REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

REVIEW OF THE 2020-2021 ANNUAL REPORTS OF THE ICAC AND THE INSPECTOR OF THE ICAC

At Jubilee Room, Parliament House, Sydney, on Monday 2 May 2022

The Committee met at 11:00.

PRESENT

Mrs Leslie Williams (Chair)

Mr Ron Hoenig (Deputy Chair)
Mr Jamie Parker
The Hon. Rod Roberts
The Hon. Adam Searle

PRESENT VIA VIDEOCONFERENCE

Mr Lee Evans
Ms Wendy Lindsay
Ms Tania Mihailuk
Ms Nichole Overall
The Hon. Chris Rath

* Please note:
[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

The CHAIR: Good morning and welcome to the Independent Commission Against Corruption Review of the 2020-2021 Annual Reports of the ICAC and the Inspector of the ICAC. For those who may not have met me before, as a newbie to this Committee, my name is Leslie Williams and I am the Chair of the Committee, and the member for Port Macquarie. With me today are my colleagues from the Committee on the Independent Commission Against Corruption, the Deputy Chair of the Committee and the member for Heffron, Mr Ron Hoenig; Mr Jamie Parker, the member for Balmain; the Hon. Rob Roberts, MLC; and the Hon. Adam Searle, MLC. The Hon. Chris Rath, MLC; Ms Nichole Overall, the member for Monaro; Ms Wendy Lindsay, the member for East Hills; and Ms Tania Mihailuk, the member for Bankstown, are also with us today appearing via Webex. Mr Lee Evans, the member for Heathcote, will also join us via Webex from 12.00 p.m. and Mr Ray Williams, the member for Castle Hill, is an apology for today.

Before we commence, I acknowledge that we are meeting on the land of the Gadigal people of the Eora nation. They are the traditional custodians of the land on which we meet at Parliament House. I pay respect to Elders past, present and emerging, and extend that respect to other Aboriginal and Torres Strait Islander people present or who are viewing the proceedings online. Today we will hear from witnesses representing the NSW Independent Commission Against Corruption, including the Chief Commissioner, the Hon. Peter Hall QC, Commissioners Stephen Rushton SC, and Patricia McDonald SC, and members of the ICAC's executive. Afterwards, we will also hear from the Inspector, Mr Bruce McClintock SC, and Ms Chelsea Delahunty, the Acting Principal Legal Advisor from the Office of the Inspector of the ICAC. At the outset, I thank all witness for making themselves available to appear today.

I remind everybody to turn their mobile phones to silent. I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing coverage of the proceedings are available. I declare the hearing open. Again, I formally welcome witnesses from the NSW Independent Commission Against Corruption.

THE HON. PETER HALL QC, Chief Commissioner, Independent Commission Against Corruption, sworn and examined

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

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

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

Ms BERNADETTE DUBOIS, Executive Director, Investigations Division, Independent Commission Against Corruption, sworn and examined

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

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

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

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

PETER HALL: Yes, I would like to make an opening statement, thank you, Madam Chair. Good morning members of the Committee. The meeting of the Committee of course provides an opportunity for its members to raise any matters arising from the Commission's last annual report for the year ending 30 June 2021. There are a few matters that I thought I should address in this opening statement and, Madam Chair, if you allow me to have slightly more than the customary few minutes in order to address those issues, I would be grateful. But I will not weary Committee members excessively.

The year in question was a significant one, and for several reasons. It includes, firstly, significant investigations undertaken throughout the year; important corruption prevention outcomes that were achieved; the significant high number of matters that were received by the assessments section of the Commission in that year; the proceeds of corrupt conduct of the order of $10 million having either been frozen or forfeited to the State of New South Wales through the Commission's activities, working in cooperation with the New South Wales Crime Commission; publication of the Commission's report on lobbying practices in Operation Eclipse, about which I will say something briefly in a moment; and publication of New South Wales Auditor-General's report on funding of the Independent Commission Against Corruption and three other integrity agencies in October 2021. I will make further reference to certain of these matters shortly.

The work of the Commission in the reporting period, notwithstanding the difficulties and challenges from the 2019 COVID pandemic, the Commission adjusted its practices and continued the work of the Commission at a reasonably high level. It undertook 20 preliminary investigations, including the strategic intelligence research unit investigations, seven full investigations, 68 public inquiry hearing days and 85 compulsory examinations or private hearings. It undertook five investigation reports, which were delivered to Parliament in the year. And the Commission made a total of 85 corruption prevention recommendations in investigation reports for that year. The Commission, as in previous years, continues to work and did in the year in question with other agencies and law enforcement agencies and, in particular, the Law Enforcement Conduct Commission, the office of the New South Wales Auditor-General, the New South Wales Crime Commission and others, and it disseminated intelligence in the course of its investigations to a total of 15 agencies.

Publication of the corruption prevention reports serves an important and significant role in integrity in the public sector. It is noted that there have been two in-depth investigations now by the Commission over the years into lobbying practices and influence. Operation Halifax was the first, conducted about 10 years ago. It was an excellent in-depth investigation, which 19 recommendations for change—in particular, legislative change—were made by the then Commissioner. Regrettably, however, only a few of the 19 recommendations were implemented, which became engrossed in the *Lobbying of Government Officials Act 2011*—referred to as the *LOGO Act*. In Operation Eclipse undertaken in the year in question, it was determined that the Commission should revisit lobbying and influence in Government and public administration and determine, after having done so, that the *LOGO Act* is a very limited piece of legislation.

It is deficient in addressing corruption risks, particularly those risks identified in Operation Halifax and in Operation Eclipse. This was a failure due to a failure to implement the 19 very sound recommendations the Commission made. In Operation Eclipse the corruption risks associated with certain lobbying practices—including, in particular, risks arising from in-house lobbyists—were identified. Detailed recommendations have been made and, in particular, a recommendation that there needs to be new State legislation to address corruption risks and practices associated with lobbying. The Eclipse report was delivered in June 2021. As yet the Commission is unaware of any response or likely response by government to that report. The value of lobbying when conducted in accordance with transparency and accountability principles is discussed and is acknowledged in the report. The reality, however, is that much lobbying since the LOGO Act is neither transparent nor is it accountable.

A further issue investigated by the Commission involved the regulation of water. Water, of course, is one of our most important resources. In November 2020 the Commission released its report in operations Avon and Mezzo concerning water management, in particular, in the Barwon-Darling area of the Murray-Darling Basin. The Commission determined that the government department that was responsible for the water management in the relevant period repeatedly undermined the Government's legislative priorities over the past decade by adopting an approach that was unduly focused on the interests of other stakeholders—in particular, the irrigation industry—at the expense of other stakeholders. Policymaking, as a result, became vulnerable to improper favouritism. The Commission's recommendations, it is hoped, will lead to the restoration of integrity in government management of the precious resource of water, in particular, in the Murray-Darling Basin.

If I can just say something about the Commission's powers. I am conscious, of course, that Committee members are familiar with those powers but I think it is important on a public occasion like this to say something about them and how they are exercised. The Commission has those extensive coercive powers for a purpose. The community generally understands the need for such powers, given that corruption involves acts performed under conditions of great secrecy, often concealed, and there are seldom eyewitnesses to it. Corrupt conduct is very hard to detect and it is very hard to prove. It requires painstaking investigations to recreate the circumstances that previously existed that led to the suspected corrupt conduct. Of course, occasionally there is misguided and unfounded criticism by one or more in our community of the Commission's powers and its work. Whatever the motive or the purpose behind such criticism may be, a proper understanding of the legal conditions of the processes, of the oversight safeguards, will reveal to the misguided critic that he or she is simply wrong.

The exercise of the Commission's coercive powers are subject to the Commission's compliance framework. This consists of both internal and external accountability systems. The internal accountability systems are summarised in the annual report of the Commission for the year in question. It is, of course, important to observe that the public inquiry power specifies criteria to be met and conditions to be satisfied. This includes issues that are directed to reputation. The Commission, in a public inquiry, maintains under continuing consideration its obligation to protect against unwarranted reputational damage—that is, before the public inquiry, during the public inquiry and after the public inquiry, when the report is being written. The Commission is exercising its functions by virtue of section 12 of the ICAC Act with regard to the protection of the public interest and the prevention of breaches of public trust as its paramount concerns. Issues such as secretive lobbying—and concern has been expressed in recent times in relation to pork-barrelling activities, or at least some of them—are the sort of activities that carry the potential to undermine trust and confidence both in public officials and in State institutions.

Members of the Committee, just briefly, in relation to the funding of the Commission, I wish to update the position and make some observations. This issue has been moving along, or perhaps not moving along, for quite a long period of time. In fact, I first raised it with the former Premier in December 2018. The current funding system, which is under the control of the Executive Government, has been the subject of lengthy and exhaustive study and discussion. It has been considered in comprehensive legal advice from eminent Senior Counsel, Mr Bret Walker, SC, by this parliamentary Committee which wrote a report in relation to the matter, with a recommendation made by the Inspector of the ICAC, Mr Bruce McClintock, SC, who will give evidence this afternoon, I understand before the Committee, and more recently and very importantly by the New South Wales Auditor-General. There is common ground now between all of these that the current funding model for the ICAC is flawed and has been flawed for many years and that it threatens the Commission's independence. That is a serious matter.

The vulnerability of the Commission to the Executive Government with control by that Executive became acute in 2016 when the budget was slashed without stated reasons and without stated justification, resulting in redundancies and serious disruption to the Commission's investigations, which affected the Commission for some considerable period of time. However, it is a warning as to what can happen. The ICAC has had applied to it, and is still subject to, that funding model. As the Auditor-General has observed in her report, the funding model was one that was designed and has been used for government departments and government entities, not for independent

agencies of the Parliament. The Commission, being an independent agency of the Parliament, created by the Parliament and required to report to the Parliament, is funded by parliamentary instrument, namely appropriations, and Parliament is ultimately the body to which the Commission is responsible, not to the Executive Government.

The ICAC by statute is not an agency of government. It does not look like an agency of government; it is not an agency of government. It does not have a portfolio Minister. It is not answerable to the Executive Government, as I have said, and, critically, members of the Executive, including those who assess and advise upon the Commission's funding, are all subject potentially to the Commission's jurisdiction. We have responsibility over the Executive Government in respect of our remit under the ICAC Act. The fact that the Executive determines the funding is not a mere anomaly. As the Auditor-General has observed, although the role of the ICAC is to provide independent scrutiny of the Executive Government, the current funding system has, the Auditor-General stated, "the effect of limiting the Commission's ability to fulfil its legislative mandate". That is a serious issue.

Limiting funding not only impedes the Commission, it also undermines the public interest in integrity in government and integrity in public administration. The ICAC has from time to time sought its additional funding, for example, to increase its staffing levels. Those attempts, details of which can be provided, have been rejected with no reasons and no justification. The applications for additional finance have always been supported by KPMG's detailed analysis as to exactly what increase in staffing is necessary. The key to the independent funding model is plain. It is the constitutional role of the Parliament to consider and to determine ICAC funding. Parliament's traditional functions includes oversighting the Executive, of course, and the ICAC, as I have already stated, acts for, on behalf of, Parliament as its independent agency in oversighting the Executive. The Auditor-General has said:

> … it is important to recognise the important role of the NSW Parliament in determining the appropriate funding model for the integrity agencies.

She went on to state that the Parliament's views should be obtained in relation to the implementation arising from the implementations of her recommendations. She said:

> This recognises the appropriate role of the NSW Parliament in safeguarding the independence of its integrity agencies.

That is pages 3 and 4 of the foreword to the Auditor-General's report. I have received a letter containing proposals from Premier Perrottet for changing the model for the Commission. I have responded to the proposals that were put forward. To my knowledge, Parliament has not yet been consulted upon the essential elements of an independent funding model. The critical question on behalf of the New South Wales community is this: Will the Executive Government entertain a parliamentary solution that provides Treasury with a role, but one which is subject ultimately to the parliamentary role, to parliamentary approval, with Parliament having independent assessment made to guide it?

The Commission's independent model, it has advocated for from the outset, is contained in this report. This is a special report of the Independent Commission Against Corruption under section 75 of the Act, which entitles the Commission to bring to the attention of Parliament any matters that are serious matters concerning the Commission, its operation and administration. Without taking the Committee through it, the model is set out, it is discussed, and its elements are reviewed from page 33 under the heading "An alternative model – appointment of an eminent person", referring to the independent person who would act as assessor and the way in which the true independence of the Commission would be respected. It has been stated on behalf of the Government that the funding model should preserve constitutional principles by ensuring that the government of the day maintains responsibility for the management of the State's finances.

I will briefly examine what that statement means in this context. There are, with respect, two misconceptions in the statement. The first is that the government of the day has the responsibility for managing the Commission's funding. The Government does have responsibility over finances for all government departments and all government agencies and for personnel within those departments and agencies, but Parliament specifically created the Commission as a standalone anti-corruption body responsible in all respects, as I have stated, to the New South Wales Parliament, not to the Executive Government, over which Parliament requires the ICAC to perform its role and assists Parliament perform its role. Secondly, it is for the Parliament itself to determine and provide ICAC funding through appropriation legislation, which it enacts. It is not money distributed under a determination of the Executive as a matter of law. Although, as the Auditor-General has explained, it is the Executive that does all the assessment and the Parliament is not in a position to review the assessments of Treasury and the ERC.

Thirdly, the responsibility for the management of public funds is in safe hands under the independent model we have advocated. It is in the safe hands of the Parliament, independently advised. It is in the safe hands of the New South Wales Auditor-General, who reviews annually the Commission's budget and expenditure. There

has been no recent criticism, I hasten to add, by the Auditor-General about the way in which the Commission manages its finances. For ICAC to discharge its statutory mandate to act fully and effectively to investigate, to protect, to promote and to enhance integrity for the New South Wales community, it must be independently funded through an accountable model as proposed by it.

