REPORT ON PROCEEDINGS BEFORE

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

2022 review of the annual and other reports of oversighted agencies

Jubilee Room, Monday 17 October 2022

The Committee met at 9:31 am

PRESENT

The Hon. Wes Fang
(Chair)

Legislative Council

The Hon. Aileen MacDonald
The Hon. Adam Searle

Legislative Assembly

Mr Dave Layzell (Deputy Chair)
Dr Hugh McDermott
Mr Paul Lynch
Mrs Leslie Williams

The CHAIR: Good morning, everyone. Welcome to this hearing for the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission's 2022 review of the annual and other reports of oversighted agencies. I would like to acknowledge the Gadigal people of the Eora Nation, who are the traditional custodians of the lands on which we are meeting today. I pay my respect to Elders past, present, and emerging, and extend that respect to Aboriginal and Torres Strait Islander people who are present or are viewing these proceedings via the internet.

This hearing is the second and final hearing of the Committee as part of its 2022 review. Today the Committee will be hearing from the Information and Privacy Commission, the New South Wales Crime Commission, and the New South Wales Ombudsman and Child Death Review Team.

I thank the witnesses who are appearing before the Committee today. We will begin with our first witnesses from the Information and Privacy Commission.

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

ELIZABETH TYDD, Information Commissioner and Chief Executive Officer, Information and Privacy Commission, sworn and examined

The CHAIR: Before we proceed, do you have any questions about the proceedings for today's hearing?

Ms TYDD: No, thank you, Chair.

Ms GAVEL: No. Thank you.

The CHAIR: Could I invite the witnesses to please make a short opening statement if desired?

Ms TYDD: Thank you, Chair. Thank you, Committee. The opportunity to present to this Committee is appreciated, particularly in respect of the Committee's focus on the exercise of my statutory functions and matters contained in the IPC and Information Commissioner Reports. I would like to briefly highlight some significant matters.

Operationally, the IPC's positive performance outcomes over the past years are clearly demonstrated in our ability to deal with increased case volumes and retain both timeliness and importantly, quality outcomes. In 2020/21, we received an increase of 10 per cent in our case work. Against this, the IPC closed 4.4 per cent more reviews and complaints than in our last reporting period.

Strategically, we have proactively promoted information access and privacy rights in an increasingly digital environment, with audits and advices that provide contemporary insights and strategies to preserve citizens' fundamental rights, and position agencies to protect those rights in digital government.

As CEO and Information Commissioner, my forward focus will be to ensure that we inform New South Wales' progress from a transactional e-government model to a mature e-governance approach that institutionalises democratic processes and values in all manifestations of digital government.

Central to the achievement of this now essential transition are building upon the reputation of the IPC as a conscientious contributor to the integrity in New South Wales and entrenching the IPC as a recognised integrity agency; ensuring that the GIPA Act remains fit for purpose in an e-government environment; and integrating the object of the GIPA Act within e-government to inculcate digital democracy, transparency, online citizen participation and online public discussion alongside online public service delivery.

The IPC has faced new financial challenges over the last two years with drivers including unanticipated and escalating Corporate Services charges and my focus will be to ensure that we maintain and effective service and achieve transparency for reporting purposes in all of our operations. My capacity to achieve these objectives is fortified by my valued and dedicated IPC staff and my fellow Commissioner, Ms Samantha Gavel. Finally, I wish to advise the oversight Committee of a further presentation I gave at the invitation of UNESCO to the global right to information conference focussing on artificial intelligence, e-governance and access to information that was conducted in Uzbekistan in September 2022. Thank you, Chair; Committee.

The CHAIR: Thank you. Ms Gavel, do you have an opening statement?

Ms GAVEL: Yes, thank you, Chair. I am pleased to appear before you to assist with your review of the exercise of my functions as New South Wales Privacy Commissioner during the 2020/21 reporting period. Throughout the reporting period, the ongoing Covid-19 pandemic required a continuation of public health measures by Government to assist in keeping the community safe. Some of these measures required careful consideration of privacy issues. The Information and Privacy Commission provided advice and assistance to agencies to ensure privacy rights of citizens were considered and preserved in measures and initiatives to manage the pandemic.

In particular, the IPC consulted with the Department of Customer Service and Service New South Wales in the development of the QR Code check-in tool to ensure privacy risks were identified and mitigated through appropriate measures, such as the deletion of contact information after 28 days, if not needed for contact tracing. The cyber security threat environment deteriorated significantly at the start of the pandemic in early 2020 and remained elevated during the reporting period. Cyber breaches perpetrated by malicious actors based overseas also impacted on organisations in Australia and in a small number of cases, government agencies in New South Wales.

The IPC provided advice to agencies to assist them to respond to, mitigate and notify those affected by data breaches, including breaches caused by cyber-attacks, as well as human error and other causes. Data breaches caused by human error continued to be the majority of breaches reported to the Privacy Commissioner under the Voluntary Data Breach Notification scheme. The heightened cyber-security threat environment is likely to continue

into the future and it poses significant challenges to NSW agencies, as well as organisations across the globe. We saw an example of this with the recent Optus data breach.

A whole-of-government approach is required to manage these challenges. The IPC contributes to this approach through its Voluntary Data Breach Notification Scheme, the provision of guidance, tools and advice to agencies and citizens, promotion of good information governance and oversighting internal privacy reviews about privacy breaches by agencies.

In May 2021, I welcomed the release of the draft consultation bill for the proposed Mandatory Notification Data Breach Scheme for New South Wales agencies. The IPC provided a submission on the draft bill during the consultation period and has continued to work with the Department of Communities and Justice and the Department of Customer Service as consultation has continued with agencies, and the bill has been further refined and considered. The IPC is well placed to implement the scheme once the legislation has been passed by the Parliament.

As the Information Commissioner has outlined, during the reporting period, the IPC was able to effectively manage increased case volumes. In the privacy stream, there was a 12 per cent increase in privacy internal reviews, following a 36 per cent increase the previous year, with all reviews completed within the target date of 40 days. The pandemic accelerated existing trends towards the greater use of data and digital technology. The importance of enhancing public trust in government services and digital technology through careful consideration of privacy risks and building in privacy risk mitigations was also demonstrated during the pandemic.

The Information and Privacy Commission has worked effectively with New South Wales government agencies to ensure that digital services and projects developed by Government incorporate robust privacy protections. The pace of development and innovation in the digital space is likely to continue and even increase into the future. Ensuring that privacy is at the heart and centre of digital technology innovation will enable government agencies to secure the benefits of this technology, while minimising harms to privacy rights. The IPC will continue to work with agencies to ensure this is the case.

The CHAIR: Thank you very much for your opening statements and for appearing today. I might just start with, if I could, with something that I think everyone is well aware of at the moment but obviously the recent data breach by a telecommunications company that has had a wide-ranging effect on many of the customers. In relation to New South Wales versus other states, we have seen a much reduced number of New South Wales residents affected due to the taking of licence numbers compared to, say, Victoria. Are you able to provide some view as to what it is that New South Wales is doing differently to other states and why that has been the case?

Ms GAVEL: I think that is a question for me, so I am happy to speak to that question. I think holistically, as I mentioned in my opening statement, New South Wales has suffered a small number of cyber breaches and, while these are very unfortunate at the time, we have been able to learn significant and important lessons from those breaches. The IPC, in assisting agencies with those breaches, has also really improved our capability to assist agencies to manage and mitigate data breaches, but we have also felt it has been very important to share the learnings from those breaches right across the government sector.

So, for example, in May this year, during Privacy Awareness Week, I focussed the Privacy Awareness Week Public Leaders event on data breaches and the lessons and learnings from breaches in New South Wales, including the Customer Service breach, for example. So I think that has been very important, not only to really learn the lessons of those breaches and then, as I also said, it is a whole of government response that is required, of course, that the IPC contributes to. So there has been a new system put in place for verifying identity through the DVS - the Document Verification System, which is a Commonwealth system. That now requires the provision of not only the licence number, but also the card number.

So New South Wales has implemented that system from September this year, whereas I understand that Victoria and Queensland have yet to implement it. So it means that when drivers licences were compromised during the Optus breach, residents of New South Wales whose licence was compromised do not need to replace their licence unless the card number was compromised. So for most of our residents, it was only the licence number that was compromised. So I think around 16,000, I think, New South Wales residents were affected and need to replace their licence, whereas I understand that it is quite significant numbers in Victoria and Queensland.

The CHAIR: So in relation to the previous learnings that we have had through data breaches and moving forward, what—how much work is done within your organisation to liaise with private companies, the government, and also other jurisdictions to share those learnings and try and proactively stay ahead of the curve when it comes to data breaches, particularly from foreign actors who are seeking to compromise our systems, particularly State and Federal Governments?

