are of infants aged less than 12 months. Of those, most are natural-caused deaths and most occur within the first 28 days of life. Of course, the starting assumption of the team is that deaths classified as arising from natural causes may in some cases, and with the right interventions and protections, be preventable. As already noted, the work of the CDRT is squarely focused on prevention and reducing the likelihood of death.

The second key trend that is apparent from the data is that, overall, both infant mortality rates and child mortality rates are declining. Over 15 years the overall child mortality rate in New South Wales has declined by more than 25 per cent. That may be considered the positive news. More concerning, while the mortality rate across most categories has reflected that generally downward trend, the most significant exception is suicide. The rate of death of 10- to 17-year-olds by suicide has been, and continues to increase, and suicide- and transport-related incidents are the leading causes of death for children in that age bracket. We also continue to see disproportionate rates of mortality for Aboriginal and Torres Strait Islander children, for those living in the most socio-economically disadvantaged areas, and for those in rural and remote areas. Of course, there are overlaps between those cohorts, and more research needs to be done to identify the predominant factors driving the increased risks for those groups. Turning to research—and as foreshadowed in our annual report—the team is at present progressing three particular research projects.

First—and directly related to the point I just made about the need for further research on this issue—we have partnered with the Australian Institute of Health and Welfare to analyse the effects of socio-economic status, antenatal care, and birth conditions on early childhood mortality in New South Wales. Our work has consistently shown that children living in areas of high socio-economic disadvantage are more likely to die than those whose families live in areas of socio-economic advantage. What we do not know is exactly why. The research we are attempting is to innovatively use linked data to try to model the underlying risk factors for early childhood mortality. The institute has progressed the linkage of that data. This includes data about children who died, and children who did not. It includes data from the NSW Perinatal Data Collection, and the Registry of Births Deaths and Marriages. Analysis of that data has commenced, and we expect to table a report from this work in 2022.

The second research stream we noted in our annual report relates to perinatal asphyxia. This too has progressed, and the team is examining this issue as a review of deaths from severe perinatal brain injury. While New South Wales and Australia have one of the safest maternity systems in the world in which to give birth or be born, there are and always will be some babies who tragically die during or shortly after their birth. This project is reviewing deaths of infants where the cause of death was related to severe perinatal brain injury. The review focuses on the four-year period from 2016 to 2019. The main aim is to identify the extent to which the deaths were or may have been preventable, and to identify strategies that could assist in reducing the likelihood of such deaths in the future. We aim to complete this work by the end of this year—2021.

The third research project relates to the suicide deaths of Aboriginal children. Aboriginal children are over-represented in suicide deaths. Over the 10 years from 2010 to 2019, 222 children aged 10 to 17 died by suicide. Of those children, 40—almost one in five—were Aboriginal. This project is being led by Aboriginal members of the CDRT. The aim of that project is to improve understanding of the factors that may contribute to suicide risk, and protective factors that can mitigate those risks. From that, we will focus on identifying interventions such as programs, agencies, and organisations that can improve the wellbeing of Aboriginal children and help prevent suicide.

Research like this is a key driver in the formulation of evidence-based recommendations to help prevent deaths. In the main, and as the annual report details, our recommendations are largely accepted by agencies and by government. As we illustrated in the report, many of the recommendations have resulted in and contribute to positive steps to better protecting children. Annually we actively monitor and follow up with agencies on the team's recommendations, and the report is a very important part of keeping agencies accountable for their commitments. Ms Wolf and I are happy to expand on any of the above or to answer any other questions you may have.

The CHAIR: Thank you very much. Obviously, it is a very difficult thing to talk about in many cases but I think we all appreciate the work that the Child Death Review Team does. Thank you for talking about it today. You have talked about some of the figures that are in your current reporting period and you mentioned that most of the numbers are early childhood deaths, but there are obviously concerns about others as well. You have highlighted the Indigenous suicide rate. Noting that you are obviously working on that, how is that work progressing? You broadly talked about—what is the time frame and what sort of things might come out of your reporting on it?