There is and can be no disadvantage whatsoever—no downside—to the Executive Government, which would have a role in the independent model, as the report makes clear. It would have no detriment or disadvantage to anyone other than those who engage in corrupt conduct and are exposed through a properly funded Commission. It is a mechanism that will provide an accountable process by which the actual needs of the Commission are assessed and provided for, both in terms of core funding and flexible funding during the year.

The last matter I wanted to mention is the TOLA legislation—the Commonwealth's Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018—which provides, as members will be aware, the framework of industry assistance for intelligence and law enforcement agencies. Companies that provide communications services and devices in Australia now have an obligation to help law enforcement and intelligence agencies, including to assist the execution of a warrant. State-based anti-corruption commissions, the Australian Commission for Law Enforcement Integrity and the New South Wales Crime Commission were excluded from the powers in schedule 1 to the TOLA Act. This is of concern.

I have written to the Premier voicing that concern and seeking his intervention to write to the Federal authorities on behalf of the Commission. All State anti-corruption commissions and integrity commissions previously wrote a joint letter on the TOLA Act some 18 months or so ago with no successful outcome, except for the fact that the then monitor strongly recommended in his report during his tenure that all the anti-corruption commissions have the Access provisions under the TOLA legislation. There has been a massive reduction in intercepted telecommunications simply because of the corresponding growth in encrypted devices. This makes no sense at all. The State Commissions, including the Independent Commission Against Corruption, are an agency under the Telecommunications Interception Act and have been for many years. It is vital to the work of the Commission. Why, then, would you exclude the Commission from the Access Act? Again, the decision is without reasons—no explanation, no justification whatsoever.

The only ones pleased at this turn of events are those people out there in our community who are planning to and are now engaged in corrupt conduct. This is good news for the corrupt. This is a concerning twist that occurs at the Federal level, of course. The Commission has no direct recourse to a Minister in the Federal sphere to try to get this matter sorted as it must be sorted. I draw the attention of members of the Committee to this very disturbing development. This development frustrates the work of the Commission. Why would it do so when it is bound to serve the public interest and to enhance integrity in the public sector? This is an aberration, but it is a serious one and it must be corrected. Thank you, members of the Committee. That completes my opening statement.

The CHAIR: Thank you, Commissioner.

STEPHEN RUSHTON: I, too, would like to make a brief statement.

The CHAIR: Yes, Mr Rushton.

STEPHEN RUSHTON: My term expires in a few months' time. Although I have been invited to make statements in the past I have not done so, but I wish to today. The first thing I wish to do is to thank this Committee for its diligence and interest in the Commission's important work. I think I can say that throughout, we have had an open and constructive relationship. I also express my deep appreciation for the work of our Chief Commissioner. He has shown total commitment to the role of the Commission in maintaining public trust in public administration. He has, I can tell you, a profound knowledge of the workings of the Commission and the essential requirements of the Commission's charter. Our Chief Commissioner has shouldered the burden of a very large and demanding workload. I can say, from my point of view, he has carried out his duties with considerable aplomb. I also wish to thank my fellow Commissioner Patricia McDonald for her work and input.

It would also be remiss of me not to mention our Inspector. Although we have not always agreed on some matters which required the exercise of his duties of oversight, we have always had a very open, constructive and professional relationship. To my observation, our Inspector has at all times shown a deep commitment to his role and, to be frank, his appointment was an inspirational one. To my mind, one could not have selected a person more capable and committed for this important role. It would also be remiss of me not to mention the staff of the Commission. The Chief Executive Officer, Mr Philip Reed, has played a vital role in the day-to-day operations of the Commission, including most recently his guidance and support during the COVID pandemic. I also thank our assessment officers, our investigation officers, our corruption prevention staff, our lawyers, our media and communications personnel, our administrative staff and the strategic intelligence unit.

My time at the Commission has been very challenging at times, but I have thoroughly enjoyed it and will be sorry to depart. There is one matter, however, that I wish to bring to the Committee's attention. It is this: I do not support the three Commissioner model. There are a number of reasons for this, and in no particular order they are as follows. The model is very inefficient and has sometimes resulted in duplication of work. It has always been my position that one Commissioner should carry out all compulsory examinations in a particular investigation. Public inquiries are, of course, another matter. But as to compulsory examinations, there can be examples where there is duplication and difficulties are raised in terms of dealing with the evidence that emerges during a compulsory examination. I will give you an example. If one Commissioner does, say, five compulsory examinations and then another Commissioner carries out the next three, that Commissioner must first get across the first five compulsory examinations. That is not only inefficient but it is very time consuming.

The second reason—and it is related, perhaps, to the first—is that with part-time Commissioners there will always be a potential conflict between the Commission's important work and professional commitments. The Commission's work should never be subject to dates which are available in a Commissioner's professional diary. I realised early on that I could not effectively fulfil my duties as Commissioner whilst maintaining my professional practice as a barrister and I surrendered my practising certificate. The third reason, and probably the most important, is that in my view there is no need for three Commissioners.

If due care is taken to the appointment of a sole Commissioner, the Government should have confidence that he or she will fulfil their statutory functions. I have no doubt whatever that our Chief Commissioner could have performed as well without me or without Commissioner Patricia McDonald. To have the Chief Commissioner constantly distracted by our views on particular matters was unnecessary. To the extent that the three commissioner model was created because of a fear there would be public hearings which ought not have occurred, I can say that all decisions to have a public inquiry were made unanimously. Those decisions could have been made, and should have been made in my view, by the Chief Commissioner. If there is a fear that there will be unnecessary public inquiries, in my opinion, that fear is misguided.

The Commission has been in existence now for over 30 years in fighting and exposing corruption and doing its very best to maintain public trust in public administration. That is its most important role. To those buffoons who have repeatedly described this Commission as a kangaroo court I would say three things: First, it is deeply offensive to the hardworking staff of the Commission. It undermines the institution. Second, there are vast differences between the functions of the Commission and a court, as the Chief Commissioner has pointed out, and those differences are readily accessible. There has been much written about those vast differences and why to describe us as a kangaroo court is not just misleading but untrue. Third, to make uninformed comments that this Commission is a kangaroo court has a real capacity to undermine the Commission's work and, just as importantly, public confidence in public administration. Thank you.

PATRICIA McDONALD: I am sorry: Could I quickly make a comment?

The CHAIR: You can, Commissioner.

PATRICIA McDONALD: Really, there are just two points. The first point is, as Commissioner Rushton has stated, our time ends at the beginning of August. I just want to thank the staff at the Commission and in particular the people I describe as the unsung heroes. As the Commissioner stated, our lawyers, our investigators, our assessments staff, our corruption prevention staff are wonderful, but we have been functioning in a pandemic and the unsung heroes are our IT people, our administrative people, who kept the place running. I really wanted to thank them.

The second point, which will be very quick, is, unlike Commissioner Rushton, I support the three Commissioner model. In my view, there were some very important decisions where the role of the two Commissioners in putting maybe different views, I think, was essential for just and appropriate decisions being made. However, I do have reservations in how the actual bureaucracy of the Commission has dealt with the three Commissioners. That has been an area of frustration for me. I think it is something that, as the three commissioner model continues, there should be an examination at least internally at the Commission when the new Commissioners start in August about an appropriate way of allocating work involving the two part-time Commissioners within the Commission. Thank you.

The CHAIR: Thank you, Ms McDonald. As there are no further opening statements, before we start questions I want to formally acknowledge the Deputy Chair, Mr Ron Hoenig, who is the member for Heffron. I am sorry we had to start without you.

Mr RON HOENIG: That is all right.

The CHAIR: We will go to questions from members. Who would like to commence? Mr Searle?

The Hon. ADAM SEARLE: Thank you, Madam Chair. Commissioners, thank you for your opening statements. Chief Commissioner Hall, apart from your opening statement, I know you have given some evidence to budget estimates about the independent funding model and the progress of your discussions with Executive Government. Are you able to tell us roughly where you have got to in those discussions? Obviously, if you regard them as confidential, you will not reveal them to that extent—

PETER HALL: Yes.

The Hon. ADAM SEARLE: —but I just want to get a sense of whether an agreement is close.

PETER HALL: Mr Searle, I should have, but I do not think I did bring with me, the correspondence—that is, the Premier's letter to me and my response. The Premier wrote to me in February on a date and I responded in early March, as did other agencies, such as the Auditor-General and other agencies. If I could try to summarise it, the proposals put forward by the Premier in his letter of February, in my understanding of the letter, it focuses on improving or perhaps providing transparency in certain respects. I think that is the centrepiece—and I hope I am not doing the Premier a disservice in saying that was the centrepiece—of the proposals. There was a proposal to re-baseline the funding for the '22-23 budget year and that there would be a specialist unit within Treasury which would manage representations for budget and the like.

There would be—I was going to say "enhanced"—under the proposal advice to the agencies by way of consultation on the Treasury's proposed advice to the Cabinet Expenditure Review Committee. That would be another suggested improvement on the present position, as I understand it; that there would be some provision made for contingency funding; and there is a proposal in respect of what is referred to as post-appropriation efficiency dividends for the integrity agencies. That, in short form, is the nature of the proposals put. I did thank the Premier for putting those proposals forward. That is the first time since December 2018 that the Commission's continued request that this be looked at has been seriously looked at. However, in my response I raised a number of matters in relation to the proposal, which I put forward to him. It is difficult to summarise the detail. It amounts to some five or six pages.

The Hon. ADAM SEARLE: Chief Commissioner, unless you feel constrained, would you be able to share that exchange of correspondence with the Committee?

PETER HALL: Yes. I think we can and ought to provide the Committee with the correspondence.

The Hon. ADAM SEARLE: If you need to take that on notice and reflect on that, please do.

PETER HALL: Yes, certainly. The only reservation—and it is really not a reservation but a disinclination—is that I think I owe the Premier at least the courtesy of advising him that this request has been made and that I would support the supply of correspondence.

The Hon. ADAM SEARLE: Of course. Absolutely. That is appropriate. Thank you.

PETER HALL: That will be attended to immediately.

The Hon. ADAM SEARLE: Even if it needed to be provided to us confidentially, of course that is something that can be done. If the correspondence needed to be provided to us confidentially, we would not publish it.

PETER HALL: Thank you.

The Hon. ADAM SEARLE: But we could at least have the benefit of that insight.

PETER HALL: I do not envisage any difficulty at all.

The Hon. ADAM SEARLE: Thank you for that.

PETER HALL: We will attend to it.

The Hon. ADAM SEARLE: The obvious next question, given what the two other Commissioners have said in their statements, is: Given your nearly five years in the role of Chief Commissioner under the three Commissioner model, do you see that the three commissioner model is useful and appropriate going forward?

PETER HALL: Mr Searle, I did not contemplate that this subject would be raised this morning.

The Hon. ADAM SEARLE: You can take any question on notice, of course.

PETER HALL: I would like to give it thought.

The Hon. ADAM SEARLE: It is not a gotcha moment.

PETER HALL: I am prepared to say this much, however. My view is the sole commissioner model worked extremely well in the past and I certainly would not oppose a return to that situation.

The Hon. ADAM SEARLE: Thank you, Chief Commissioner.

PETER HALL: At the heart of that, I will just add, is the matter that Commissioner Rushton pointed out. If, on consideration, a person is to be offered the position of Commissioner—Chief Commissioner for that matter—and the person has the requisite credentials, ability and so forth, there should never be any requirement for somebody to be also appointed to second-guess what the presumably able person of integrity is being asked to do as the Commissioner.

The Hon. ADAM SEARLE: Thank you, Chief Commissioner. Reflecting on the most recent annual report, I see that there are three public inquiries conducted and five investigation reports furnished to Parliament. I know some of the detractors of the Commission have said that that is a pretty minor output, given the resourcing. I think at budget estimates you indicated that there was a combination of factors. You had the COVID effect, and then you had the increasing complexity of the investigations that the ICAC is undertaking. Is it fair to say that those are the two reasons for the time it has taken to produce some of the more recent reports?

PETER HALL: There is the factor that we have raised before, and we have raised it again in the most recent budget case that has been put in for the next financial year. The staffing levels of the Commission are inadequate. There are, briefly, two areas where this is most important. One is in investigations and the other is in legal, where legal has the responsibility of assisting in the production of the report. There are delays, necessarily and unavoidably, in the investigation phase, as there are in the report-writing phase. I have previously made my position clear and known to the Committee in this respect. We have not had the staffing levels that we have requested and need, and there have been, from time to time, difficulties in securing funding and so on.

These factors, whereby you get investigators having to run from one investigation and drop it and go to another, and it might be some weeks before he or she can get back to what they were doing—this is inefficient. It should not be that way. Sometimes a solicitor will be required to attend to requisitions from the DPP's office. Those requisitions often require a lot of work to be done. I had one of our very able lawyers working to assist me in relation to the Aero report, which is a very difficult report. It is probably the longest report the Commission has ever produced. He was called away midstream for several weeks in order to attend to the DPP's requisition in a matter that had been dealt with by the Commission some years before. So these are the combination of issues, Mr Searle, which in a practical way are frustrating. I have made suggestions in the past that with staffing one approach is to have, as you know, as the Supreme Court and District Court have, a panel of respected retired law enforcement officers who could be brought in to assist with the search from time to time.

Mr RON HOENIG: Can I interpose a question, if you do not mind, Mr Searle?

The Hon. ADAM SEARLE: Of course.

Mr RON HOENIG: The report that was produced—I do not know the name of the investigation—in respect of the Labor Party—

PETER HALL: Aero.

Mr RON HOENIG: For my part, I thought it was a very well-written and comprehensive report that seemingly, to me, examined every piece of evidence. But it took a long time from the close of what I assume would be the close of submissions from counsel assisting in reply to when the report was written.

PETER HALL: It did.