Ms GAVEL: Yes, so my jurisdiction is focussed on the New South Wales government sector and New South Wales government agencies. So that includes, of course, government departments, agencies, the local

government sector, local councils, as well as public universities. So that is where I focus my attention on these issues, but we do this in a number of ways. So, for example, we provide guidance on the IPC website for agencies and also for citizens - about data breaches and how to keep yourself safe; for agencies, how to respond to and mitigate data breaches.

Secondly, when there is a data breach and the IPC is notified through the voluntary data breach scheme, we will engage—depending on the nature of the breach, but if it is a breach where there is a risk of significant harm to those affected—we will engage with the agency to provide advice and assistance to them as they remediate the breach and as they notify those affected. In the last two years, there have been significant learnings from that, for the sector and for the IPC. So now when we do receive a data breach, we are able to significantly assist agencies in managing that breach and notifying people affected.

The CHAIR: Thank you The last question before I pass to some other members - in your opening statement, you said that all of the breaches, I believe, were conducted within the 40 day timeframe. Is that—

Ms GAVEL: Oh, that was actually—

The CHAIR: —so they finished the investigations in the timeframe, is that right?

Ms GAVEL: Yes, that was actually in relation to internal privacy reviews where, as Privacy Commissioner, I have an oversight function. So we have a 40 day timeframe, which we put in place a couple of years ago, when there was a mandated timeframe for information access casework. So we put it in place for privacy as well, to ensure that both streams were getting the required resourcing, because otherwise, if you have a timeframe for one, you might end up with more resourcing there, because there is a statutory timeframe.

In terms of data breaches, it—look, it can depend on the nature of the breach. If it is a relatively simple breach, where someone has sent an email to an incorrect party, for example, we may close that very quickly; but if it is a more complex breach, for example, like the Service New South Wales breach, where we engaged with Service New South Wales over quite a number of months, then the timeframe for that will be longer.

The CHAIR: Other members? Deputy Chair.

Mr DAVE LAYZELL: Yes, I will. Thank you for coming. My question is about the annual report, and you stated in that, that your resources are being stretched and, as you exercise new statutory functions and increase your case volumes, your submissions for increased funding in the 2021/22 period were accepted. Has this increase in funding been acceptable?

Ms GAVEL: We certainly appreciate the additional funding that we have received through those processes, and it has been a significant help, because we had new statutory functions that came in a couple of years ago that we had not been resourced for. So it was really important to receive that funding. Our case work volumes have increased over the last five years, and I think I mentioned some of the privacy statistics in my opening statement. So the resourcing has certainly assisted in dealing with those case volumes, but I might hand over to the Information Commissioner and the CEO of the IPC to talk a little bit more about those resourcing issues.

Ms TYDD: Thank you, and I would add to the Privacy Commissioner's advice, which firstly, I would endorse and secondly, recognise that we did receive that funding that reflected the change to legislation under the GIPA Act, for mandating 40 days of completion of the review, and applied that to privacy as well. There have been other budget drivers. They go to both statutory functions, such as provision of advice from the Privacy Commissioner and the Information Commissioner under the *Digital Restart Fund Act*, and providing proactive advice to agencies in that regard.

Other changes that have impacted our budget may not have been as well foreseen. They are those of the corporate nature where, because of the increased volumes, there are other budget drivers, in terms of systems support, accommodation, financial reporting charges, and general corporate charges. We are working through those issues to ensure that we have transparency in our reporting, for the purposes of our annual report, and reporting to Committees such as this. At present, the IPC is in a satisfactory place in terms of its budget arrangements, but that is subject to working through some of these increasing corporate services charges.

Mr DAVE LAYZELL: Thank you.

The CHAIR: Other members?

The Hon. AILEEN MacDONALD: So you mentioned the—in terms of GIPA. So on page 4 of the report of the GIPA Act, you highlight that the right to access information has been exacerbated by continuing non-compliance by government departments and local councils. I was just—and you note also that councils

have a—I guess unacceptable levels of non-compliance. So I was just wondering, how are you monitoring compliance with the open access requirements, and what strategies do you have in place to promote that compliance? Then, what do you consider would be the main reasons for non-compliance?

Ms TYDD: Thank you. I will take that question, in relation to the GIPA Act in particular. We monitor, on an annual basis, open access requirements. In my report that you were referring to, there was progress in that regard referenced. That was particularly for government departments that were increasing their use of what is called an agency information guide, where they update all of the proactive requirements. So I was very conscious to publicly acknowledge the progress that had been made in that regard, and also contrast that progress with a consistent level of non-reporting in areas of the major acquisition and disposal of assets, which is mandated for government departments.

In the local council sector, in response to changes that were brought into the Model Code under the *Local Government Act 2018,* is this notion of reporting on interests, the interests of key officials, so, elected officials and other key officials within the executive, if you like, of local government. Now, you ask about monitoring. We updated, first of all, the Information Commissioner's Guidelines, in respect of those disclosure requirements, and engaged with the local council sector and their regulatory entity, the Office of Local Government, to ensure that we provided a joined up regulatory approach.

The Office of Local Government issued fact sheets to aid compliance so that if one of the factors that was detracting from compliance was a lack of familiarity, for example, both the IPC and the Office of Local Government provided very helpful, practical advice to achieve that. At that time, not only did we conduct public engagement, and provide these reports, and engage in the communication strategy, we also heralded that I would be conducting an audit of compliance within the next 12 to 18 months. So, providing local councils with that period of time to ensure that their reporting requirements were in place, and that public could search on their websites for those disclosures.

In conducting that review—and this is a published compliance report available on our website, we did find that there was still about a 30 per cent non-compliance which, after the investment in education and guidance and assistance to ensure that their processes were sound, was a disappointing outcome. So we have published that report, published more guidance around what better practice looks like, and we will, in terms of responding to your question about ongoing monitoring and promoting, we will of course undertake a further review, and that will be scheduled on our compliance calendar, made available, so that agencies have time to put in place additional requirements.

I would mention that in conducting our audit review, we were conscious that the local council sector is one that contains councils that are very mature in their approach, and others that are smaller councils and less mature. So our compliance approach and philosophy, really, is to work with the education and promotion tools available to us in the first instance, prior to escalating further in that regard. So our work will continue. We have also undertaken new approaches to our communication, with the development of things like infographics, available to the staff within councils, so that they can very easily explain to elected officials why their disclosures of interest is important. and how it can be made easy for them in terms of compliance. I am confident that maturity is growing, but we will need to test that in a further audit.

Mr DAVE LAYZELL: Thank you and have you finished your question? Okay, thank you. Mr Searle, would you like to ask any questions?

The Hon. Mr ADAM SEARLE: Yes, just on this. From all the reports and anecdotal feedback, that the GIPA system is now a decade old, and government agencies are still not really wanting to easily give up information. Do we need to retool the legislation? Because even the process of going to the NCAT is quite laborious and if you are—if you are not a skilled or frequent litigator, you are just a regular person trying to get this information, it is really problematic, and the NCAT is either under-resourced or just does not seem to function swift, efficiently as it was intended to. Do we need to retool the architecture of the legislation to maybe give some body, such as yourself or another body, some of the powers of NCAT to be used in a lot more speedy and informal way? A bit like, I don't know, the Small Claims section of the local court where you have matters dealt with that are a lot faster and a lot less formality.

Ms TYDD: Thank you for that question. I will respond at an operational level and then more at a strategic level. Operationally, we have seen agencies meet a 30 per cent increase, and not reduce timeliness. So I think transactionally, they are doing much better than they were doing several years ago, and a 30 per cent increase in applications is very significant. So timeliness has been maintained. and it has been maintained for reasons such as maturation of processes. In the New South Wales Police, they have introduced electronic systems that have certainly delivered benefits there in terms of timeliness.

Likewise, those dimensions of transactions under a formal application are operating at a mature level, compared to other jurisdictions in Australia. We do publish the national dashboards. That area is something that,

I think, because of agencies working in earnest, and the IPC and Information Commissioner working alongside them, has delivered results. I think there are still areas at a strategic level that we need to focus on, and they include proactive disclosures. They include how we might use the informal release mechanisms in an improved way, and we have just commenced research to look at how agencies are using that informal pathway, and how we might maximise it.

So, within the GIPA Act, there are some areas where we are doing well, other areas where we need to strengthen them. If I then turn to the GIPA Act itself, in the context of digital government, it is being stretched to some extent. There are issues such as archives. 'Archives' under the GIPA Act does not reference, necessarily, digital archives. So, we may have situations where one would think that digitisation of records holdings would lead to more rapid extraction of information, and greater timeliness in that regard, but under the GIPA Act, 'archive' —and as you say, introduced 10 years ago - probably referred to a paper based archive system, with records held 40 kilometres out of town, for example. That took time.

So, in those circumstances, we have had a case where—or NCAT has considered a case in which - a reliance was placed on the ability to extend time, to retrieve records from an archive, in circumstances of a digital archive being used. NCAT's decision was a favourable one, in that it recognised that there might—there would need to be some additional effort applied to extract those records, but you can see, digital versus paper is quite a different environment, and that presents one area of tension, potentially. The other issue that I am concerned about is the notion of information being 'held'. Decisions that speak to the issue, or address the issue of, information 'held' as opposed to information having to be 'created'; a record having to be created.