Ms WOLF: Are you referring to the Aboriginal child suicide?

The CHAIR: Yes.

Ms WOLF: It is being led by our two Aboriginal members of the Child Death Review Team. We are looking at it in a number of contexts. The first thing we have done is a literature review of all of the work that has been done previously. We are also doing a service mapping, which is looking at mental health and wellbeing services that relate to all children, and then to Aboriginal children, so we are trying to map where that is. That will then inform an internal review of 40 suicide deaths of Aboriginal children that occurred over a 10-year period. So we will do quite an intensive review of those matters, to look at whether there are any systems issues arising from that, particularly the connection to culturally appropriate services, or cultural input into the care of those children. We will then put all of that together, and consult with community as well, to look at some of the solutions to the issues that we identify. We are drawing on Aboriginal expertise. We are using the SAX Institute at the moment, which has a number of Aboriginal experts doing the literature review and will be consulting, and our CDRT members as well. So what we are hoping to get out of it are not only the risks for Aboriginal children but also the mitigators to those risks—what are the strengths in those communities that can help us reduce the rate?

The CHAIR: In the 2019-20 annual report you mentioned there were 19 open recommendations relating to sudden unexpected death in infancy. Do you want to update us on the progress of where those are up to?

Ms WOLF: Sure. There are 19 recommendations we are monitoring across all death types. I think with sudden unexpected death in infancy [SUDI] there are about five or six, and they relate largely to the investigation process after an infant under 12 months dies suddenly and unexpectedly. We have been working on that for quite a number of years. Our early work identified that the investigation process in New South Wales was not optimum, and a lot of that was to do with the number of agencies involved in responding—there was a police response, an ambulance response, a health response, and it was not connecting. We also identified that we were not always getting a cause of death for an infant who died suddenly and unexpectedly. A cause of death is of course really important to explain to parents their loss, to make sure that there are no suspicious circumstances around a death, and any genetic issues are picked up. But also it is very hard to prevent something if you do not know what caused it.

So cause of death is really important. We took all of that together and we proposed a complete revamp of the way New South Wales investigated SUDI deaths and that was picked up. The Department of Premier and Cabinet created a cross-agency working group that was police, ambulance, health, community services, the Coroner's office, and forensic services to look at the whole system and how it connected. I think we have seen a lot of gains from that. They are still working together, so most of those agencies have revised their advice to their frontline staff who have to deal with those sudden deaths of an infant. There are about 50 of those each year, so it is not common, but the guidance is there. NSW Health is now taking the lead on that, and has revised its processes and protocols. We are still monitoring it. There are some things that still need to be improved, but I think it has come a long way.

The CHAIR: What about in—I think next year's or the 2020-21 report will look at COVID as one of the things that is affecting children in some way and looking at the number of COVID-19 related deaths of children.

Ms WOLF: Yes.

The CHAIR: You have not got all the information now, but is that something that is expected to be a difficult thing to look at?

Ms WOLF: We have not identified any COVID deaths of children, but we certainly will be monitoring that.

The CHAIR: Okay, thank you. Do any other members have questions?

Dr HUGH McDERMOTT: No, but I just want to say thank you for the work you do. It is not an easy area. It is difficult and it does make a lot of difference, so thank you.

Ms WOLF: Thank you.

The CHAIR: Thank you very much for your time. As you might be aware, we may send you some additional questions. Your replies will form part of your evidence and will be made public. Would you be happy to provide written replies to questions?

Mr MILLER: Yes.

The CHAIR: Once again, thank you for being here and the work you do. That concludes our public hearing for today. I place on record my thanks to all of the witnesses who appeared today, in addition to other Committee members who have been here and on the phone, Committee staff and Hansard for their assistance in the conduct of the hearing.

(The witnesses withdrew.)

The Committee adjourned at 16:31.