Mr RON HOENIG: Was that because of the complex nature or was it a funding issue? It was some two years, I think, because it meant that I had to absent myself from here while you were giving evidence during that time.

PETER HALL: Yes. I would have to check my dates and get it right, but I think the COVID period cut into that report-writing stage. I cannot remember when. The case of the able lawyer who was called away to attend to the DPP's requisitions was the lawyer who was working with me on the production of the Aero report, and he had to down tools for weeks—I cannot remember exactly how long it was. He is an extremely able and efficient and hardworking lawyer—no fault on his part. He did a magnificent job. Again it is a case of being stretched and pulled between competing commitments simply because there is nobody else to attend in that case to the DPP's requisitions. So funding comes into it and it comes back to this issue of staffing levels. COVID, complexity—it was very complex, as you will recall from the reading of the report. This was a referral by—

Mr RON HOENIG: The Electoral Commission.

PETER HALL: Yes—Keith Mason, the then Electoral Commissioner. They had been investigating for some time and needed to refer to us so we could use our coercive powers. There was a string of witnesses, all who went through compulsory examinations and just lied their heads off. It was obvious that they were lying. And then it came out in the report as to why they were lying. They had been pressured, in effect, to do so. But all that evidence, even though it was fabricated evidence, had to be analysed and worked through, including how it came about that they were lent on and how their truthful accounts could be accepted as truthful even though they are admitted liars. It was a very complicated matter and very important, as you would appreciate fordemocracy—free and fair elections.

Mr RON HOENIG: There are other things that flow from that delay. There are other witnesses who appear in every news bulletin against whom ultimately findings are not made.

PETER HALL: Yes.

Mr RON HOENIG: Their careers are put on hold.

PETER HALL: Yes.

Mr RON HOENIG: Banks threaten to close their bank accounts for them and their family. I think from previous evidence, the Commission plays no part in those problems with bankers as a rule. So there are consequences to other people who ultimately findings are not made against, who have trouble getting on with their lives.

STEPHEN RUSHTON: Mr Hoenig, accept this assurance that it is of deep concern to us too that people have allegations hanging over their heads for sometimes years before they are resolved. As the Chief Commissioner has pointed out, it is largely a product of a lack of resourcing. It is a very good example of the unfortunate consequences that can occur as a result of that. We all understand that it must be horrible for people who have been waiting to find out their fate once there has been a public inquiry. But there is very little we can do about it without more resources.

The Hon. ADAM SEARLE: Chief Commissioner, I think my final question—and I am happy to cede the floor to all the other members—is in relation to the structure. The concerns that appear to have led to the creation of the three commissioner model, it seems to me, could equally be addressed—

PETER HALL: Sorry, Mr Searle. I did not pick up. The concern as to—

The Hon. ADAM SEARLE: The concerns that led to the creation of the three commissioner model it would seem to me could be equally addressed, or perhaps even better addressed, if, leaving aside the investigation side of the ICAC work, the hearings were conducted by someone who was not the Chief Commissioner, in the way, for example, that Assistant Commissioner McColl is handling a particular inquiry at the moment. It then provides, if you like, that second set of eyes. Is that a possible approach that could be workable in the context of the work of the Commission?

PETER HALL: The Commission has for many years—and I can recall myself, being an acting Commissioner out at Redfern when the Commission was out there, so that is going back a long time now—retained from the bar. Almost always, not always. Members of the bar were asked to retain to do a particular inquiry—as is the case with Commissioner McColl. There is provision in the Act, as you know, for assistant Commissioners to be appointed. It does provide a remedy in cases where there is a particular reason, and it may be to do with workload, for bringing in somebody from outside. That did work well, so far as I am aware. It is one way of alleviating the workload and demands of the Commissioner, to have that assistance. It does not help the investigators, of course, who have got to do the groundwork and all of this, and the analysts and so on. It is a facility that is available. For particular reasons, which I think are well known to this Committee, I determined that it was appropriate for Commissioner McColl to do that inquiry.

Mr RON HOENIG: Can I just raise an issue that might be topical at the moment but is a general issue relating to local government? Under the Local Government Act under particular specific legislative provisions, council meetings and council committee meetings are required to meet in public. They are required to have reports available to the public and they are required to have material transmitted to them in a public forum, and these days even broadcast. A practice has developed in local government, which has now been enshrined in a code of conduct, to permit briefings of councillors in closed sessions, not subject to scrutiny by public transparency. Effectively, that practice has now developed to a stage whereby these staff of the council utilise it to get the councillors on side behind closed doors. Therefore, there is limited discussion on those complex issues in a public forum.

It is inconsistent with the concept of transparency and it is inconsistent with the concept of publicly accessible, available information. In my view, it is conducive to corruption. If you have got everybody on board in those sorts of forums without local newspapers being around and without any public examination, I would like

the Commission to have a look at those operations or somebody from the corruption prevention area to have a look at that area because it festers and, whilst it may not be corrupt, it impacts on the competency of the decision-making process.

The same practice has developed for planning panels. As a corruption prevention mechanism, development applications were taken away from councillors and given to independent panels being appointed. When the councillors had to deal with development applications, with all the corruption problems that existed, they had to sit in a public forum, the reports had to be given to them publicly, the deliberations had to be public and, in theory, the information provided to them was public. These planning panels are taking reports, having private meetings with council officers and they are viewing the sites privately just with panel members. The public go and make submissions and then they are adjourning and having deliberations and discussions behind closed doors and then announcing decisions.

That as well means no transparency and also can be conducive to the very corruption mechanisms that caused the Commission, probably, to recommend—or it certainly was the Government's motive to take development application systems away. I think that as you start looking into local government you find that a lot of problems appear through lack of transparency. I think if the Commission could in the future utilise its resources to do something similar like it did to the lobbying reform matters, it might prompt some government action to make local government more transparent.

PATRICIA McDONALD: Can I say, in respect of that, in Dasha we looked at an aspect of that, which was an approach by councillors to planning staff and putting pressure on them to change the particular reports that then would be produced in an open forum. There were recommendations about regularising and formalising that relationship. We did not really look at planning proposals in that because I think they were relatively in their infancy at that stage. I suppose the comment to make about it is that if you look at the report in our assessment section, the main area of complaints is local government. Indeed, currently the Chief Commissioner is sitting on another public inquiry which is dealing with a council and there is other work within the Commission that looks at, if I can put it broadly, local government. So it is an area of concern and, as I said, an area where obviously the public is concerned. Maybe something like an equivalent of Operation Eclipse, just focusing on local government, would be a good idea for the new Commissioners to pursue.

Mr RON HOENIG: The other question I wanted to ask maybe the Commissioners or maybe the corruption prevention director is about codes of conduct. I remember—

PETER HALL: Could I just interrupt for a moment? Mr Rangott, who is here, is best placed to, I think, respond to some of the matters you have raised. But, I am sorry, I have interrupted you.

Mr RON HOENIG: Codes of conduct, which were originally designed to be aspirational documents, are now given, in effect, in some areas, statutory force because they can be arbitrarily changed. But they are no longer an aspirational document. If you look at the ones for local government, it becomes almost impossible for a normal person and impossible for even a member of the bar or former judicial officer to work out what they say, let alone a councillor. Have they outlived their usefulness or are they being misused because of their complexity? I mean, they are designed just to be a behavioural standard aspirational document, as distinct from some sort of statutory document.

PETER HALL: If I could just respond by saying I am a firm believer in codes of conduct. It is critical. The codes of conduct I have seen in local government are clear on what we call the core principles. Anybody who has had a minimum of education should be able to understand and get the message. There is, as we know, a members' code here for members of Parliament and ministerial codes. They are important. Of course, they have been given some statutory operation under our Act under section 9, and rightly so. It may be that there is scope in the future for codes of conduct to become similar codes in the local government space. I am not suggesting one way or the other at the moment; I am just simply responding to what you have put.

Codes of conduct are important. They are of assistance, not only in stating values but also setting standards that must be met. But the consequences at the moment for a breach of code is limited, as I understand, to misconduct proceedings of some kind, which could lead to termination of the appointment. If there are meetings, for example, that are secretive and that impose serious conflicts of interest, they should be identified under codes of conduct.

Again, as you say, democracy at all levels of government including the local councils, the local government level, is absolutely important. It is fundamental. I will not respond in terms to the earlier matters you raised because I am presently involved in two matters concerning local government issues, but I hear your concerns. You are right, with respect. There is a need for proper transparency. There is a need for proper accountability by councillors to ensure that trust and confidence in the system, in democracy, in local government

is high, that the community know that the bar is high. If you choose to run and be a councillor—which is a noble thing to do, serve the community—then you accept it knowing that you have to perform at a high level, not just any old meeting will do. Secrecy was discussed at length in the lobbying report. Bad things happen in dark places, as we all know. There should be the light shined on all workings of councillors, in my view, in terms of their discharge of their official functions.

Mr RON HOENIG: I will initially give you a practical example of the problem with a code of conduct, say, for local government. I am a religious person and I go to church. I have a close affinity with my church. I go to church on Sunday and the priest says to me, "Look, there's a real problem with the pedestrian crossing just outside. People are nearly getting killed. Could you do something about it?" On one reading of the code of conduct, because of the close association that that councillor has with their church, he probably should say, "Look you probably need to speak to somebody else because of my religious faith and my close affinity with this church." That is ridiculous because the whole purpose of a councillor being elected by community is, of course, he has those community contacts and he gets that information. You would want that councillor to immediately speak to traffic engineers and get somebody to have a look at the safety of that crossing. So that is not what it is intended to be.

But assuming two suburbs away the very church of which I have a close affinity to, although it might be in another parish, makes an application for a childcare centre or rezoning for a childcare centre for the church to run. That is not the church I go to but I have a close affinity to that church. Do I have a pecuniary interest in respect of that or conflict of interest or not? So there are practical problems with codes that get into specifics, and you do not want to deny that councillor the opportunity of participating. So it is fine to have aspirational reasons but you do not put in the code of conduct "Thou shall not kill". There are problems with it and when they are given statutory force you could leave yourself in a position where you are subject to breaches.

PETER HALL: Could I just respond in this way? It is the same with the development of codes of conduct by the Commission in respect of members of Parliament, ministerial officers. We are mindful, and have expressed, that we do not want to put public officials in a straitjacket so that they cannot effectively do their job, perform their functions. Local councillors, of course they will speak to their constituents. They are there to represent their constituents and, if there is a need for a crossing in the view of the hypothetical case you put, then of course you are at liberty to say to the parishioner who is a councillor, "I am worried about safety issues here." We do not want to put elected officials in straitjackets whereby it is unrealistic to impose such strictures that it becomes unworkable and the democratic system starts to breakdown. It is a nonsense. It would be counterproductive entirely.

So it is a question of being able to also discern in a particular case the answer to the question: What was the purpose? What was the objective in the priest coming to you to say, "I want you to look into this safety issue. I am concerned for my parishioners and other members of public from what I have seen." The purpose was a noble one. The objective of his inquiry of you, or his request to you, was quite noble. He is concerned for others, not for himself—there is nothing in it for him. Of course, I know you put it in—

The Hon. ADAM SEARLE: Except in the broader sense.

Mr RON HOENIG: The noble test?

The Hon. ADAM SEARLE: But that would be very different, wouldn't it, if the priest was talking about a development application the church had before the council?

PETER HALL: Yes, indeed. Planning and development—

The Hon. ADAM SEARLE: Or some other matter. And that is the distinction, isn't it?

PETER HALL: Exactly.

The Hon. ADAM SEARLE: It is whether or not there is a benefit to be conferred upon the person seeking the attention of a councillor. That is the clear dividing line you have discerned.

PETER HALL: I agree. It is in the areas of planning and development that commonly problems arise and that is because, as we all know, there are various forces at work. Developers have got interests, landowners have got interests, councils and so on all have and are all stakeholders.

Mr RON HOENIG: I want to ask you about the lobbying issue and the two reports the Commission wrote. In fact, think I advocated at one stage for the subsequent lobbying inquiry that you did. It is hard to discern where the line is. I suppose it is important for a regulator because they have to draw the line. The lobbying concern is that I am able to make money as a result of a lobbyist because my mates are in government and I can actually

go and see them any time, so somebody pays me to go and, effectively, get in the door to be able to advocate it. Is that improper, because that is effectively how it works?

PETER HALL: You will understand that I would prefer not to deal with hypotheticals of that kind. All I can say is I cannot add any more than is in the report. Indeed, it is another issue Mr Rangott is expert in and would be free to answer any particular questions concerning the lobbying practices that we examined and issues raised. It is a difficult issue sometimes to draw the line, as you say.

Mr RON HOENIG: Because that may not be dishonest to be able to utilise your friend or relationship to get in the door. You might not like it. You might think that just because someone has got the capacity to pay they can get an appointment but somebody who has not got the capacity cannot get an appointment. That is why I am asking you about—I might talk to Mr Rangott afterwards if that is okay?

PETER HALL: Do you want to add anything?

Mr RON HOENIG: To try to get my head around the report, because I am struggling to find out where the line is.

PETER HALL: Mr Rangott, I am sure, will be happy to oblige.

The CHAIR: I remind members that we do have the opportunity to submit further written questions following the hearing. I am going to go to members online. Do any members online have questions? No?

Mr JAMIE PARKER: I am happy to ask one. We are all being very modest in the amount of questions we are asking. First of all, I offer my very sincere appreciation to the Commissioners for your service and for the work you have done to expose corruption and protect our community. Thank you very much. I am sure all the other members of the Committee agree. There will be a discussion about the structure—three Commissioners or otherwise—but I just think it is very important for us to acknowledge your work and thank you very sincerely for that. Also, I thank you for your work in terms of the development of the PID Act. It was a long time coming but the Public Interest Disclosure Act I think is important. It is a step forward. It is not perfect, but it definitely is a step forward. I know in all the discussions that we have had with the Government there has been the involvement by ICAC in that process, and I want I thank you for that.