If we think about digital government, all records are stored in a different form. They are not paper records, that they do have to be created in some way. That is an issue where, perhaps, the GIPA Act could be enhanced, to focus more on the ability to, for example, create a new record, in circumstances where you are actually creating a record, because this is digitally held information. It may be a record of itself, but is it held in that form at the time the request was made? - which is the threshold under the GIPA Act. Additionally, there are other issues that perhaps turn on the issue of, what is important to the public? What is in the public interest?

In other analogous jurisdictions, Queensland and the ACT, for example, both a second tranche of two models of legislation, the same as the GIPA Act, there is a recognition of the environmental protections being a factor, in favour of disclosure of information. Under the GIPA Act*,* it actually is a consideration against disclosure of information. Now, we know that the public interest test under the GIPA Act is not an exhaustive one. It is a very broad consideration, but in the absence of it being called out, it may be that agencies are more inclined to apply those considerations that are clearly defined under the Act, and to introduce something like consideration of the environment. It may not be within their existing systems. So there are some areas of the GIPA Act, potentially, to be more responsive to a digital environment, and also to be more responsive to the public interest more broadly, at this point in time.

The Hon. Mr ADAM SEARLE: But what about the architecture for processing? You know, you go to the agency, you get refusal. You go to the internal review. You have then got to go to the NCAT. Is the NCAT working as the legislation hoped it would, in terms of being responsive to the needs of people seeking information, or is that not a mechanism that is working as effectively as it could?

Ms TYDD: I am not in a position to comment on the functions of the NCAT, that would be something to take to the NCAT President. In terms of our reviews, and the uptake of our recommendations by agencies, our reports indicate that there is a significant uptake of our recommendations. We have started looking at measuring that. One would hope that the system operates to ensure that it is only the most complex matters go to a judicial determination because, as you say, the costs associated with that, and timeliness in the context of the GIPA Act focussing, actually, on timely provision of access to information.

Now, timeliness has been enhanced in the IPC, because we are the only jurisdiction in Australia with a 40 day turnaround, and our time—we have met that timeliness threshold, or mandatory timeframe, very successfully. I commend the IPC staff and in particular, directors, for their contribution in that regard. So, our timeliness is quite prompt. Likewise, agencies are prompt. I do appreciate your theme here, that access to information must be provided in a prompt way, but I can only speak to the functions that I oversight as Information Commissioner.

Mr DAVE LAYZELL: Thank you, Mr Searle. Thank you, Commissioner. Dr McDermott, do you have any questions?

Dr HUGH McDERMOTT: No, I do not, Chair. Thank you.

Mr DAVE LAYZELL: Any questions over there? Okay, well I might ask another question, regarding the Privacy and Personal Information Protection Amendment Bill 2021 (PPIP). Public consultation closed in June last year. We were wondering if you could provide an update on the bill and in particular, the introduction of the

mandatory notification data breach scheme, and extension of the PPIP Act to cover state owned corporations?

Ms GAVEL: Yes, thank you. So there has been a significant amount of work done on the bill since it was released as a consultation draft bill last year. The IPC has had significant engagement with the Department of Communities and Justice, which is the lead agency for the bill. In addition, the IPC has received funding to enable us to implement the legislation once it comes in, and so we have done significant work - to the extent that we can, as the bill has not been legislated yet - to prepare to be able to implement the scheme. That includes producing a very detailed project plan, and then starting work on those elements that we can actually address at this point.

So we are really focussing on, for example, the guidance that will be needed for agencies, and for the public, on the scheme. Also, on changes that will be needed to our IT systems to be able to capture the notifications, and also on the reporting and compliance aspects of the legislation, so that we can report back to the Parliament and the public, and also undertake any regulatory action that might be required under the scheme. So at this point, it is up to the Government to bring the bill forward to Parliament. So at this point, I would have to leave that for the Government to address, but in the meantime, as I have discussed earlier, I do encourage agencies to notify me, as Privacy Commissioner, of any data breaches through the voluntary notification scheme, and agencies are doing that, and we do provide guidance and tools for agencies on the website to assist them with that, and we also do engage with agencies to provide advice and assistance where there is a significant data breach involving personal information.

Mr DAVE LAYZELL: Okay, thank you.

Mr PAUL LYNCH: Can I just follow that up?

Mr DAVE LAYZELL: Sure, Mr Lynch.

Mr PAUL LYNCH: Has the Department, or anyone else for that matter, given you a hint as to when the legislation might be coming forward? This decade?

Ms GAVEL: Look, I think I would have to leave that for the Government to say when it is coming forward but certainly, the IPC is ready for when it is passed by the Parliament, and when we need to implement it.

Mr PAUL LYNCH: Inshallah.

Mr DAVE LAYZELL: Well thank you for that response. Is there any other questions? No? Okay, in that case, I think we will conclude this session, and thank you for appearing before the Committee today. We may send you some additional questions in writing. Your replies will form part of your evidence and will be made public. Would you be happy to provide a written reply to any further questions?

Ms TYDD: Yes, thank you.

Mr DAVE LAYZELL: Thank you.

(The witnesses withdrew.)

MICHAEL BARNES, Commissioner, New South Wales Crime Commission, affirmed and examined
MICHAEL WILDE, Chief Operating Officer, New South Wales Crime Commission, affirmed and examined

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

Mr WILDE: I do not.

Mr BARNES: No.

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

Mr BARNES: I would, thank you, Chair. It is my pleasure to appear before the Committee this morning. I will make a short—a few short remarks and then I am happy, obviously, to take any questions you or the Committee may have. The Crime Commission had a highly successful year in 2020-21. Our joint investigations led to 175 arrests and 833 charges, both significant improvements on the previous year. As members would know, our Criminal Investigations Division has two primary responsibilities: to investigate organised and other serious crime; and to share intelligence and evidence gathered by the Commission with its partner agencies. Offences that we investigate include homicide, terrorism, organised crime, kidnapping, and the most serious drug offences and associated money laundering.

If I could just give brief outline of the most notable investigations that were completed during the reporting year.

Reference Windy/Kerrison involved an investigation with the New South Wales Police Force into the execution-style murder of one Shane De Britt, at Eurimbla, which I am told is south of Dubbo. Mr De Britt was President of the Bandidos Motorcycle Club in that area. He was shot dead in his bed in January 2020. The Commission conducted hearings in the region, summoned 22 witnesses, and gained essential information that led to the arrest of 11 individuals. Proceedings have not yet been completed, so I will say no further about that.

Organised Crime Squad Coact reference - in May 2021, the Commission obtained information that led to the interception of more than 500 kilograms of cocaine, concealed in a consignment of steel boxes. The seizure had an estimated street value of $155 million. After intercepting the consignment, police carried out a controlled delivery, with two suspects arrested in Botany. Both were charged with large commercial drug supply. Again, proceedings are yet to be finalised.

Reference Granjon. In October 2020, the Commission launched an investigation into the alleged importation, manufacture, and supply of drugs by Mostafa Baluch and his associates. He was arrested, and as is well known, he sought to decamp, and was again arrested after cutting off his ankle bracelet on the border with Queensland and New South Wales. He was then charged with further offences, and is currently in custody awaiting trial.

Strike Force Wolara is a joint investigation, again with the New South Wales Police, targeting the supply of prohibited drugs by a criminal syndicate. Searches conducted at a residential property revealed a sophisticated hydraulic storage area in concrete flooring underneath a shed. It contained $7.18 million in cash, believed to be the proceeds of drug sales by the syndicate. Searches conducted at a second property located more cash and various electronic devices, including encrypted communication devices. The Commission commenced confiscation proceedings, and the money and property owned by the resident owner and his wife is now subject to a freeze order. It demonstrates the interaction between the criminal investigation and the proceeds of crime investigation.

I will say something about our Human Sources program. As you would appreciate, it is essential that those operations are kept securely confidential, so I need to be discrete. It is easy for me to say, though, that the Human Sources team manages a carefully identified stable of informants. Some are high level organised crime figures, other are relatives or associates of such criminals. It is recognised that meeting with and associating with these people contains or involves considerable risks for our personnel, the security of our handlers, the potential for blackmail, and the making of false corruption claims. Nonetheless, in our view, it is an essential strategy - choir boys are unlikely to have information useful for our purposes. In the reporting year, 802 intelligence reports were disseminated to other law enforcement agencies, many as a result of collecting information from our human sources.

The Crime Commission employs digital forensic analysts and technical officers. They are expert at extracting data from phones and computers, downloading CCTV vision, installing listening and tracking devices, and undertaking numerous other sensitive but extremely effective investigative tasks. Their assistance is regularly supported by other law enforcement agency officers, because they are expert, responsive, innovative, and agile.

Our officers undertook 618 technical deployments and forensic examinations in the financial year 2021.