I am interested in Operation Eclipse. Hearing in your statement opening, Chief Commissioner, that you have received no further correspondence from the Government is concerning. Obviously Halifax was not implemented in any really serious way by government. So my first question is about that. There is potentially a role for us as a Committee to be more proactive in terms of pressing government on the findings of ICAC inquiries. Could you just confirm, so I make sure that I did not mishear it, that there has been no further discussion between the ICAC and the Government about Operation Eclipse? Do you have any general comments that you think might be worthwhile for the Committee to hear about the implementation of recommendations that ICAC makes in its inquiries?

PETER HALL: Thank you, Mr Parker. Two things: On the first point, my recollection is that Mr Harwin wrote some months ago before he retired, I think the letter indicated that some work was being done or the report was being looked at, something like that. I have confirmed this morning with the persons who have been assisting in Operation Eclipse that we have heard nothing from Government. The letter that I have referred to from Mr Harwin is the only communication we have had. On the second point, with respect, I think what you raise is a very important point. A lot of time and resources and so on went into the production of Operation Eclipse. That is par for the game. That is why we are there—to do that. But it is concerning, and I am now thinking back to Halifax, which, as I have said before, is an excellent report. The late Commissioner David Ipp was the presiding Commissioner in that matter. There was not one observation in that report that I disagreed with. It is disturbing that after such an inquiry you can get an unsatisfactory outcome in the public interest. After all, we only do it for the public interest.

The only procedure that I have always thought would be worthwhile exploring is that in certain investigations, not all, and Eclipse would lend itself to this, there be post-reports, the establishment of a task force—call it a task force or a special review panel—to do the follow-up work as to are there any difficulties in implementing the recommendations and so on. That continues the work of the Commission, not leaving it solely in the hands of government, and government cannot get to it for different reasons—it might be that the workload is so great—but at least progress would be being made and a constructive outcome being eventually produced with the assistance of a post-report task force or review panel driving it to a practical outcome. That may involve a task force with a representative of the Commission, a representative of government and other stakeholders to get a consensus on the issues that have to be decided.

Mr JAMIE PARKER: Thank you. I am interested in one of the issues that you raised in your address, which is the proceeds of crime issue. Obviously, there is some good news, and it is reported in the annual report. There has been a lot of public discussion, and it has been raised in the House, around the Cascade Coal issue and the difficulties in recovering the proceeds of crime in that matter. I note that the New South Wales Crime Commission in a statement discussed the fact that they had been engaging with the ICAC and that very meticulous work that the ICAC undertook is something which is very labour intensive and very expensive for the ICAC. I understand it is completely within the purview of the Crime Commission, but I wonder if you have any reflections on how to improve the recovery of the proceeds of crime, or if the experience of the ICAC during that inquiry would allow you to make any additional comments or provide any feedback to this Committee about that.

PETER HALL: The jurisdiction under the Confiscation Act is, of course, one exercisable by the Crime Commission, not by the Commission itself, as you would understand. I should add that in the matter to which I referred in which something of the order of $10 million has been secured for the public, that was a combination of the Crime Commission application and the department relevantly involved in that matter taking civil proceedings based upon obviously the evidence that came out in the course of the inquiry. It managed to secure similar orders to freezing orders from the Supreme Court, and in combination the two amounted to $10 million. It is open to an affected party, such as the department in that case, to take action independently to try and secure for the public purse ill-gotten gains.

I do not have any other views as to a system whereby the Commission needs to be equipped with the powers to secure or freeze assets, but I would always be open to suggestions. It is absolutely abhorrent that those who engage in corruption can cost the public purse large sums of money, money which should be spent on needy causes such as hospitals and so on. But it would be an issue that certainly could be explored to ensure that the Commission in a particular case could immediately apply to the Supreme Court, for example, for an order rather than having to go through the process—a roundabout process perhaps—of going through the Crime Commission.

Mr JAMIE PARKER: Yes, that is something we might consider as a Committee.

PETER HALL: Yes.

PATRICIA McDONALD: Could I just raise something? I am sorry about this.

Mr JAMIE PARKER: Please.

PATRICIA McDONALD: It relates to page 38 of the report, which refers first to—

Mr JAMIE PARKER: "Proceeds of crime".

PATRICIA McDONALD: —the Crime Commission action. The comment I want to make is on the second aspect, which refers to recovery over $5 million. I just wanted to stress, as the Chief Commissioner said, they were civil proceedings but they were settled. A deed of release was entered into between the Department and the relevant companies and persons. There was no confidentiality provision in the deed of release. But, importantly, no admissions of fault or liability were made by the company or the people affected. They are quite different from proceedings under the Criminal Assets Recovery Act, and I just think to be fair to the company and persons involved, it should be noted that it was settled on that basis.

Mr JAMIE PARKER: Yes, thank you for raising that. That is noted; that is an important distinction. The only other point that I wanted to raise before other people ask questions is that we have obviously held an inquiry into reputational impact and we have heard before that the length of time is something which is significant, that the former Premier is waiting, a former Minister is waiting, lots of people are waiting, and obviously that is something that weighs on our mind. I appreciate the comments that have been made that that is something which is a matter that is important for the ICAC.

One of the things that we look at when it comes to the annual report is the corporate goals, and there is a corporate goal of 60 to 90 days for the furnishing of reports. Obviously that is a target that is not being complied with. An organisation setting those types of targets and then being so far away from meeting those targets is something that may not be optimal for the organisation. There is obviously a hope that there will be additional funding to allow ICAC to be more timely in the furnishing of the reports. But from an internal management perspective, is that something that the ICAC is considering changing? Is that something that is useful to have a time frame of 60 to 90 days as a corporate goal? Maybe that is something I could ask you to reflect on.

PETER HALL: Yes. The matter that you raise is of course very important and it is certainly at the forefront of our minds. The Commission has had in place, in relation to its investigations, specified KPIs that need to be met, and that deals with different stages of an investigation and leading to, in some cases, a public inquiry and how long the public inquiry will take and so on. This matter is touched on briefly in the annual report on page 34 under the heading "Review and amendment to investigation KPIs". There was a need for the KPIs to be

converted into what is referred to as a two-tiered system of investigations, as explained on that page, based on the level of complexity and what are regarded as standard investigations as against complex investigations. The KPIs, as now adjusted, my understanding is—and the director of investigations is here to assist on any of this—at the moment is travelling well.

The cause for delay is sometimes due to a number of factors. As I said before, piecing together a corruption investigation is like putting tiles for a mosaic in place and you do not get to see the picture until it starts to emerge. Often it does emerge through compulsory examinations that then open up new leads, and that requires delay in order to pursue the new leads and further compulsory examinations with others associated with that. All I can say is that the review of the KPIs, which the director of investigations recommended and we agreed with her, had to be done in order to realistically cope with our work. The investigations do vary from the complex to the not so complex. No one figure such as you have referred to can cater for the differences in the two classes or tiers of investigation. I think one has to be realistic. That is why we decided, reluctantly—on my part, anyway—to extend the KPI for complex investigations. Not to do so would not have achieved anything. It would have been unrealistic.

If you pardon me a moment, Mr Parker, I will just see if the investigations—so far as the matter you have raised is concerned, Mr Parker, as you say, the delay issues that you have raised do relate to the report-writing phase, which is—

Mr JAMIE PARKER: Post-inquiry stage, yes.

PETER HALL: —a further delay due to the need, earlier discussed, to analyse evidence and to put it together through an analysis that ends up in report form. I am not sure if I am answering your question—

Mr RON HOENIG: There is also—

PETER HALL: —so far as that delay is concerned. If I can just deal with Mr Parker's question for the moment—

Mr RON HOENIG: I think there is also—

Mr JAMIE PARKER: You go, Ron.

Mr RON HOENIG: I was just going to say, Jamie, that after all the evidence—which is the last the public hear—by the time counsel assisting makes its submission and all the represented parties then make a submission, then counsel makes a submission in reply, that is a pretty lengthy process in itself, is it not?

PETER HALL: That is true. It is.

PATRICIA McDONALD: And you can also have cross submissions. If one interested party makes assertions or allegations against another interested party, they have got to have an opportunity to respond.

Mr RON HOENIG: If it is over Christmas, it may be four to six months before all the submissions are in, would it not?

PETER HALL: Yes. The submissions timetable has been varied in order to meet exigencies, particularly with counsel assisting, for example, as to the ability to get the Commission counsel assisting's submissions out to the parties. It is then necessary to give equal extended time to those affected by the submissions so they have a fair and full opportunity to respond. You are quite right that the submissions phase can be lengthy. It can be very detailed. It is a critical part of the process before the report comes into existence. It is usually very helpful to have those submissions and they are given close attention. That does all take time.

Mr JAMIE PARKER: I think the point has been adequately ventilated. The point that I make is that a 60- or 90-day turnaround time for the furnishing of reports is not realistic.

PETER HALL: No.

Mr JAMIE PARKER: Therefore, should that really be a corporate goal? We need to be setting, I think, realistic expectations for the public as well. We know it takes time. This Committee, as you know, has been committed to seeing this independent funding, and potentially enhanced funding, for the ICAC to see that happen. But this issue of detractors pointing to something like that saying, "Well, see, they say they should do it this fast and they're not"—that is the approach that I want the ICAC to potentially consider about creating the right type of expectation for the public.

PETER HALL: Thank you Mr Parker. We will certainly take that on board and give it due consideration.

Mr JAMIE PARKER: Thank you.

PETER HALL: With respect, I think there is much force in what you say. We need to be realistic, and if those stated targets cannot be met we need to revise the situation.

The CHAIR: Mr Parker, did you have any further questions?

Mr JAMIE PARKER: I will let other members speak. I think three is plenty.

The CHAIR: Mr Roberts?

The Hon. ROD ROBERTS: Thank you, Madam Chair. I just have one question because Mr Searle and Mr Parker have touched upon areas that I was interested in, but obviously we have a common concern. I thank them for raising those issues. I direct you to page 15 of the report, table three, in relation to accountability activities. I wonder if you could explain to me the significant increase in the number of reports provided to the Inspector. As we can see, in 2018-19 there were 16 responses; in 2019-20 there were 13; and in 2020-21 we have a sudden increase up to 59. Can you just talk me through that, please? What is that about?

PETER HALL: I cannot, off the top of my head, tell you what all those reports and responses related to. There had been, as these numbers indicate, considerable correspondence. It is usually done by email between the Inspector and myself relating to a range of issues. There was, for example, the issue in relation to our information management processes. There was, you will recall, inadvertent posting of restricted transcript. That was the subject of considerable discussion by correspondence between myself and the Inspector. We kept him apprised as to what reviews we were conducting and the outcomes of our reviews, and were reporting to him as to the specific steps that had been taken and so on. That was an issue about which I recall there was quite a deal of back-and-forward correspondence.

There was another issue in relation to the Department of Foreign Affairs. There was some TI evidence referred to which involved Mr Maguire in Operation Keppel. That was also the subject of, I will not say "considerable" but quite a bit of correspondence between myself and the Inspector dealing with that issue. Look, there are a number of issues. The Inspector writes to me about any complaints he has received from members of the public or people who have been involved in our investigations. Our practice has been to give early, almost immediate responses to the Inspector on any issues he has raised. I think, in the main, we have managed to achieve quick turnarounds in relation to any matters he has raised. I am afraid I just cannot satisfy you with any more detail.

The Hon. ROD ROBERTS: Certainly, Commissioner. If I may rudely interrupt, then, just so I have a good grasp of it. Are we saying that there are 59 individual issues that have been reported to the Inspector or are there 59 pieces of correspondence? Is that what you are saying?

PETER HALL: I think it is—

The Hon. ROD ROBERTS: Please be prepared to take it on notice.

PETER HALL: Yes, sure.

The Hon. ROD ROBERTS: This is not a catch; it is something significant. There is a massive increase, I am assuming you would agree.

PETER HALL: If we may take it on notice, but I think, on the basis of information I presently have, 59 refers to pieces of correspondence back and forth between the Commissioner and the Commission.

The Hon. ROD ROBERTS: That is fine. Thank you. That is all I have, thank you, Madam Chair.

The CHAIR: Thank you, Mr Roberts. I will just go back to those online to see if there are any questions from those online. No. It is very quiet.

Mr JAMIE PARKER: Could I have just a quick, last question?

The CHAIR: You can.

Mr JAMIE PARKER: It is great when everything is quiet. Madam Chair, I have just a quick question and I think it is probably the last question. I think it would be great to have the benefit of the current Commissioners before we see new Commissioners. In our last inquiry we talked a lot about reputational impact and grappled with how that could be managed. There were two potential legislative issues that we discussed. Feel free to take it on notice, but this is in regard to the threshold for determining whether to hold public hearings. We thought that that should be reviewed, and looking at similar bodies in other jurisdictions, and the test about whether a public hearing should be held. We also talked about the mechanism for judicial review and whether it should be reviewed.

PETER HALL: Yes.

Mr JAMIE PARKER: Do you have any feedback about those two issues? I ask because, obviously, any inquiry this Committee has will not have the benefit of your role—well, your role, yes, but not your tenure in that role. The two questions are: That the threshold for determining whether to hold public hearings would be reviewed; and we wanted to look at the existing mechanism of judicial review to be reviewed. Do you have any feedback on either of those?

PETER HALL: Yes. Can I just say I think that we are talking there about recommendations 3 and 9, as I see it. Mr Parker, I have come here today upon the basis that we are in a position to deal with recommendations 1, 2 and 5, but that in respect of the others—namely, 3, 4, 6, 8 and 9—they do require further work to be undertaken. But the decision has been taken not to respond to those matters until the Committee does indeed decide to undertake that work.

Mr JAMIE PARKER: Okay.

PETER HALL: I am happy to provide information as soon as possible on any of those recommendations, including the ones you have mentioned when there has been an indication that that will be undertaken.

Mr JAMIE PARKER: Sure.

PETER HALL: May I leave it on that basis?

Mr JAMIE PARKER: Yes. Please do.

PETER HALL: I am happy to address the position in respect of, in particular, recommendations 1, 2 and 5, if that is of any interest?

Mr JAMIE PARKER: I think that is useful. I mean, it is not urgent that you respond. I just thought it would be appropriate to give you an opportunity if you did feel like there was something you wanted to say. But if you want to address those other recommendations, I think the Committee would be interested.

PETER HALL: Yes. I am happy to deal with the other ones now. That is one, two and five.

Mr JAMIE PARKER: Sure.

PETER HALL: Yes. Very well. Mr Parker, recommendation 1 related to the question of introducing mental health protocols. As to that, we do have available for the Committee our policy and procedures in 1M02 entitled, "Managing Risks to the Health and Safety of those involved in Investigations". I think that would be of interest to the Committee. It sets out in detail the procedures that are already in place to deal with problems that could arise with persons who, for example, might receive a notice from us to produce documents; to attend for compulsory examinations; to attend for public inquiries; and the onus to establish whether or not there are any potential health issues of any kind and for those then to be actioned. I just do not have, or I have here somewhere, a copy of that model and I am happy to make it available to the Committee.

Mr JAMIE PARKER: Thank you.

PETER HALL: It is a very comprehensive set of procedures that is now required—incumbent on officers of the Commission to follow through—to ensure that mental health issues are identified early, or other issues, so that appropriate action can be taken and, if necessary, advice obtained to deal with the problem. The second is recommendation 2. I have been handed a copy of the protocol to which I have referred. Madam Chair, if I could be permitted to hand that up?

The CHAIR: Thank you.

PETER HALL: In relation to then recommendation 2, which deals with the question of preparing a table of persons involved with an indication that the person was subject to an adverse finding, a corrupt conduct finding, or was a witness only, the position in relation to that is that the Commission would be against the adoption of such a process or a table. The reasons for that are that each section 74 report contains a summary of investigation and outcomes. That sets out the details of corrupt conduct findings made against individuals. Section 74A (2) statements made in the report deal with that and that clearly indicates who has been found to have engaged in corrupt conduct; and the implication is who has not been found to have been corrupt.

There may be other persons named in the body of a report which are subject to adverse factual findings falling short of corrupt conduct. Identifying them in the table may possibly increase the likelihood of reputational damage to them by providing a central reference point where such persons are identified. The fact that a witness who is not subject to any corrupt conduct or any other adverse finding is otherwise named in the report of course does not involve any reputational damage to the person. It will be clear from the context in which they are named that there is no adverse finding. It is difficult to see how identifying them in a table is necessary, in our respectful

submission. Indeed, some persons may not relish their contribution to the inquiry being made prominent by having their name appear in the table. That is the basis, Mr Parker.

The Hon. ADAM SEARLE: Just on that, Chief Commissioner, I understand what you are saying but people who are caught up in an inquiry might like to be able to have a simple ready reckoner, if I can put it that way, to show someone—whether it is their employer, a possible future employer, maybe their bank that wants to close their bank account because they have been named in a breathless media report, which has occurred from time to time—a simple table of the kind floated by the Committee, which might provide those innocent parties with that ready reckoner, that easy one document, if you like—

PETER HALL: Yes.

The Hon. ADAM SEARLE: — rather than inviting someone to wade through a 100-plus page report. That is the other side of the coin.

PETER HALL: I concede and can see the contrary argument, Mr Searle. There may be cases where somebody, if there was an election about it, may elect to have that matter dealt with in the report.

The Hon. ADAM SEARLE: Yes.

PETER HALL: Some, as I have said, may take the opposite view.

The Hon. ADAM SEARLE: Indeed.

PETER HALL: Especially those persons who we are talking about who are mere witnesses. They are not affected persons. Some may prefer not to have their name put up in lights in any way at all. Others may be, as you say, Mr Searle, in a situation where in a particular case they feel there may be a cloud lift over them in some way and misunderstood. I, for one, would be very willing to discuss that with the Committee further.

The Hon. ADAM SEARLE: Okay, that sounds good.

PETER HALL: The fifth recommendation related to matters taken into account by the Committee in making the recommendations on pages 24 to 25 of the report. In particular, the Committee did note the evidence of Mr Kinghorn in Operation Jasper that, although the New South Wales Supreme Court and Court of Appeal overturned the Commission's corrupt conduct finding, the Supreme Court decision was only reported in one small article in the newspaper and was not reported on the Commission's website. Our response is that, while what is related in the report concerning Mr Kinghorn is not entirely accurate, as a general proposition it can be accepted that where any finding of corrupt conduct is overturned by a court it would be appropriate for the Commission to publish that fact on the relevant investigation webpage in addition to the current practice, which is publishing such information in its annual report.

In its July 2020 submission to the Committee, the Commission noted that in the case of Mr Kinghorn a note explaining that the corrupt conduct finding against him had been declared a nullity by the Supreme Court had been placed on the Commission's public website entry for Operation Jasper, although details concerning the operation were temporarily removed from the website at the request of the DPP so as not to prejudice then current criminal proceedings. Accordingly, members of the Committee, I would recommend that the Commission advise the Committee that it agrees with recommendation 5 and remind the Committee that it does already update relevant investigation pages on its website where judicial proceedings have affected its findings.

Mr JAMIE PARKER: Thank you.

PETER HALL: The balance of the recommendations are in the position I earlier stated and the Commission, of course, is willing to and available to assist the Committee as it may be called upon to do so.

Mr JAMIE PARKER: Thank you.

Mr RON HOENIG: I am just trying to follow this mode of reasoning in relation to the Commission's funding. The Commission is not the only independent integrity agency that is starved of funds. There are a range of independent statutory officers or organisations that, in theory, are accountable to Parliament for their conduct, or who are part of the Executive branch of Government, who also could do with more funds and where members of the Executive are also accountable. The classic is the Commissioner of Police, of course. Why is your Commission any different from every other integrity agency or every other statutory independent officer or even the legislative branch, who is also bounced every year by the Treasury for funding? Why are you in a special category? Just so that you have this in mind when you answer the question, why should some shonky council planner be given greater resources to an integrity agency to catch than a contract killer, for example? I understand your argument. I want an answer to get all of that into perspective.

PETER HALL: Mr Hoenig, I am happy to respond to that. I am not sure if I can deal with that second last question about the parity between killers and others. The first question is really an important one. I am very pleased that you raised it. The Auditor-General's report to which I have referred of October 2020 did, as you have indicated, deal with the other integrity agencies—the Ombudsman and LECC.

Mr RON HOENIG: And also did what I am really surprised about and that is found you all efficient. The Auditor-General never finds anybody efficient. You and the other integrity agencies have done extremely well.

PETER HALL: Yes, we will take her clearance gratefully.

The Hon. ADAM SEARLE: Take a win.

PETER HALL: The other was the Electoral Commission. There are issues we share in common with the other independent agencies about this concept of independence in terms of funding. Indeed, we have had discussions with those other agencies along the way as well as with the Auditor-General, who is another important integrity agency. But we are different to all of them. That is by reason of the statutory jurisdiction that the Commission is bound to exercise in the appropriate circumstances. Jurisdiction, as you know, is defined under the Act. Public officer includes everyone, from the Governor and judges, down to the appointed official at the lowest levels of the public sector. The width of our jurisdiction has been commented upon many times—that it is all pervasive so far as the public sector is concerned.

Take public officials within the DPC. Take public officials within Treasury. Take elected members of Parliament who are members of the Expenditure Review Committee. All of them fall within our jurisdiction. That is to say we, as necessary, can and must, where there is a requirement, investigate any one of them. As explained, as you will know in the vast material now on this question of independent funding, those who determine our funding are the very people over whom we exercise the jurisdiction. That is different from any of the other agencies. The members of the ERC are directly in the centre of our jurisdiction and we must exercise that jurisdiction in appropriate circumstances. That is different from any other agency.

The DPC has, in the past, been the means by which flexible funding issues have been dealt with, regrettably not always satisfactorily from the Commission's point of view. They directly affect or can affect the funding of the Commission. They, too, are directly at the centre, potentially, of the exercise of our corrupt conduct jurisdiction. That is the core reason why we are completely different from all of the other integrity agencies and why funding for ICAC must be examined carefully on its own merits, not having regard to what is required for the Electoral Commission, the LECC or the Ombudsman. All of those agencies have very meritorious grounds for a suitable funding mechanism that should be independent, of course. But because we are in a position whereby all the funding of the Commission under the present model is determined by those over whom we have oversight, evidence the anomaly—it is more than an anomaly; it is a total inconsistency—in the system arises. It must be dealt with.

We must have a completely independent system whereby no member of the Executive is involved in determining our funding. In the second reading speech in 1988, the then Premier made plain that this is one body that is completely independent of the Executive Government and that is why the Government at that time decided to set it up—because of its statutory independence and so that the Commission is not open to influence. It is not open to control. It is not open to manipulation by anyone, whether they are public officials, anywhere in the hierarchy, and not subject to control and manipulation by anyone, whether they are public officials or not. That is what the public interest requires and that is what they got under the legislation.

There have been attempts here and there to undermine the Commission and all those attempts fortunately have failed. The Commission does have, I believe, the support of the New South community because they know we are independent. We will go wherever the evidence requires us to go. We do not target people. We do not have hit lists. We just go where the evidence requires us to go, no matter who it is, so long as they are within jurisdiction. I hope I have emphasised to you the very important fundamental why we—that is, the Independent Commission Against Corruption—must be dealt with separately from any other agency, whether they are government agencies or whether they are integrity agencies. We must be dealt with having regard to the statutory provisions and framework of the Independent Commission Against Corruption Act.

Mr RON HOENIG: You do not make these submissions in a vacuum. Is it a reasonable inference to draw from what you have just said that you reasonably suspect that the Executive Government are restricting your funding to avoid oversight by the Commission?

PETER HALL: No, I am not saying that at all, Mr Hoenig. I am trying to summarise what the Auditor-General said about this, that the threat to independence—that is the way she put it—is there in the system. That is the way the Auditor-General assessed it after an exhaustive performance audit report. Regrettably, that has

been there for too long. Applications for grant funding, for example, are sometimes granted or very often granted, other times partly granted, other times nothing. That can control what we can do and what we cannot do. I think it is unfortunate, but it is an expensive business. In terms of budgetary comparisons, the budget for ICAC is very small compared to the major departments of government, for example. But it is not the size of the budget that counts; it is the principle, to which I have referred.

The CHAIR: Thank you, Chief Commissioner. Given the time, I want to thank you all for coming to our hearing today. I am sure that the Committee also appreciates the time that you have given us. As was previously indicated, we may decide to send you some additional questions. The replies to those questions will form part of your evidence and be made public. If we do forward you additional questions, would you be able to provide a response within two weeks?

PETER HALL: Yes, certainly, Madam Chair.

The CHAIR: Thank you, Chief Commissioner.

PETER HALL: Madam Chair, I am sorry, if you have finished I take this opportunity to thank the members of this Committee for the work that has been done. Although this Commission is independent, as I have said, it is subject to the oversight of this Committee and of the Inspector. Both of those oversight mechanisms are extremely valuable, in my experience. The work of this Committee is extremely valuable in the public interest. Though we are independent, we are not unaccountable. We are accountable to you and we are accountable to the Parliament.

As I have earlier said, this Committee has always dealt with us in a very cooperative and polite manner. I would like to record on the record our appreciation for that. It is good to have a working relationship with members of Parliament. We come away learning something from the interchange at every committee. I do take the opportunity, on behalf of Commissioner McDonald, Commissioner Rushton and, indeed, on behalf of all of the officers of the Commission, to thank the Committee for the way in which you have conducted your meetings with us and your work with us over almost five years now.

The CHAIR: Thank you, Chief Commissioner. Your words are much appreciated. This hearing will now adjourn until 2.00 p.m., when we will continue questions with the Inspector of the Independent Commission Against Corruption.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr BRUCE ROLAND McCLINTOCK SC, Inspector of the Independent Commission Against Corruption, affirmed and examined

Ms CHELSEA DELAHUNTY, Acting Principal Legal Advisor, Office of the Inspector of the Independent Commission Against Corruption, before the Committee

BRUCE McCLINTOCK: I am both a practising barrister and the Inspector of the Independent Commission Against Corruption. It is in my capacity as Inspector of the Independent Commissioner Against Corruption in which I appear here today. Ms Delahunty is with me. She is my Acting Principal Legal Advisor. I have taken the position that it is me who is sworn to tell the truth and that she advises me, rather than her being sworn, which I think is the appropriate way of doing it. So I take responsibility.

The CHAIR: As long as everyone is happy, I am happy. I welcome from the Office of the Inspector of the Independent Commission Against Corruption Mr Bruce McClintock, SC, and Ms Chelsea Delahunty, Acting Principal Legal Advisor. I thank you for appearing before the Committee today. Before we proceed, do you have any questions regarding the procedural information sent to you in relation to this hearing?

BRUCE McCLINTOCK: None at all, Ms Williams.

The CHAIR: Before I ask you if you would like to make a brief opening statement, I will let you know that we have a number of members who are online: Ms Nichole Overall, Member for Monaro; Mr Lee Evans, Member for Heathcote; and Ms Wendy Lindsay, Member for East Hills. Do you want to make a brief opening statement before we start with questions?

BRUCE McCLINTOCK: I will, Ms Williams. First can I say how nice it is to see some friendly faces—perhaps not so friendly, but some faces I have seen here before.

The CHAIR: I am the friendly one.

BRUCE McCLINTOCK: Mr Roberts, Mr Parker, Mr Searle and Mr Hoenig. Congratulations to you, Madam Chair, on becoming Chair.