Coercive hearings are one of the Commission's unique investigative tools. Witnesses are compelled to answer even incriminating questions, and to produce documents or things relevant to an investigation. We recognise the very intrusive nature of those powers, and respect that the legislature made access to them conditional upon our external management committee granting a reference to undertake the investigation in question. During financial year 2021, we were able to increase the number of hearings held because, before I joined the Commission in August 2020, Mr Bodor KC, the Assistant Commissioner, Legal, was the only person who could preside over those hearings. Now, with two of us, we have presided over a total of 87 hearings in the year under report. Approximately two-thirds of the hearings relate to organised crime matters, and one-third relate to homicides.

I say a few words now about the Financial Investigation Division. As you would appreciate, the Commission takes civil action against people in the Supreme Court to recover proceeds of crime that they have either derived from their own criminal activity or other people's crimes. Since organised crime networks are motivated by money and the appearance of wealth, these actions are an essential disruptive strategy in trying to reduce the impact of serious and organised crime on the community. It deprives organised crime networks of money they might otherwise use to fund further criminal activity. Tainted assets are sold, and the cash seized. Proceeds are delivered to the Confiscated Proceeds Account, which is used to fund victims of crime support programs, crime prevention, drug rehabilitation, and law enforcement.

During the financial year 2021, confiscation orders were made that had a total estimated relatable value of $50 million. This was the highest value in any single year in the history of the Commission. Two particularly significant matters give an indication of the nature of the work, and why we had such a successful year. The first of these involved orders that had a total estimated value of $8.8 million against a defendant, Damion Flower, who has subsequently been convicted of very serious drug offences, involving large supply quantities of cocaine. He was sentenced to 28 years imprisonment. The second involved the forfeiture of cryptocurrency that had an estimated value of $11.5 million when it was seized. When it was sold in the following year, it actually realised $12.6 million. Cryptocurrency can go either way, as you would appreciate. We had a win on that occasion, but you cannot always be confident of that.

Although the majority of the confiscation cases in the Commission are undertaken against defendants that have derived proceeds of crime from drug supply or associated money laundering, it also undertakes proceedings to recover the proceeds of other types of crime. A good example of this is a matter that was finalised in the reporting year, which resulted in the recovery of $4.35 million. The alleged offending gave rise to confiscation proceedings in that case, because a senior executive of a major Australian company received corrupt benefits for their role in a major fraud that involved inflating the value of contracts given to an associate. I should not say anything more about that matter, as the trial is currently before the courts; however, whatever the outcome, the $4.35 million is banked.

More broadly across the Commission in 2021, we drafted and agreed a new five year Strategic Plan for the organisation. The Plan outlines our strategic objectives for the next five years. Work to operationalise it is well under way. It details our priorities of continual improvement, and sets out the way our values underpin the work we do to contribute to a safer community, less impacted by serious and organised crime. It acknowledges our priorities to continue to develop our highly skilled staff and to foster our mutually supportive relationships with other law enforcement agencies. I have given a number of copies to the Secretariat. I table those. I am sure members will find them fascinating.

The last matter I will mention is the People Matter Employee Survey. Some key results from the year under report: Employee engagement, 76 per cent. Job satisfaction, 83 per cent. Wellbeing, 80 per cent. Health and safety, 87 per cent. Customer service, 81 per cent. Job purpose and enrichment, 81 per cent. Risk and innovation, 86 per cent. Flexible working, 91 per cent. All improvements on the previous year, and all significantly higher than the sector wide scores. We continue to focus on learning and development of the staff. As you would appreciate, activity in our area of responsibility is continually evolving. As criminals use new techniques, we have to be up to date with respect to that. That is all I was hoping to say, Mr Chairman.

The ACTING CHAIR: Well thank you very much, Mr Barnes. Is there anything from you, Mr Wilde, in terms of opening statement? No?

Mr WILDE: No, thank you.

The ACTING CHAIR: Quite happy? Okay, in that case, if opening statements are now concluded, we will proceed with the questions.. In December—this is in regard to the money laundering inquiry—in December 2021, you commenced an inquiry in conjunction with the Australian Criminal Intelligence Commission, and the Independent Liquor and Gaming Authority, into money laundering in licenced premises. Since commencing the inquiry, you have called for submissions, and also released three issues papers inviting comment. Are you able to

update the Committee on the progress of the inquiry? Do you have adequate powers and resources to conduct the inquiry, and are you considering conducting any more inquiries around this?

Mr BARNES: Thank you, Mr Acting Chair. The inquiry is nearing conclusion. We anticipate releasing a public report, hopefully as soon as next week. It has been a challenging activity for the agency, both in terms of the subject matter, and also the process. The Commission has not previously undertaken an inquiry of this nature, where the principal objective was a public report rather than, say, prosecutions, or proceeds work. I am of the view it is a valid function of the Commission, and the Act in section 10(1)(e) authorises the Commission to make reports designed to include recommendations for reform of the law, in relation to areas of activity over which we have responsibility, and that is what this report will do.

It may be that we will seek amendments to our Act, if the report finds favour with government; in that the process had to be carefully managed, to avoid some of the pitfalls that would have otherwise made it less effective than it could have been, and that is because the processes are usually aimed at a prosecution, where the risks of impacting someone's trial or damaging their reputation are, of course, given precedence. When we are looking at a more general policy focussed inquiry, such as was undertaken in Islington, there are different considerations that we think should—could be assisted by some amendments, but we are not going to deal with that in the report, that is something for the future. The report itself will, we think, demonstrate that there are serious issues that should be addressed, and it contains recommendations about how that may occur.

The ACTING CHAIR: Can I just follow up? In terms of the resourcing, do you have the appropriate resourcing for that inquiry?

Mr BARNES: I am not sure that you have ever had a CEO of a public sector agency sit here saying, "Do not give me any more money."

The ACTING CHAIR: No, no, no, indeed. Indeed.

The Hon. Mr ADAM SEARLE: It would never happen.

The ACTING CHAIR: Exactly. No, no, that is right. No way.

Mr BARNES: It is a direct cause and effect. The more money we get, the more we can spend on crime prevention, and confiscating the proceeds of crime. It is no secret to say that crime is continuing to expand in the type of areas in which we operate in. The price of drugs is such that there are always willing—people willing to participate in attempting to import and market them. We are limited by how much we can do by the size of our organisation, simple as that.

The ACTING CHAIR: Well thank you very much. It is a lucrative trade, unfortunately, so you will never be out of work. Does anyone on the Committee have a question for the Commissioner? Mrs Williams, would you like to—

Dr HUGH McDERMOTT: I do, Chair.

The ACTING CHAIR: I will start with Mrs Williams and then Dr McDermott.

Ms LESLIE WILLIAMS: One question—thanks. My question is in relation to the statutory review of the Crime Commission Act, which it was completed in December 2020. My understanding is there were nine recommendations for change. I just wonder if you could give an update on how the implementation of those recommendations are going, but also if you think there are a need for any further amendments of the Act?

Mr BARNES: That is correct, Mrs Williams. There were nine recommendations. All of them have been accepted by the Government, and they are all now included in various cognate bills that are before the House.

Ms LESLIE WILLIAMS: Do you believe there are any other amendments to the Act that could assist you as the Commission?

Mr BARNES: There is always fine tuning that should—that is identified as a result of our operations; a matter I mentioned to the Acting Chair before is one of those.

The ACTING CHAIR: Does that conclude your questions, Mrs Williams? Okay, we will move to Dr McDermott. Would you like to ask your question?

Dr HUGH McDERMOTT: Thank you, Chair. Thank you. Mr Barnes, just going back to the review into the clubs industry you are doing, and I am pleased to hear that it is going to be released next week. It is great. You mentioned that there were some significant issues which you believe with the industry. Can you expand on any of that at this hearing?

Mr BARNES: It has been widely publicised that there is extensive money laundering in pubs and clubs. That may be the case, but not of the type of money laundering we think the media reports focussed on. It is clear

that there is lots of activity involving money of various provenance being put through electronic gaming machines, and the report identifies how each of those impact upon proceeds of crime generally.

Dr HUGH McDERMOTT: Are you thinking it is mostly low-level money laundering? I am talking about not—like it is not huge amounts of money laundering coming through? Or is it more low-level, you know, so many thousand dollars every week by low-level drug dealers and stuff like that?

Mr BARNES: There is that, but there are two types of money laundering: dealing with the proceeds of crime with intention to make it appear to be legitimately gained wealth; and there is dealing with the proceeds of crime for any purpose. We think there is more of the second, rather than the former.

Dr HUGH McDERMOTT: Do you have any estimates of how much money is being laundered in New South Wales, or what the proceeds of crime is worth each year in New South Wales at the moment?

Mr BARNES: That is an issue that agencies like ours have been attempting to nail down for quite some time—

Dr HUGH McDERMOTT: It is very hard to do. I understand that. It is very hard to do, but do you have any guesstimate? Nothing else for the Commission?