The CHAIR: Thank you, Inspector.

BRUCE McCLINTOCK: As you will know, this is my last appearance before the Committee, barring some accidents. My commission expires on 30 June this year. It cannot be renewed under the legislation. I might say something about that a little bit later on because I cannot be accused of having any self-interest at this stage. It has been, I have to say, a privilege to have served as the Inspector of the ICAC. I have enjoyed the role immensely and I hope I have made a contribution. I have always approached this Committee as being in the same role towards me as I am towards the ICAC itself—that I report to you and you supervise me and check on what I do and so on.

As I said, I leave the role with some sadness. I have achieved most of the goals that I set myself when I became Inspector in 2017. I thought about breaking into song and saying, "Regrets I have a few, but then again too few to mention." When I took over, the problems I identified—and they are problems that could easily recur; they have not in my term—were these. The relationship between the Inspector and the Commission had descended to depths where it was destructive and damaging to the operations of both organisations. I will not go into that, but there are a number of reasons for it. A number of people involved are no longer with us, having passed on, and I am not going to say anything bad about them.

It is necessary in dealing with an agency like ICAC for the Inspector to have a cooperative relationship so that information can be passed on and so on. It is cooperation but not capture. You have to cooperate but maintain your independence at all times. But that said, you can do so within the confines of a harmonious relationship where each side understands their role. I believe I have achieved that. As I said, cooperation but not capture. I have not found it necessary to make findings of actual misconduct but I have on a number of occasions criticised the approach of the Commission. One example, one of which is mentioned in the report, is the issue about the Japanese consul, which some of you may ask me about.

The other issue I found when I took over was that there was a backlog of complaints, between 20 and 30. Some of those complaints had been outstanding for over two years and some for in excess of three years. Almost none of them could be described as trivial. They all had substance and they all involved real work. I might say I was shocked myself when I found that out. It is a mark of my own naivety at the time that I set myself the task of dealing with all of them by 31 December 2017, which in retrospect was absurd. It took me really to the end of 2018 to get rid of them, to deal with them. I should not say "to get rid of them"; that is not an appropriate way to put it. The reason why was, of course, I had to accord everyone procedural fairness, which involves

correspondence and so on, and many of the people did raise issues with me that I needed to address. But, anyway, I got that out of the way.

The regret, I suppose, that I have mainly is I have not been able to carry out more audit work in relation to the Commission. But I and my office do things like attending their audit and risk committee meetings to see what is going on there. I have carried out one audit of the search warrants power. But this comes back to something that Mr Roberts raised with me on a previous occasion, which is the limit on my powers, or the Inspector's powers—because of the Commonwealth legislation, about which this Parliament can do nothing, unfortunately—to carry out audits of telephone intercepts.

Now, it would be surprising to think that in this day and age that a major part of the Commission's intelligence-gathering capacity was not made up of such intercepts. But because of this gap in the Commonwealth legislation, which I have repeatedly made representations to the Commonwealth to get fixed, I am not allowed to carry out an audit to determine whether in that respect they are complying with the law. In my paper search warrant audit, I found that they were complying with the law there. It is a concern that this is something that cannot be looked at.

It is particularly ridiculous because I am allowed access to material obtained by intercepts to deal with complaints. So if someone complained about the circumstances of an intercept warrant, I can deal with that but I cannot carry out an audit of any kind. There are other issues. I think the Chief Commissioner may have mentioned one this morning which is access to—which is the new Commonwealth TOLA legislation dealing with the access to service providers and getting intelligence from them. That is disturbing. I do not understand the logic for it myself. But, again, it is not something that the Committee itself can deal with. It is a Commonwealth issue.

I have probably spoken for too long. One thing that I do know came up this morning was the three Commissioner model. It is probably better for me to answer questions about that if any members of the Committee wishes to raise them. I was around in 2015-16 when that model was being adopted and I did support it then. It is one of those issues where there is no right or wrong answer, there may be better or worse answers. As I have always said, the real issue in this area, as I said before, depends upon the people you appoint to the roles. It does not matter whether you have one Commissioner or three Commissioners or five Commissioners—

The Hon. ADAM SEARLE: Or two as in the LECC.

BRUCE McCLINTOCK: Yes. If you appoint, say, a zealot, you will always have problems. Because it was articulated to me at the time, I think in this room, I know why the three Commissioner model was adopted back then. I have probably gone further than I intended to, but I will say this: I think there should be a second Commissioner, and that may lead into a two Commissioner model, but that can be debated. Part of the reason is that I think you need someone who can step into the shoes of the Commissioner if the Commissioner is absent for some reason—for example, for annual leave—and who is cognisant of the operations of the Commission and can take over. That leads in to a related point, which is this. This is not seen as a criticism of anyone. It is unfortunate that the terms of the three Commissioners are ending all on the same day. It would have been better if the terms had been staggered, because there is a big loss of institutional knowledge with all three going at the same time.

Related to that also is I think that it might be worthwhile considering in future staggering the terms of the Inspector so that there was not a new Commissioner or Commissioners and a new Inspector at approximately the same time because I believe that there is a lot that the Inspector—I flatter myself of course—can pass on to a new Commissioner and vice versa. You probably know that the relationships between the Inspector and the Commission are governed by a memorandum of understanding that I and the Chief Commissioner signed in 2017. There is a lot that could be done if there was time, which there will not be of course here because there will be a new Inspector from 1 July this year. I have gone for much longer than I intended and I apologise for that, so over to the Committee. After pre-empting things, I apologise.

The CHAIR: Thank you, Inspector.

Mr RON HOENIG: On the latter issue in relation to the three Commissioners, we acquiesced in 2016 to a Premier's department submission. Its argument was that it was to prevent agency capture. After the amendments and the appointment of the Commissioners, there is one thing that was evidence given by either Mr Rushton or Ms McDonald—I cannot remember which one—that coincided with my view. You have two members of the bar coming in and going out again, retaining their values that members of the bar have. Whereas, the Chief Commissioner—and you are not always going to get a quality appointment like Peter Hall—is sitting there on an individual matter.

He is not a judicial officer who hears the evidence as the evidence unfolds. He gets the preliminary stuff and then he gets the preliminary investigation stuff and then he is deciding whether to apply for a search warrant and then he is deciding whether to apply for telephone intercepts. He is hearing and seeing all that material. He is

then having compulsory examinations, and then he is deciding whether or not to have a public hearing and then he is presiding over it. Over a period of some time through intensive investigations he is getting only one side of the material, and that is happening in each and every matter of it.

Human beings being human beings, a judicial officer, barrister—anybody—remaining dispassionate in those circumstances for a five-year period on a range of all these corrupt people that either you can get the evidence or cannot get can cause agency capture, which I am concerned about. We are all concerned about judges, leading to this point which is actually Adam Searle's suggestion that he has made to me some time ago and he raised it with the Chief Commissioner. Would you not be better off bringing in or having a panel of either judges, barristers et cetera presiding over these public hearings to at least provide some prevention of agency capture?

BRUCE McCLINTOCK: That is a hard one to answer. I do not think you could say that either the two Commissioners, Ms McDonald or Mr Rushton—but particularly not Mr Rushton—could be said to have been captured by that agency.

Mr RON HOENIG: No, but they are back at the bar practising again.

BRUCE McCLINTOCK: Except Mr Rushton gave up his practising certificate because he felt he had to do it. He is not a full-time appointment, and I know he worked extraordinarily hard—in many cases unremunerated—at ICAC. Agency capture is an issue; there is no question about it.

The Hon. ADAM SEARLE: It was an allegation levelled at the ICAC in the past. Whether correct or not, the three Commissioner model was in part a response to that perception.

BRUCE McCLINTOCK: Exactly; it was. As for a panel of barristers or ex-judges to step in, in effect, the Commission has that already and can find people like retired Justice McColl, who is doing the current inquiry Keppel. I do not know that it needs to be formalised like that. But, you see, when I say "agency capture is an issue", anyone who has ever done a quasi-prosecutorial role or an investigative role will realise that the pressure on you as an individual to come up with a result can be very great. I was counsel assisting in ICAC back in the early nineties in an inquiry into Randwick council. While there was plenty of stuff there which were justified findings of corruption, there is no doubt that if I had turned around and said at the end of the day, "Look, there is nothing to see here, Commissioner," there would have been howls of outrage. But that is something that is common to those roles and those Commissions.

You can only deal with it in the end, I think, by the people in question who do it being conscious of the risks of that, which again comes back to what I said before and have always said, which is that this always depends upon the calibre of the person you appoint to do these jobs. You give an agency like this enormous powers and that is the reason why there are so many safeguards built into the legislation—it is the reason why my position exists—but the only way of being sure is to appoint the right person. I have to say the State of New South Wales has been lucky in the three that it has had for the past five years—it really has. I can say that because they are all friends of mine. I hope that answers your question, Mr Hoenig.

Mr RON HOENIG: So you have to get the appointments right.

BRUCE McCLINTOCK: Absolutely.

The Hon. ADAM SEARLE: Whatever model you have.

BRUCE McCLINTOCK: Yes. I have to say I know that the Law Enforcement Conduct Commission has gone by legislation from Parliament to a two Commissioner model and the Attorney General just announced the appointments last week. That was an agency I knew a bit about because I was the assistant Inspector for one particular inquiry. It involved a complaint by one of the Commissioners against the Chief Commissioner, which is an indication of how utterly dysfunctional that agency had become under those Commissioners. That will not happen again, both because of the people appointed and because of the new model. Again, it is another illustration of what I said about the right choice of people. You cannot have situations where one Commissioner is complaining about the Chief Commissioner.

The Hon. ADAM SEARLE: No, that is not sustainable.

Mr RON HOENIG: I raised with the Chief Commissioner when he was giving evidence before the investigation—I do not know its name—into the Labor Party and the Labor Party people over those straw donors. I thought the report was exceptionally well written. It was obviously an issue that I read carefully and followed. I thought they weighed up every portion of the evidence that they had available to them exceptionally well and made factual findings very thoroughly, but it took two years really from the time in which counsel assisting finally responded in reply and for the Commission to write the report.

I know it was a difficult and complex one, but in the intervening period you have people of which there were no corruption findings made who were unable to get a job. They were people that had their photos in newspapers featured for weeks and on the nightly news. They were threatened, them and their families, with closure of bank accounts by their bankers. I do not know why that happens but it did.

BRUCE McCLINTOCK: Banks are very nervous about those things now, Mr Hoenig.

Mr RON HOENIG: Yes, except a human being cannot operate without a bank these days with electronic transactions. They have social licences, in my view; but it is a Federal issue. That is a long time to prepare a report like that. If it was not that thorough you would say, well, it was not fairly done. But there are difficulties under the current model where there are consequences of going about this task in such a public way.

BRUCE McCLINTOCK: Mr Hoenig, the delays in preparation of the reports is a real issue, I accept that. There have been situations where I have intervened, where I thought it was getting problematic, by a polite letter saying, "What's happening?" or something like that. There is also a resourcing issue as a result of that. You cannot expect an agency like ICAC—just to step back a bit, if the Commission makes a finding of corrupt conduct, it owes it to the person against whom it is making that finding to be absolutely meticulous, to check everything, all the material it has, to make absolutely sure it is right. It would be monstrously unjust if it was done in a sloppy way.

Those things do of themselves take time. It is not like a simple situation with a judge, for example, who has witnesses in front of him, here are two barristers and who then has a discrete issue—maybe a big issue—to decide. That is more susceptible to dealing with it quickly. I can appreciate that the Commission is taking longer than one would normally anticipate that a court would take. As I said, there is a resourcing issue as well, unquestionably. That said, it is a matter of concern that these reports do take so much time. You may be aware, just so it is on the table, that the Labor Party formally complained to me about the execution of the search warrants at the Sussex Street headquarters, a complaint that I dismissed because there was very clearly nothing wrong with that. I have also forgotten the name of the investigation myself, Mr Hoenig, for which I apologise.

The Hon. ADAM SEARLE: Was it Aero?

BRUCE McCLINTOCK: Aero, that was it.

Mr RON HOENIG: There are always complaints because the media seem to be able to arrive prior to ICAC officials executing search warrants. They have been doing that for decades. In fact, there was evidence given with a previous Commissioner to this Committee that wanted to know how come they were at Chris Hartcher's office before they actually executed the search warrant. The explanation was that somebody in the shopping centre provided the media with the information. The next question was: How come they were at Torbay's house, who lived an hour out of town, before? Somebody has been leaking search warrant details since inception from somewhere.

BRUCE McCLINTOCK: That may be true, Mr Hoenig, about the past. But there was a pretty good case that the leaks there came from staffers at Sussex Street headquarters because there was a mass pulling out of mobiles when the team arrived. I had an example last week—it does not matter what it was—and I thought, "I wonder how long it is going to take the press to get hold of this?". I got it wrong; I overestimated by about an hour, that was all. It was the very same day I found out that within a matter of hours it was all over the papers.

The Hon. ADAM SEARLE: Mr Inspector, perhaps I can ask you this question then: Given you have nearly finished your tour of duty and, as you say, you are statute barred, based on your insights is the role of Inspector in need of reframing at a legislative level? Can you give us an insight into how much time you have applied yourself to the role, which is supposed to be a part-time role but I am very mindful of the limited resources that your office has historically had?

BRUCE McCLINTOCK: Yes. You have been a barrister; you know what hard work is like.

The Hon. ADAM SEARLE: I do.

BRUCE McCLINTOCK: You do. You just do the job.

The Hon. ADAM SEARLE: There is nothing wrong with hard work.