Mr BARNES: The Australian Institute of Criminology says between $23 billion and $50-something billion, so you can see the very broad range that they have been able to get it to. We cannot do any better than that.

Dr HUGH McDERMOTT: Yes but—

Mr BARNES: You are safe to say more than $20 billion a year.

Dr HUGH McDERMOTT: So it is a big amount of money, and I do commend you for the fact that for the Crime Commission this year has gone after $50 million worth of proceeds of crime. I think, like you said, it is the most it has ever had and that is quite an achievement. Compared to what—some of the difficulties the Crime Commission has had over the last three years, that is really good, and I am pleased with that, but when you have got such a huge figure and there is billions of dollars every year, what more needs to be done to support the Crime Commission and other agencies to go after that 'bigger end of town', or more of that money? Because you look at $50 million compared to the billions, it is quite a small figure.

Mr BARNES: I accept that, Dr McDermott. The issue is, as I mentioned before, purely our staffing limitations. We have—we initiate about 100 Supreme Court actions each year. We have got 300 on foot currently. We cannot get enough lawyers to do more work in that area. Had we more staff, we would introduce more—we would prosecute more confiscation proceedings, but it is not simply as easy as tipping more money in. We did get a significant budget uplift the financial year after the reporting year, and recruiting to those positions has been extremely difficult.

You have all heard about how hard it is to get café staff. It is even harder to get forensic accountants. We advertise, we get them through the interview process. They then, when we offer them the job, they say, "We want $30,000 more." We say, well it is a public sector role, we have to advertise, it is graded at whatever the professional grading is. We cannot simply tip 30—"Okay," they go, "That is okay, we are going to go and work for one of the banks where they will do that." So it is a real challenge recruiting to this area. So, it is budget to do it, but then, finding the staff. Our response to that is to train our own. We are bringing in more university graduates, but as you can appreciate, an accountancy graduate to a forensic accountant is a—not an easy transition to make.

Dr HUGH McDERMOTT: All right, thank you very much.

The ACTING CHAIR: Thank you, Dr McDermott. Has anyone else got any questions? Mr Searle.

The Hon. Mr ADAM SEARLE: Yes, just on that. Commissioner, amongst the legislation going through the Parliament at the moment, some of that relates to the confiscation of proceeds of crime. Does any of that provide for an automatic forfeiture regime in certain circumstances?

Mr BARNES: Administrative forfeiture aim, yes, it does.

The Hon. Mr ADAM SEARLE: Can you just outline what that would mean to the Committee?

Mr BARNES: Yes, it means that if property that appears to the Commission to be improperly gained wealth, obviously the ones I have—the example I would give, would be cash; box full of cash on the floor, we can seize that, give a notice to whoever we think might legitimately have a claim for it - obviously, the home owner, people seen entering and leaving the premises - and say, unless you convince the court that this is legitimately obtained cash, or you want to have a contest about it, it will automatically be forfeited. The vast majority of people run a million miles and say, "I did not know it was there. It had nothing to do with me." So

you can understand how much more expeditious is the forfeiture regime under that system.

The Hon. Mr ADAM SEARLE: But that will make it easier in one sense to accelerate that forfeiture of—

Mr BARNES: That is right.

The Hon. Mr ADAM SEARLE: —criminal assets?

Mr BARNES: Yes, there will not be nearly as much work to do in our office. We will say, this looks to us like proceeds. You have a fight if you want to, otherwise it is going in.

The Hon. Mr ADAM SEARLE: Now, just because I have not read the legislation recently, does that administrative forfeiture regime extend to other types of property like real property? Cars, you know, whatever is in the notice?

Mr BARNES: It does.

The Hon. Mr ADAM SEARLE: Okay and so that will accelerate your ability to take these assets of suspected criminals subject of course to their right to go to court to ask [inaudible]

Mr BARNES: That is right. It is more difficult with things like cars that have a registered owner, because we have got to—the registered owner will say "It is my car," and then we have got to prove that he got—he or she got that through serious criminal activity. It is not usual, despite the appearances—organised criminals do not usually drive around in cars that are registered to their names.

The Hon. Mr ADAM SEARLE: Now, in relation to your other activities, do you target particular industries or are particular industries on your radar from time to time?

Mr BARNES: I would like to be able to say we do, do that. The reality is, there is so much work coming up that you cannot ignore that to—to take a more—to step back and look at the environment broadly is difficult. Having said that, we have just last year commissioned a Strategic Intelligence Unit. The function of that unit will not to be to respond to information that a particular crime is being committed by a particular group of individuals, but to search for those individuals or activities that are criminal that have not otherwise come to attention. Our concern is that, by always focussing on those who come to our attention, we are in fact identifying the ineffective or least effective operators, and the smart crooks who do not draw attention to themselves get a free ride. So the intention is to attempt to do that.

The Hon. Mr ADAM SEARLE: So that would go to your disruption activities to sort of—

Mr BARNES: That is right.

The Hon. Mr ADAM SEARLE: —try and [inaudible]

Mr BARNES: Yes.

The Hon. Mr ADAM SEARLE: Look, Commissioner, at Budget Estimates, in relation to police, I raised some issues to do with some potential associations between an office holder—a person who at least by—at one stage was the office holder of a construction company called Coronation, and an association between that person and other persons who are, shall we say, known to authorities, but seem to suggest a reasonably close linkage to criminal activities. That is just one indication of the potential for this kind of activity to be occurring in the construction industry in our state. Is that potentially something the Crime Commission could build into its strategic plan, to look at potential concerns like that?

Mr BARNES: Certainly. There is real concern that the construction industry is a mechanism by which dirty cash can be readily laundered, either in the form of cash payments to workers, or simply inflating—

The Hon. Mr ADAM SEARLE: Inflating costs.

Mr BARNES: That is right. So—and your happy snap has been subject to intense analysis, and all of the individuals identified, and profiles prepared in relation to each of them.

The Hon. Mr ADAM SEARLE: Those are my questions. Thank you.

The ACTING CHAIR: Thank you, Mr Searle. Mr Lynch, would you like to ask a question?

Mr PAUL LYNCH: Thanks. Yes, Commissioner, just following on from that. If the construction industry is a matter of potential concern, does the potential concern then extend to local councils who have frequent interactions with construction companies? Indeed, the one that was subject to the happy snaps, has notoriously got connections with councillors. I wondered whether the Crime Commission has a—well whether its view extends to local government?

Mr BARNES: Certainly, it is something that the Commission would have jurisdiction to investigate, were it apparent they were involved in organised crime. I guess the ICAC would also be interested in that, and we would not want to get into a turf war with them. The—and the down side, of course, is that when the ICAC gets involved, we need to hold off doing what we do until their process is completed. That has caused difficulties for us from time to time.

Mr PAUL LYNCH: In relation to organised crime and local government, I wonder whether this particular scenario might be worth having a look at or whether it might concern you? There is a senior Council officer, someone who is currently a senior Council officer was in 2009 arrested for robbery and kidnapping in company with members of an organised motorcycle crime gang. One of those co-accused and indeed, this officer's brother, was sergeant at arms of a local chapter of an outlaw motorcycle gang. Does that level of involvement of organised crime and local government cause any concern? Should that be something on your radar?

Mr BARNES: I mean, I assume the person you have spoken of was prosecuted and has served their sentence, whatever that might have been. I am not sure that the fact that they were involved in crime 13, 14 years ago means that we would necessarily target them. We have more than enough people who we know are involved in crime now.

The ACTING CHAIR: Thank you very much, Mr Lynch. I might ask a question. On page 26 of the 2020-2021 annual report, you comment that the likelihood of further organised crime-related murders is significant, due to the volatility of current disputes between certain criminal groups, the availability of firearms, the propensity of individuals and groups to resort to violence, and the amount of funds available to the groups involved. What strategies are in place now to address this situation?

Mr BARNES: I can well understand why members of Parliament, and the community generally, would be very concerned about public place shootings. Clearly, they are not something that a civilised community expects to be occurring within their midst. They are directly attributable to the amount of money available to large scale drug dealers. Unfortunately, if I have got a million dollars to offer, I will always find someone willing to take up a contract to do something like a public place shooting. It is significant that the arrests that have been made—and there have been a number now, in connection with those shootings, none of the shooters were serious organised crime figures. They are just people who, if you offer them a million dollars, are prepared to have a crack.

So, the response to the issue has to be focussing on the drug trade. You have to take away—we cannot identify all of those who would be willing to take up a million dollar contract to kill someone, as sad as that is, so all we can do is attack the supply side, those willing to have—those able to offer the million dollars, and that is the continuing focus of our organisation and the New South Wales Police Force.

The ACTING CHAIR: The recent reports are that not all these, I suppose, 'contracts', are a million dollars. They are reducing in value and there is a broader market—lack of a better word, for these type of activities. Do you have any comment on that or that is actually true?

Mr BARNES: I mean, the optimistic explanation would be that the peak is over, and that the impact of the arrests and the saturation policing in some areas is having an effect. I do not want to say that too loudly, because I will be back here next year, and there has been another bunch of shootings, and you will be quoting what I have said today. It really is too soon to say where we are at, I think.

The ACTING CHAIR: Well indeed certainly the intense scrutiny is important, and the work of your organisation is to be applauded there. Is there any other questions? Mrs MacDonald.

The Hon. AILEEN MacDONALD: So we see in the media that criminal organisations have a sophisticated communications network. So what strategies has the Commission employed to deal with the challenge of the sophisticated or encrypted communications?

Mr BARNES: Dedicated encrypted communication devices have for the last decade, probably, usually been used by organised crime networks. There is, currently, before the House, amendments to make it a criminal offence to have possession of those, and to compel the holders of those devices to provide information to enable them to be operated—or opened. The difficulty is that one attractive feature of the devices is that they can usually be wiped remotely, so as soon as they are seized, a message is given to the franchisee who causes them to be wiped. Making them illegal to possess may have a deterrent effect, but as we all know, guns are illegal to possess, and there are plenty of those around. So although it is certainly a step in the right direction, I am not quite sure how effective they will be.

The ACTING CHAIR: Are you satisfied with that, Mrs MacDonald? Yes? You are finished, then? Dr McDermott, I will just check back with you again.

Dr HUGH McDERMOTT: Yes, I do have an additional question. Going back to Mr Barnes again.

Commissioner - going back to the proceeds of crime discussion you had with Mr Searle. So—and obviously the unexplained wealth laws we were discussing then. I remember that one of the problems was, when they were trying to be brought in at a federal level, in the discussions, is where the actual money that was seized, or assets that were seized and stolen, where that money went. I know the AFP was trying to create a model like the US Department of Justice where, whatever they seized, they get to keep, and it goes back into their budget, and they re-use it in organised crime fighting. So I was wondering firstly, with your seizures, where the money goes, and secondly if you think that there is a better model than what is currently going on, regarding seizures.

Mr BARNES: All of the proceeds go into something called the Confiscation Proceeds Account that is established under the Criminal Assets Recovery Act. It can only be spent on things stipulated in that Act, which are: victims of crime support, crime prevention, law enforcement, and to other things. We agree with you, Dr McDermott, it clearly all should come to us - that would be welcome. I mean, to be serious though, there is an argument that giving agencies like ours a budgetary incentive to increase its take might not always be healthy. At the moment, we need to persuade the Police Minister and the Treasurer that money should be spent on something that we say is worthwhile.

We are certainly an authorised beneficiary, being a law enforcement agency, and that is one of the purposes for which the funds can be spent. As you would appreciate, the Treasurer, I think, tends to see all consolidated revenue as something that he or she needs to very closely guard, which is his or her responsibility. There is a lot of money in that Proceeds Account that seems to go unspent each year, and we would always be urging the Minister and the Treasurer to look more favourably on our request for further funding.

Dr HUGH McDERMOTT: Thank you, Commissioner.

The ACTING CHAIR: Thank you, very much. I might just follow up with a question in regard to that one. You mentioned earlier about the cryptocurrency, and its changing value from the time that you seized it to now, I suppose, when the report was done. How do you manage that variability in value in terms of realising its value and managing that asset through this period?

Mr BARNES: It is primarily the responsibility of the Public Trustee and Guardian because the money—those funds, because they are not cash funds, are held by them as an asset, and I do not think it would be critical of me to say that that agency had some difficulty coming up to speed, to work out how they could offload it and how they should be managing it. I am more confident that they have now done that, and there should be a quicker turnaround. It would be always difficult for any agency to know when they should hold that, and when they would be better off selling it immediately, so it is something we are all going to have to grapple with as cryptocurrency continues to be part of the economy.

The ACTING CHAIR: Is there any other digital forms of assets that you have had to deal with through—other than cryptocurrency?

Mr BARNES: I think that is all. I do not think we have had any fungible assets or anything.

Mr WILDE: Not that I am aware of.

Mr BARNES: No, I think it is only cryptocurrency. Thank you.

The Hon. Mr ADAM SEARLE: No NFTs?

Mr BARNES: I am sorry?

The Hon. Mr ADAM SEARLE: No NFTs?

Mr BARNES: No.

The ACTING CHAIR: We will treat that as a comment, thank you, Mr Searle, and I will just ask, in regard to—well back to the future, your report highlights tobacco smuggling, and the comment that illegal tobacco importations and domestic tobacco crops have increased, and continue to attract criminal syndicates, with their low cost and, of course, lucrative profit margins. What do you think has contributed to the increase in tobacco smuggling over this reporting period, in addition to the syndicates?

Mr BARNES: I mean obviously the sole driver is the excise placed on commercially available tobacco, and as long as people want to smoke it, if they can get it cheaper, they will. Of course, it is not just a tax question, because as we know, tobacco is the most deadly of all drugs used in the community. The combined death rate of all the other drugs does not get close to the ill harm effects of tobacco, so I am not suggesting that it should be more freely made available, and if tax discourages some people from using it, then that is a community benefit. There is no doubt, though, that there is a lot of illicit tobacco, both being grown in Australia and being imported into Australia, because of the difference between the cost of production or importation, and the retail value of excise or tax—tobacco, on which tax has been paid.

The ACTING CHAIR: Thank you.

Mr PAUL LYNCH: Just following up—

The ACTING CHAIR: Mr Lynch?

Mr PAUL LYNCH: —on that, was there any involvement in the task force of big tobacco? Were any of the tobacco companies involved in that?

Mr BARNES: I could not say, Mr Lynch. I would be happy to make an inquiry.

Mr PAUL LYNCH: Yes, well—so that you know where I am going with it, I—there have certainly been examples where big tobacco companies have paid for the surveillance technology used by police in New South Wales. They provided expert witness statements. They provided the laboratory services for the police investigations. They drafted warrants, indeed, for a raid on premises at Liverpool. I am not defending illegal tobacco, but I do not think big tobacco should be part of the enforcement process. So if you could take that on notice—

Mr BARNES: Certainly.

Mr PAUL LYNCH: It would be appreciated.

Mr BARNES: Certainly.

The ACTING CHAIR : Thank you, Mr Barnes. I think—have we got the time right? We might, unless there is any other questions? Mrs MacDonald, you are right? Dr McDermott, I will just check with you - you are okay?

Dr HUGH McDERMOTT: Nothing from me, Chair.

The ACTING CHAIR : Well, gentlemen, okay. Well in that case then, thank you very much, Mr Barnes.

(The witnesses withdrew.)

(Short adjournment)

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

MONICA WOLF, Chief Deputy Ombudsman, NSW Ombudsman, and Member, Child Death Review Team, affirmed and examined

CHRIS CLAYTON, Chief Operating Officer, NSW Ombudsman, affirmed and examined

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

Mr MILLER: No.

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

Mr MILLER: Yes, thank you.

Before I begin, we first wish to acknowledge the Gadigal people of the Eora nation on whose lands we are meeting, and pay our respects to elders past and present. With your indulgence, Chair, I might take a little more time with my opening statement this year than usual.

I appreciate that, formally, this hearing is a review of our 2020/2021 annual report, which was tabled in Parliament in October last year. As it is nearly a full year since then, I thought what might be useful is if I provide the Committee with some updated information on matters that have occurred or been progressed since that report was tabled. Our next annual report will be tabled next week.

Firstly, appointments of statutory officers. In March this year I finalised the appointment of our new Deputy Ombudsman, following a competitive market search and recruitment process. Apart from Monica Wolf, our Chief Deputy Ombudsman here today, the other Deputies are Leanne Townsend, Aboriginal Programs; Jacqueline Fredman, Complaints and Resolution; and Helen Wodak, Monitoring and Review.

I have also since appointed two Assistant Ombudsman on a temporary basis: Louise Lazzarino, who is leading our work in implementing the new *Public Interest Disclosures Act*; and George Blacklaws, who is leading our review of the complaint handling system of the Department of Communities & Justice, with a focus on child protection issues affecting Aboriginal families, and the recommendation of the Family is Culture report.

Our team of statutory officers is therefore complete, barring the position of Deputy Ombudsman, Investigations, which is currently in the market.

With Leanne and George, two of our 6 deputies are First Nations. Leanne was planning to be here for this hearing before it was rescheduled; unfortunately – or perhaps I should say with very good fortune – she has now just commenced a period of maternity leave.

If I can turn to developments concerning our funding. As the Committee will be aware, in May 2022, the NSW Government responded to the recommendations of the Public Accountability Committee and the Auditor General. Both had recommended that the process for funding the core integrity offices, including the NSW Ombudsman, be made more transparent and separate from the Treasury/Cabinet led process.

The Government has not supported that recommendation, but has proposed some other changes to the processes by which funding decisions are made. My views on this matter were set out in our detailed submissions to the PAC, and those views have not changed. However, I am supportive of the changes that the Government has proposed, as they are certainly an improvement on the current process. I responded in writing to the Government on this matter on 13 May 2022.