BRUCE McCLINTOCK: No, nothing at all. I have never found—I am not avoiding answering your question at all—that the lack of resources has impaired me at all. I have been exceptionally lucky with my three Principal Legal Advisors: Susan Raice, who was at the Law Enforcement Conduct Commission; Angela, who went on maternity leave and is now with Corrective Services; and now Chelsea Delahunty. They have all been people of extreme ability and I have been extraordinarily lucky to have them. I really have. As I say, I have never found the lack of resources an impairment. I have just done the work. I have found it is, I would say, about an

average of two days a week, but there have been times when those two days have been Saturday and Sunday. But that is because of my case load as a barrister, although that is coming to an end because I am formally retiring from the bar on 30 June—the same day as I end my employment as Inspector. There have been other times, though, where it has been full-time. It was particularly like that in the early days getting rid of those complaints. I do not think the role needs to be a full-time role. Indeed, I think it is probably better suited to someone who has another job that they can work around because these things do cross-fertilise.

The Hon. ADAM SEARLE: Sure.

BRUCE McCLINTOCK: As to the ways in which the role could be expanded, there are a whole lot of things that you could do. For example, the Northern Territory legislation, which is not a badly drafted Act—it had the benefit of picking up on all the previous State legislation and seeing what had been done there. For example, it gives the Inspector there power to deal with complaints; it does not say what kind of complaints. Whereas here the New South Wales legislation says "complaints of maladministration", which is a defined term. It includes delay, misconduct, impropriety and so on. If someone comes to me with an area outside that, I just do not have power to deal with it.

In some ways it is a benefit to have a restriction because it means you can explain to people why you cannot deal with it. For example, in the Northern Territory one of the persistent complaints is that the Commission did not accept the complaint made by the person for investigation. My attitude about that is, well, that is hardly going to be misconduct and therefore—and it is a resourcing issue, too. It is the kind of role that a person can make of it what they want. They can deal with the Commission in basically any way. I have no doubt that if I said to the Chief Commissioner, "Look, I'm a little bit concerned about this aspect of what you're doing", even if it was not strictly within my powers—although when you think about it, the audit function, which says "to audit the operations of the Commission to ensure the legality of its actions", is pretty much wide enough to cover anything that an Inspector wanted. I do not think it needs—I could answer your question by saying I have not myself noticed any constraint on what I do coming from the description in the legislation.

The Hon. ADAM SEARLE: There is no jurisdictional remedy power you feel that would have been useful to have had at your disposal?

BRUCE McCLINTOCK: As in?

Mr RON HOENIG: Most of the complaints have been those legacy items to which we referred. I think Mr Searle makes a good point, although I extend it and say the administrative law division is of no help because the bar is too high. The Inspector is restricted because of that terminology that you use. I mean, you could have a bit more flexibility and have unfairness and that sort of stuff in there.

BRUCE McCLINTOCK: Mr Hoenig, that flows into merits review of the decisions and that is something that the Hon. A. M. Gleeson, QC, and I rejected in the report in 2015. It is dangerous in itself because you would end up—firstly, it could not be the Inspector who did the merits review unless you had a very, very different inspectorate; it would have to be the Supreme Court. I am personally deeply suspicious of judges doing merits review of any external decision like that. There was a regime when the Federal Court did merits review of competition decisions at one point, or price-fixing decisions in the electricity market, which is just insane because judges are just not fitted to doing that. I know what ICAC does is a bit different, but I do not like the idea of merits review of those decisions.

The Hon. ADAM SEARLE: What about the judicial review function that is in the Supreme Court now? What if that were to be conferred on the Inspector?

BRUCE McCLINTOCK: As in dealing with—as in, in effect, saying, "You cannot do this—

The Hon. ADAM SEARLE: Did not comply with the statute?

BRUCE McCLINTOCK: Again, it would have to be—

Mr RON HOENIG: Say that again? Sorry, I missed the last part. What did you say, Adam?

The Hon. ADAM SEARLE: In circumstances where it is alleged that the ICAC did not comply with the statute.

BRUCE McCLINTOCK: So that, in effect, the Inspector had power to issue writs of certiorari or prohibition.

The Hon. ADAM SEARLE: Something like it. Obviously, it would not be those powers, which are properly reserved to the Supreme Court, but I guess when we did the reputational impact review some of the

evidence was, look, even when you have got a good case, going to the Supreme Court is a bit beyond a lot of people's means.

BRUCE McCLINTOCK: Oh, sure.

The Hon. ADAM SEARLE: So therefore approaching a less daunting, less formal body but nevertheless being able to invoke that kind of supervisory jurisdiction. It might be good if that was reposed in another body.

BRUCE McCLINTOCK: That needs some more careful thought than perhaps I can give to it in a hearing like this.

The Hon. ADAM SEARLE: Sure. I am happy for you to take it on notice, if you would.

BRUCE McCLINTOCK: Well, can I say this: It is the sort of thing that would warrant another investigation into the legislation like the one I did in 2005 and like the one that Murray Gleeson and I did in 2015. I can understand the logic behind it, Mr Searle. What you are saying is that it would be cheap and quick for someone to complain to an inspector-type body that they had been dealt with unfairly or that the Commission did not have jurisdiction or whatever. I can certainly understand the logic in that and then you grant to the Inspector the power to directly Commission, to remedy or not to do a thing.

The Hon. ADAM SEARLE: It is not necessarily my view, but it is certainly a view that is abroad and they are trying to do justice to people who arguably have had the rough end of the pineapple.

BRUCE McCLINTOCK: I have to say this: In two months' time I can give you, completely free of any allegation of bias in relation to these things or empire building or wanting to get more powers for myself—as much as I would like more power—and so in those circumstances it is the sort of thing I would be perfectly happy to talk to the Committee about, if you wanted to then.

The Hon. ADAM SEARLE: Yes.

BRUCE McCLINTOCK: And I am going to be very free after 30 June.

The Hon. ADAM SEARLE: That is good to know. My final question—because I am mindful of the time and other Committee members have not had an opportunity to pose questions to you—you talk about the staggering of the role of Inspector and the other two Commissioners, and I totally accept the force of that argument. The public policy rationale of only limiting Commissioners to a five-year appointment it seems to me does not apply to the Inspector. Shouldn't the Inspector not be statute barred? I know that this is the risk of you speaking in your own interests, but assuming that that is not going to change—

BRUCE McCLINTOCK: It is not going to change between now and 30 June.

The Hon. ADAM SEARLE: No. So the issue is: Should the Inspector not be someone who, if they had not finished a report, could get an extra six months or 12 months?

BRUCE McCLINTOCK: I have got to say there is something incongruous about the fact that in my first year I had to present a report within three months of the end of the financial year about a year when I had not been Inspector and had had nothing to do with it. The same thing is going to happen to my successor, although I will offer any informal help when I am handing over. Personally, I do not think—my view is that it is imperative that the Commissioners have a five-year limit.

The Hon. ADAM SEARLE: Yes.

BRUCE McCLINTOCK: Absolutely, or a limit. I think it would be very wrong for all the reasons about agency capture and so on for it to be any longer. The Inspector is not in the same position. But, that said, you would not want someone who just became the professional Inspector, so to speak, and you might consider a two-term limit—something like that—so it was two terms of five years.

The Hon. ADAM SEARLE: Which is how the LECC legislation is now framed, not so much around the Inspector but around the Commissioners. There is something in our legislation.

BRUCE McCLINTOCK: Is it?

The Hon. ADAM SEARLE: Yes.

BRUCE McCLINTOCK: I did not realise.

The Hon. ADAM SEARLE: I am not suggesting it for the Commissioners. I think the ICAC Commissioners are in a very different position to any other supervisory body, if I can put it that way. The Auditor-General is in the same boat because of the sensitivity of the role.

BRUCE McCLINTOCK: Yes.

The Hon. ADAM SEARLE: But the Inspector, I see the force of what you are saying—the idea of a limit but not necessarily the same limit.

BRUCE McCLINTOCK: Yes, exactly. Exactly, Mr Searle.

The Hon. ADAM SEARLE: Thank you. Those are my questions, Madam Chair.

The CHAIR: Thank you, Mr Searle. Are there any other questions? Mr Parker?

Mr JAMIE PARKER: Before I start, I just want to agree with Mr Searle that five years is too short but some restriction is appropriate, so it is something that maybe we could consider as a Committee. First, I just want to express my very genuine appreciation for all the work that you have done as Inspector and the support you have given to public interest over these years to ensure that ICAC functions after—how can I put it—a very difficult period to move into this new period where I think a lot of those legislative issues have been addressed. Obviously there is more work to do.

I just want to discuss a couple of things briefly. First of all, the issue of delay is something which the Commissioners discussed today. We know it is something that is particularly important. Operations Dasha and Eclipse I think were almost 500 days after the completion of the inquiry until production of the final report. You said that you wrote a polite letter to encourage that production. In the corporate goals of the ICAC it talks about 60 to 90 days, which I think is very much an aspirational kind of target.

BRUCE McCLINTOCK: Yes.

Mr JAMIE PARKER: Obviously 500 days seems to be excessive. When you wrote your letter, what do you think we should be thinking about as a committee in terms of what is an appropriate period of time? Obviously we have got people who we used to work with and who we know, but also people from the general public who came and spoke to us in our inquiry into reputational impact where that was one of the major issues. Could you give us any feedback in terms of what you think is a realistic and optimal type of period for the report to be handed down after the inquiry has concluded?

BRUCE McCLINTOCK: That is a very difficult question to answer—to give one answer to—Mr Parker.

Mr JAMIE PARKER: Sure.

BRUCE McCLINTOCK: The problem is that there are inquiries that are in a sense discrete, like Aero, the one with the Labor Party. I do not know why that took so long: I don't. There are others that tend to grow as they go along. Keppel has changed its nature entirely. That is not quite right, but it certainly has—

The Hon. ADAM SEARLE: The focus widened.

BRUCE McCLINTOCK: The focus widened. Your question really is: How long after submissions have been concluded should that be? I do not think I can genuinely say any set period. I know that in the Supreme Court the chief judges of the divisions and the Chief Justice get very concerned if a judgement is outstanding for more than a year. I would have thought that a year, even for a complex investigation, would be the—

The Hon. ADAM SEARLE: Just on that, where there is a public hearing, the idea that a report—maybe not the final report, but certainly a report—should be issued by the Commission within 12 months of the final hearing date or any final submission, that is not an outrageous ask, is it?

BRUCE McCLINTOCK: No. No, it is not. But, again, there was one thing in your question that I would not wish to be thought to be endorsing. You may not have intended it but you said, "a report", but not necessarily the final report.

The Hon. ADAM SEARLE: Correct. There may be circumstances where, because there is an ongoing investigation, the case has grown: Maybe there needs to be longer.

BRUCE McCLINTOCK: I can imagine a situation where you could have an interim report exonerating people. You would not want to have an interim report finding people guilty of corrupt conduct.

The Hon. ADAM SEARLE: No, I do not think that.

BRUCE McCLINTOCK: That is the reason why I hesitated about the question, Mr Searle.

The Hon. ADAM SEARLE: Yes, sure.

Mr RON HOENIG: It is a good question. I saw the Western Australian corruption Commission 13 or 14 years ago have a Minister called to give evidence and when the Minister gave his evidence the Commissioner made a statement thanking the Minister and said, "There will be no adverse findings against you. We thank you very much for your assistance."

He said, "I would not normally do that." He was obviously conscious of who the person was.

BRUCE McCLINTOCK: There is a problem with that too, Mr Hoenig, because if you do that to some but not all, you have implicitly suggested they might be guilty of corrupt conduct. The problem with this area is there are no right or wrong answers. You are dealing with subtleties and gradations and so on. There was an inquiry I was involved in as counsel for the target of the inquiry, who was a Minister in the Government—it does not matter who. It was dealt with privately. There was one public hearing, which is notorious for a question I asked. But I could see in a situation like that, where there was one target in the investigation, that you might be able to do something like that. But, again, the problem is next time there is one person and you do not do that, you have done the same thing.

The Hon. ADAM SEARLE: I will put the question another way. Why shouldn't there be in the legislation a requirement to issue the report no later than 12 months after the final hearing or final submissions? What would be the harm in that?

Mr RON HOENIG: I was just going to say, what happens if you have got a whole pile of persons of interest and everybody has to make submissions?

The Hon. ADAM SEARLE: It is a question of time frames.

BRUCE McCLINTOCK: I think Mr Searle's premise was after the submissions had closed.

The Hon. ADAM SEARLE: After the submissions.

Mr RON HOENIG: Oh, after they closed.

The Hon. ADAM SEARLE: Yes, either the final hearing or the final submissions.

BRUCE McCLINTOCK: But also remember there are also procedural fairness requirements after that, because they have to give notice of the—

The Hon. ADAM SEARLE: Adverse findings.

BRUCE McCLINTOCK: —adverse findings and deal with that. It is a cumbersome process. I am not criticising it. I would be very loath to suggest an absolute time bar of some sort. But the underlying concern on the part of the Committee is that these things are taking too long.

The Hon. ADAM SEARLE: We understand the resourcing aspect.

Mr JAMIE PARKER: I just wanted to ask you to consider providing us with advice as a result of your years as Inspector on this issue that you raised about employing the right person. That is one of the great challenges that we have. We have a three Commissioner model now, which was designed, I think we can all honestly say, to deal with a particular situation. You have spoken, and so have others, about employing the right people and having the right person. As someone that came into this role with quite a conflict between what we saw with the former Inspector and the ICAC, do you have any advice or any recommendations of issues that should be considered? This Committee has a veto role, but in the broader employment role do you have any advice for us as a result of your experience?

BRUCE McCLINTOCK: I think I do actually. Not so much advice—it is not my place to do that—but things that you might think of. This is not to be interpreted as in any way a criticism of any previous Commissioner at all. You know the old saying, even though it is probably out of fashion now, that no-one ever got sacked for buying IBM. If you go with the market leader, you are not going to be fired if the programming goes wrong. It is very tempting for governments to appoint retired Supreme Court judges to roles like this. I specifically say that this is not a criticism of any previous Commissioner and I want to say specifically that I think Peter Hall has done an absolutely outstanding job.