The Government has said that the improvements will be included in a new Charter of Independence to be issued by way of a Treasurer's Direction, and has said that it will consult with us and the other integrity bodies in developing that charter. We look forward to assisting in that process in due course.

In terms of the 2022/23 budget itself, the reception of Treasury and the Government to the funding proposals we put forward this year was significantly more constructive and positive. We put forward a number of discrete funding bids, all of which were supported by Treasury and ultimately, by the Expenditure Review Committee of Cabinet. The additional funding falls into three broad categories.

The first is funding for new or expanded functions, where the Government had already made a public commitment to provide necessary funding when the relevant legislation for those functions was being debated. The most significant of those is funding for the new *Public Interest Disclosures Act.*

The second is temporary funding over the next two years, for the purpose of particular projects that will enable us to modernise and catch up on an underinvestment in some of our core systems. These include a new case management system, a new human resources (HR) and payroll system, and a cloud-based record management system.

The final component of the funding was some enhanced funding for existing functions, where there had been most obvious critical and chronic under-resourcing. Apart from the temporary projects, almost the entirety of the other funding is for employee-related expenses, that is, employing extra staff. While we obviously welcome the additional funding, we need to be realistic about the challenge now facing us, particularly given current labour market conditions, in terms of recruiting, onboarding, and skilling up qualified people for those new roles.

I will very briefly outline some recent changes to our statutory functions. Obviously, there has been the enactment of the *Public Interest Disclosure Act 2022*, which will commence in October next year, and in respect of which there is a great deal of work needed before that can happen. That work has commenced, including the process of developing sector-wide guidance, communications, and training plans. As mentioned, I have appointed an Assistant Ombudsman to lead that work.

The *Mandatory Disease Testing Act* has also commenced in July this year. We have started our work monitoring applications under that regime, and we are currently in the process of recruiting our roles that will lead the preparation of an assessment report, which we must produce once the regime has been in operation for 12 months.

Amendments were made on 30 June 2022 to repeal the residual functions we still had in relation to disability, following changes in that sector, most notably the transition to the National Disability Insurance Scheme (NDIS), as well as the establishment of the New South Wales Ageing and Disability Commission. Our previous function of reviewing the deaths of adults with disability in state care has been repealed, and we will be tabling a final report on that function later this year.

A suite of relatively minor but important amendments to our legislation was recently made in the *Ombudsman Legislation Amendment Act 2022*. The most significant changes there include a clear function to allow us not just to investigate complaints but, also to review complaint-handling systems, and a new power to refer a complaint to a public authority for it to investigate and report back to us. These are important tools in a modern ombudsman's toolkit, and I am grateful for Parliament in supporting them.

There have also been some minor amendments in other legislation, including to make clear that we have maladministration jurisdiction over the new Voluntary Assisted Dying Board, as well as over the New South Wales Independent Casino Commission, and any other public authority exercising functions under the *Casino Control Act.*

As recently as last week, a bill was introduced relating to the Family is Culture report that includes a provision clarifying my ability to investigate matters even when they are, or may in future become, the subject of court proceedings, providing of course that my doing so will not interfere with those proceedings.

That amendment is not legally necessary. However, it seems useful for it to be made for the avoidance of doubt, as there has been some confusion about that issue from time to time, including when agencies have sometimes sought to resist scrutiny by the Ombudsman by pointing to the fact that there may be court proceedings on foot or anticipated.

One piece of legislation that we had been hoping for which has yet to be introduced is legislation for the implementation of the Optional Protocol to the Convention Against Torture (OPCAT); the UN Convention on torture and other forms of ill-treatment in detention. New South Wales, like other states and territories, is required to commence those arrangements by January 2023. We have previously indicated that, like Ombudsmen in other jurisdictions, we believe it would be appropriate for our office to be nominated as a National Preventive Mechanism (NPM), at least for those places of detention over which we currently have jurisdiction, such as correctional and youth justice facilities, whether that be jointly with the Inspector of Custodial Services, or through a structural merger with the Inspector.

In terms of recent reports to Parliament, I will not go into great detail, but will quickly highlight some of the more significant projects. Recent reports tabled include those addressing failures in the public housing system to address the needs of tenants with disability, issues in specialist homelessness services in providing services to people with complex or high needs, and our jurisdiction to investigate when there are court proceedings dealing with the issue, as I already mentioned.

We also tabled this year a section 27 report, following our earlier report on strip searches of young people in detention. A section 27 report can be made when the Ombudsman is not satisfied with an agency's responsiveness to recommendations made in an investigation. Once the section 27 report is tabled, the Minister is required to provide an explanation to Parliament as to why the recommendations were not implemented. Section 27 reports are not a frequent occurrence, but in this case I considered it appropriate. That was not simply because the agencies had rejected the recommendations I made—that is always the prerogative of government—but rather because they did not provide a substantive explanation for that rejection. The Minister has responded to my report, and the adequacy of that response is a matter for Parliament.

In November, we published a major report on machine technology which looked both at the specific case

of Revenue New South Wales's use of automation in its fines enforcement system, as well as the intersection of automated decision-making and administrative law more generally. We anticipate that, with the increasing use of digital technologies in all areas of government, consideration of automated decision-making will become an increasingly important aspect of what we do. As foreshadowed in the report, we are currently scoping a project to map the current and proposed uses of automated decision-making across the New South Wales public and local government sectors.

I am pleased to note that I recently met with the Secretaries Board who have expressed their support and willingness to work collaboratively with us on that important piece of work.

In August, we tabled our second report on the COVID pandemic, in which we again highlighted the importance of ensuring that complaint mechanisms, both internal and external, are designed into any crisis response from the outset.

Something worth reiterating about that report is that it was not an investigation of maladministration, and nor does it contain allegations or adverse comment by us about any of the public officials involved in some way with the pandemic response. Indeed, in the report we acknowledge the work of the public service throughout the pandemic. That includes, of course, those on the frontlines of the health response. It also includes those officials involved in advising on designing, drafting, implementing, and communicating public health orders, and other guidance or programs throughout the pandemic.

We do observe in our report that it was sometimes challenging and confusing for the public to always understand and keep up with the rules. To say this is to point out what I think is obvious and uncontroversial. It is also something that may, to some extent, have been unavoidable, given the nature of the crisis and the agile response it called for.

For us to make the observation that it was a challenging time for the public does not mean that we do not also recognise that it was a hugely challenging time for the public service, and nor do we suggest that they were failing at their job. It is not an exaggeration to say that many public servants were working day and night. Rather, and really this is the key point, we say that in times of crisis and, given those inherent challenges, appropriate mechanisms of external complaint-handling and oversight become more, rather than less, important.

Before I finish, I would like to quickly take the opportunity, which I rarely get to do publicly, to acknowledge all of the dedicated people in the Ombudsman's office. Despite what our 1974 Act seems to suggest, the Ombudsman is not an individual, it is a team of people. At the beginning of 2020, that team adopted a five-year strategic plan and we are now at almost exactly the halfway point. We report on that plan in our Annual Report, and will of course do so again next week.

What is remarkable to me is that, despite some significant headwinds along the way - COVID most obviously - we remain firmly committed to that strategy, and have made enormous progress against the initiatives in there. There is more to do, but I would like to express my appreciation and thanks to all our people, for their dedication and commitment to the work and purpose and vision of our office.

I do need to make a separate opening statement wearing my slightly different hat as Convenor of the Child Death Review Team (CDRT), and I understand that this year the two hearings are combined. My question is, would you like me to do that now, or would you like to deal with the Ombudsman jurisdiction first, then I can come back to the CDRT?

The ACTING CHAIR : Yes, I think if that is all right with the Committee—I am just looking. Yes, I think we are quite happy for you to proceed with your opening statement for that part of the hearing.

I think everyone on this committee agrees with the great work that the Ombudsman does and commend the team that you have working with you.

Mr MILLER: Thank you very much.

Mr PAUL LYNCH: In my earlier career that would have been called a verbal, but anyway.

Mr MILLER: If I can start with another acknowledgment and thank you, and that is to all members of the Child Death Review Team, and sincerely thank all of them for their ongoing contribution to this important work. All of those members of the team have very important day jobs, but contribute greatly to the team.

As the Committee would be aware, the CDRT is a team of individual experts and senior-level agency representatives. Each member brings individual expertise to the table, as well as a strong commitment to the overall goal of the team, which is of course to prevent and reduce the likelihood of deaths of children in New South Wales. The team's vision is a society that values and protects the lives of all children, and in which preventable deaths are eliminated. Our corresponding purpose is to eliminate preventable deaths in New South Wales by working collaboratively to drive systemic change based on evidence.

As a team, we recently developed new strategic priorities for the period July 2022 to June 2025 and I can

tender a copy to the Committee if you would like.