Mr JAMIE PARKER: Absolutely.

BRUCE McCLINTOCK: But there are problems with those people in that sense. First, they are ex-barristers who are no good at management, they have no management experience. That was part of the reason why the CEO role was adopted with the legislation, to make up for that lack of management experience. But it is still necessary for the Chief Commissioner to have an understanding of the management needs of that agency—no question. As I said, judges who have a small staff of an associate and a tipstaff are not necessarily trained to

do it. They have for the most part been ex-barristers who, again, get no training in management because they are sole traders and act only for themselves in effect. The other thing too is that, again with great respect, the retired judges tend to have a degree of age about them. That is not necessarily a good thing. Again, I specifically exempt the present Chief Commissioner from that. What that adds up to is casting the net wider than it has been before. But that is really a matter for the Executive, of course, who presents the candidates for veto by the Committee to you.

Other than that, obviously these are truisms. You want someone of complete integrity with ability to work hard but also with judgement and moderation. If you appoint a zealot to the role of Chief Commissioner, you will have problems. One Commissioner said to me about another Commissioner, both of them retired at the time, that "the problem with X is that he carries the rhinoceros hide whip in his back pocket". The Commissioner about whom that was said, said to me about the other Commissioner, "The problem with the Commission was that it went to sleep for the five years before I took over." You need someone of judgement and moderation, bearing in mind that one of the important parts of the role is to stay your hand, to not do things, and to make decisions as to what is the right thing to do in that particular circumstance.

Also, you need an understanding of human beings, and also, I think, probably an understanding of how New South Wales operates. I have heard it suggested—someone suggested to me that the ultimate solution should be an Australia-wide anti-corruption Commission covering all States and all Territories. I do not know that that would be a very good idea myself. It was suggested to me only last week, in fact. Someone who comes in from, say, outside you may think might be attractive, but there is so much history and you need to understand how the pieces fit together. I wish I could be of more assistance, but those are the things that I do think about this. Cast the net wider and just hope that the person—Mr Searle and Mr Hoenig will be able to think immediately of examples of people appointed to the bench who completely changed sides once they have got there. There is always a risk of that with an agency like ICAC. But just choose someone with skill and moderation.

Mr JAMIE PARKER: They are very useful insights, thank you.

Mr RON HOENIG: If the Chief Commissioner goes down a particular path, as controversial as it may or may not be, for example, one in which he is currently part-heard in, the inference that I draw, despite a lot of criticism, is that there must be pretty cogent material. I am not sure I would come to that view with some of his predecessors, such as Cunneen, which prompted a review by you, for example.

BRUCE McCLINTOCK: It did. But remember in relation to Cunneen in the 2005 inquiry, I recommended the inclusion of the provision in section 13A that says so far as practical the Commission should focus on serious corrupt conduct and systemic corrupt conduct. I regarded that inquiry as a violation of that directive, and I said so at the time. Even though my own view was that the inquiry was illegal, contrary to what the High Court ultimately found, I thought it should not have been undertaken because I was completely unable to see how what was alleged could be serious corrupt conduct, and I said so at the time. But what you have said, Mr Hoenig, is another way of saying that the present Chief Commissioner has done an outstanding job and that you trust him and his judgement, which is a fair comment. I do not know that I can say much more than that about it, though.

Mr RON HOENIG: You were involved in two reviews, one in 2005 as well.

BRUCE McCLINTOCK: Yes, 2005 and 2015, the one after the Cunneen case.

Mr RON HOENIG: Since the first review—and it was the Cunneen matter that prompted the second review between you and the Hon. Murray Gleeson.

BRUCE McCLINTOCK: Yes, it was.

Mr RON HOENIG: If you were to do a review now with six or seven different corruption Commissions operating around Australia, that would give you an opportunity of picking the eyes out of each of them, wouldn't it, or does New South Wales have a particular culture and is more corrupt than other States?

Mr JAMIE PARKER: Good question, Ron.

BRUCE McCLINTOCK: I do not think New South Wales is more corrupt than other States.

Mr RON HOENIG: Therefore, there is experience gained by what works and what does not work.

BRUCE McCLINTOCK: Yes.

Mr RON HOENIG: You could come up with a pretty good model if there was a review looking at the workings of a number of others.

BRUCE McCLINTOCK: Can I say this? First, legislation like the ICAC legislation is legislation that should be subject to comprehensive review regularly. I mean, whatever period you pick. For example, the Defamation Act had a review provision built into the amendments in 2005. Legislation like the ICAC Act, for obvious reasons, is the sort of legislation that should be kept up to date. There is now a wealth of experience Australia-wide in all the other jurisdictions because they all now—except the Commonwealth—have some form of anti-corruption agency. Even Tasmania has got a small one that is run by a very small anti-corruption unit down there and is run by a barrister who is actually a friend of mine whose name has escaped me. He is also major general, if that narrows the field. But there is a lot to be drawn from that.

The Northern Territory has just had a comprehensive review of their Act, which has only been in force since 2017. There are amendments being contemplated up there. There are issues going on up in Queensland about their Crime and Corruption Commission. There are continued issues in Western Australia. You know what has happened in South Australia. But the answer is yes. There is ample material for someone to carry out a comprehensive review of the legislation, if that was thought necessary. It may not be now, but I would say there should definitely be another one before 2025, to pick an outside limit. It would go 2005, 2015, 2025. Once every 10 years is about right, I think.

The Hon. ROD ROBERTS: Firstly, Inspector, thank you for your attendance today. I always find your appearances and evidence to be insightful and useful. Thank you for your service over the years.

BRUCE McCLINTOCK: Thank you, Mr Roberts.

The Hon. ROD ROBERTS: I did have three questions but two have been basically wiped out. One was on the three Commissioner model, and I think we touched upon that, and one was on the tenure of the Commissioners and yourself all colliding and terminating at the same time, which I think has some issues to it. That leaves me with only one question and that is about page 35 of your actual report. Inspector, if I could just draw your attention to that. It is in the quoted text where I am to understand that you are writing to the Commission. The last sentence says, "However, I am concerned that there may be other areas of the Commission's work in which there are unidentified and unaddressed risks relating to how information is handled."

Clearly, like everybody, I was concerned about the release of that transcript. From this, am I to draw the conclusion—and if I am wrong, please correct me—that you have some concerns that there may be other areas that have yet to be worked on, if I can use that expression, by the Commission? If you have raised that, do you know if they have addressed those issues to your satisfaction yet at all, or do they still exist?

BRUCE McCLINTOCK: Can I just speak to Ms Delahunty?

The Hon. ROD ROBERTS: Yes.

BRUCE McCLINTOCK: The answer to your question, Mr Roberts, is, in a sense, yes and yes. But it is an ongoing and dynamic situation. We have been on the job, so to speak. I can produce, if you want me to—I should probably take it on advice but I am perfectly happy for myself to give it to the Committee. There has been an amount of correspondence between myself and the Chief Commissioner about the information-handling practices, initially prompted by the release of that transcript. We have been following up on that. There is correspondence going back til June last year. The most recent letter from the Commission to me was on 9 February this year and I replied on 25 February. But it is an issue that has been undertaken. As I said, the correspondence continues through til March. I am perfectly happy myself to supply the correspondence to the Committee but, in fairness, I should check with the Commission first. I do not think they would object but, yes, we are on the case, so to speak, Mr Roberts.

The Hon. ROD ROBERTS: Can I ask you this then: Are you satisfied with the remedies that the Commission is putting in place to address these?

BRUCE McCLINTOCK: I hope you will not think that I am evading you, but the jury is out.

The Hon. ROD ROBERTS: That is fine.

The CHAIR: You can take those questions on notice if you wish, Inspector.

Mrs NICHOLE OVERALL: Mr Inspector, you will excuse me as I am not only a new member to this Committee but also of course one of the newest members to the Parliament. I hope I will not be going over ground that has extensively been covered. Circling back to some of the points that have been raised already, there was at least touched upon if no response as such was provided on increasing the threshold for public hearings. In light of all that has been discussed so far, I am wondering if we could hear your direct view or if you are actually able and willing to comment on whether you feel that it should be increased.

BRUCE McCLINTOCK: So that there was a standard that the Commission had to satisfy before it could have a public hearing?

Mrs NICHOLE OVERALL: That is my understanding.

BRUCE McCLINTOCK: I am inclined to think that these things should not be overly prescriptive and that you should leave it to the Commission itself to ultimately make the decision about when it has a public hearing. Public hearings are an issue, obviously, and there has obviously been debate about them in the Federal sphere. When you actually think back on the number of public hearings, they are not particularly excessive. Also, I do not know what the standard would be to trigger a public hearing. There could be problems in putting in some sort of standard that the Commission had to satisfy before it did it because it might require, in fact, giving procedural fairness and so on if you did. I would be inclined to leave things as they are myself.

Mrs NICHOLE OVERALL: And you do not feel that this could potentially offer more mechanisms to be able to address what Mr Hoenig was referencing as well? With the potential for reputational harm, the potential for individuals to be under undue stress in the public forum and considering the periods of time that are passing, you do not feel that that would offer an opportunity to potentially address that?

BRUCE McCLINTOCK: I do not think imposing a standard which had to be satisfied before an inquiry would happen. It has to be realised that reputational risk and stress are inherent in creating an agency like ICAC. If you had no public hearings—which I might say I would personally strongly oppose because it starts to get like a Star Chamber if the public cannot see what is actually going on—presumably you would just have a report presented to Parliament that made the findings of corrupt conduct against a person in question, and that is where the reputational damage would be done then. The problem when reputational damage comes up is supposed unfair reputational damage from people who are giving evidence before an inquiry and then later turn out to be exonerated. But that is something that can only be addressed—that is hard to prevent partly because it depends upon the reporting by the press of what is going on. But, generally speaking, no, I do not think that adopting—putting in legislation—a standard which has to be satisfied before a public hearing took place is necessary myself.

Mr RON HOENIG: One thing that has always troubled me is the impact on a potential jury if the evidence is such that someone is likely to be charged. But I accept, particularly bearing in mind the complaints that you get—you probably get more than me—about what happens in compulsory examinations and things of that nature. I mean, having these organisations operate without public scrutiny ends up being like the Crime Commission was—that is, outrageously unfair and improper.

BRUCE McCLINTOCK: I do not wish to be thought to be assenting to the fact that ICAC has behaved outrageous, unfairly or improperly, Mr Hoenig.

Mr RON HOENIG: I have never seen a compulsory examination, but I have seen videotapes of Crime Commission evidence and it has been pretty—

The Hon. ADAM SEARLE: I have appeared in them.

Mr RON HOENIG: You have probably seen them then?

The Hon. ADAM SEARLE: I have. There was nothing particularly untoward about them, in my experience.

Mr RON HOENIG: I will show you a video.

BRUCE McCLINTOCK: They are infinitely variable. If you ever represented a company director or company officer down at ASIC sometimes they are like a fireside chat between the investigator and the company director. I can remember one I appeared at where my client was an extremely eminent sportsman and the investigator was a follower of that particular sport so it was very friendly. On the other hand, I have seen others where it is a full-style Spanish inquisition. Again, they are infinitely variable.

The Hon. ADAM SEARLE: It depends on the issues involved.

BRUCE McCLINTOCK: Exactly Mr Searle.

The Hon. ADAM SEARLE: And who is doing the examining.

BRUCE McCLINTOCK: The ones I have appeared in front of—I mean, I did one in front of retired Justice Jack Slattery 20 years ago and that was conducted with all the formality of a Supreme Court hearing, in a full hearing room and so on. On the other hand, everyone does them differently. It has been a persistent regret of mine that I have never been able to get across—it has never been able to be got across—to members of the public that ICAC is not a court. It is a specialist investigative agency of the State of New South Wales; it an arm of the

Executive. It has the powers of a standing royal commission. It is not a court. And remember the private interviews are more akin to a police interview than they are to a court hearing. That is what they are there for.

But in the first round of amendments—the report I did in 2005—I changed the nomenclature in the *Act* to try to get away from it being seen as a court. I failed dismally—something that Murray Gleeson and I acknowledged in 2015 and, basically, we said there is nothing more we can do about this. But if people understood we are not dealing with a court—as I said, it is a specialist agency to deal with corruption in this State; it is an arm of the Executive, it has got nothing to do with a court—we would be a lot better off if people understood that.

The CHAIR: Thank you, Inspector. I want to acknowledge your email of 19 January to the previous Chair and your offer to come and speak to us separately from this hearing, which I am gathering from the interest from my other colleagues that that may be something that we would correspond with you about very shortly.

BRUCE McCLINTOCK: Thank you. I had particularly in mind the arrangements for the conclusion of the terms of the Commissioners and those things to deal with them because I had become concerned about that by then. I have to say, back in 2017 when we were all appointed, it never occurred to me, partly because—foresight is a funny thing but in retrospect it is absolutely obvious.

The CHAIR: We look forward to it. Thank you. Thank you again for appearing today before our Committee. As I said before, the Committee may have some additional questions but I have no doubt that we may ask them in a different forum. The replies to those questions, of course, will form part of your evidence and be made public. Are you happy if we did have further formal written questions there will be a two-week turnaround?

BRUCE McCLINTOCK: By all means. Can I say this, it honestly has been a privilege to be Inspector and also to deal with the Committee. I have never dealt with a parliamentary committee like this in the same way—I have given evidence. I have to say, just as I think the Chief Commissioner and Commissioners have done their job fantastically—I do not want anyone to think about pockets and so on—I think the Committee has done an outstanding job too. The level of engagement and commitment to making this agency work is extreme and it is a testament, I think, to the high functioning of this Parliament. I think everyone knows that democracy in New South Wales is enhanced by the committee system, and I think you are a living example of it.

The CHAIR: Thank you, Inspector.

(The witness withdrew.)

The Committee adjourned at 15:11.