I will turn briefly to the activities of the CDRT since our last meeting in May last year, and provide some information by way of update. In August 2021, we tabled the Biennial report of the deaths of children in 2018 and 2019. This report examined the deaths of 989 infants and children aged zero to 17 who died in those two years. It also reported on trends over time. Consistent with previous years, three quarters—73 per cent—of the infants and children died from natural causes and, of those, the majority were infants aged less than 12 months, generally during the first 28 days of life, from causes associated with perinatal conditions.

Overall though, infant and child mortality rates in New South Wales are declining. Over the 15 years, 2005 to 2019, infant mortality has declined by 30 per cent and for children aged one to 17, it has declined by 26 per cent. This is positive. However, higher mortality rates are seen in those living in the most disadvantaged areas of New South Wales - those living in regional and remote areas, Aboriginal and Torres Strait Islander infants and children, and families with a child protection history.

Of particular concern, and unlike other causes of death, the rate of suicide among children aged 10 to 17 has significantly increased over the past 15 years. In 2018-19, suicide was the leading cause of death for young people aged 15 to 17. The CDRT is actively working to understand the predominant factors driving the increased risks for these groups, and to identify strategies for prevention.

The team itself is currently working on three research projects. First, we have partnered with the Australian Institute of Health and Welfare to analyse the effects of birth conditions and socioeconomic status on early childhood mortality in New South Wales, using linked data. Our work over many years has consistently shown that children living in areas of high socioeconomic disadvantage are more likely to die than those whose families live in areas of socioeconomic advantage. What we do not know is exactly why. The aim of this project is to identify and quantify the role of key risk factors behind child mortality at specific ages, and it also involves a separate analysis for Aboriginal and Torres Strait Islander children. A report of the Australian Institute of Health and Welfare (AIHW) analysis is in the final stages of preparation, and we anticipate tabling that report within the next few months.

The second research project we are working on relates to neonatal deaths associated with severe perinatal brain injury. While New South Wales and Australia have one of the safest maternity systems in the world in which to give birth or to be born, there are and always will be some babies who tragically die during or shortly after birth. This project involves a review of certain deaths over a four-year period, 2016-2019, to identify the extent to which the deaths were or may have been preventable, and to identify strategies that could assist in reducing the likelihood of such deaths in the future. Individual case reviews of neonatal deaths have been completed, and a draft thematic analysis of key issues has been prepared. At this stage, we anticipate being able to table a report in Parliament relating to this work in early 2023.

The third CDRT research project currently underway relates to suicide deaths of Aboriginal children. Aboriginal children are overrepresented in suicide deaths. Over the 10 years from 2010 to 2019, 222 children aged 10 to 17 died by suicide. Almost one in five of these children were Aboriginal. This project is being led by Aboriginal members of the CDRT, and involves detailed review of the deaths of 44 Aboriginal children, a literature and policy review, a service-mapping exercise, and a consultation process including with Aboriginal community-controlled organisations.

The primary aim of this work is to improve our understanding of the factors that may contribute to suicide risk for Aboriginal children, and protective factors that can mitigate those risks. The project will focus on identifying interventions, programs, agencies, organisations that may improve the wellbeing of Aboriginal children and help prevent suicide. A final report will be tabled in Parliament next year.

Research such as the projects just outlined are a key driver in the formulation of evidence-based recommendations to help prevent deaths. In the main, and as detailed in our annual reports, our recommendations are largely accepted by agencies and by government. Many of those recommendations have resulted in, or contributed to, positive steps to better protect children. We actively follow and monitor with agencies our team's recommendations, and the annual report is an important part of keeping agencies accountable for what they have said they will do. The CDRT's next annual report will be tabled next week.

I might conclude briefly by noting that the CDRT has been considering also issues relating to COVID-19 that may be identifiable in individual deaths. As of July 2022, six deaths of children have been registered in New South Wales, where COVID-19 has been listed as an indirect or direct cause of death. We will present our observations relating to COVID and child deaths in the CDRT's next biennial report, due to be tabled in late 2023. Thank you.

The ACTING CHAIR: Thank you very much for the opening statement, Mr Miller. Ms Wolf, do you have any opening statements, or Mr Clayton?

Ms WOLF: No, thank you.

The ACTING CHAIR: No. Okay then. Great. All opening statements have concluded, and we will move on into the questions. We might work on the questions first, for the first 15 minutes maybe, on the Ombudsman's annual report, and then lead on then into the Child Death Review Team questions after that. I will start with just asking you about—and you started your opening statement talking about the funding arrangements and obviously it was not exactly what you were after, but could we maybe get your thoughts on what has been approved and how that is—well, some of your comments around the current funding arrangements or improvements.

Mr MILLER: Thank you. One of the things that we—and I think a number of the other integrity officers, particularly the Auditor General herself, have been very clear on, is the importance of separating matters of principle, versus matters of adequacy or amount of funding. So, the Auditor General's recommendations, as well as the Public Accountability Committee's recommendations, were very much directed to those issues of principle, their view that, in principle, given the status and in a sense constitutional position of integrity agencies, the funding process should provide a degree of independence and transparency that is different from government departments and agencies that are directly subject to ministerial direction and control, particularly given our responsibilities for oversighting government agencies and departments.

That is the point of principle. The point of adequacy and amount of funding is distinct from that and so one of the things that I think we would be keen to indicate is that, while we may still have concerns with the fact that the Government has not supported the changes in principle that have been recommended, our views in relation to their acceptance of our funding bids has been quite positive.

In terms of the changes to process that the Government has agreed to in its public response, I wrote to the Government, I think it was on 13 May this year, and I am quite happy to table that letter if it would assist, responding to the Government's response itself to the Public Accountability Committee. The proposals that I have indicated that we do support are that the integrity agencies be removed from the Department of Premier and Cabinet (DPC) cluster.

I think it is incredibly confusing, if nothing else, to have integrity agencies purportedly clustered with a department, and a recent example of that is—I mentioned in my opening statement that we are currently in the market for a Deputy Ombudsman, Investigations. If you go onto LinkedIn and you look for advertisements for roles in the public sector, one of them is headed New South Wales Government Department of Premier and Cabinet Deputy Ombudsman. The issues around the confusion for the public, for applicants for roles, the suggestion inherent in that, that a Deputy Ombudsman is somehow a Deputy Ombudsman working for the Department of Premier and Cabinet is something I have a great deal of concern with. So, very pleased to be removed from the DPC cluster.

The other recommendations that the Government has accepted, the removal of efficiency dividend applications to independent bodies, the proposal from the Government is also to increase transparency by ensuring that if there are any deviations—and as I indicated this year, there have not been, but if there were any deviations between what an integrity body requested through budget bids and what was approved by Cabinet, that those deviations would be made public. So, the Government would provide to the relevant committees, and I understand for our purposes it would be this committee, essentially, what budget bids were not accepted, and their reasons for not accepting those budget bids. That certainly would be an enhancement to the current behind-closed-doors Cabinet process.

The other one is a contingency fund built into the annual appropriation process. That is probably going to be of more relevance to some of the other integrity offices than to ourselves. I appreciate that a body such as the Independent Commission Against Corruption (ICAC) would have greater difficulty in pre-planning for the particularly large, unexpected corruption investigation that might come its way than we do, for example, in terms of managing within our annual appropriation. I think all of those are definitely improvements to the current system and so we welcome those.

The ACTING CHAIR: If I could just quickly ask then about the budget bids. Where do you—and you said you have been quite successful and you are quite happy with those budget bids, which my understanding is that is almost like case-by-case or putting forward business cases, is that right?

Mr MILLER: Yes.

The ACTING CHAIR: Yes, thank you. Where do you see in the future more of that type of work or area of work?

Mr MILLER: There is two—there is probably—there is two elements of that. The first is in relation to new or enhanced functions. The view that I have, and my predecessors have consistently put is, that if new jurisdictions, new functions are going to be conferred on the Ombudsman, then the funding that is necessary to perform those functions needs to flow as well. The alternative is that the conferral of a new function becomes a de facto budget cut across the rest of the Ombudsman's budget.

It also becomes in a sense—this is perhaps putting it too highly but I am going to say it anyway—a bit misleading to the public, because there is a public statement to the public that, "Here, you now have an Ombudsman with these functions," but if the Ombudsman is not funded to perform those functions, then inevitably what you create is an expectations gap between what the community thinks and expects the Ombudsman to do, and what in reality the Ombudsman can actually do. That is the first category of budget bids that I see as always potentially in the mix.

The second is in relation to what I would call 'baseline funding'. This is funding for functions that the Ombudsman, or in the case of any other integrity agency, the integrity agency may have had for a long period of time. The way budget-setting typically takes place in government is that the starting point is last year's budget, and budget bids are about the first category - what has changed since last year that requires you to require additional funding?

The problem with that is, where there has been a mismatch, an extended, protracted, historical mismatch between funding and functions/standards of service/expectations, proceeding merely on the basis that well, what you received last year must prima facie be adequate is not necessarily an accurate reflection of where we are. So, I think for us, and for the other integrity agencies, there is a requirement for consideration of that baseline funding against the existing functions.

The ACTING CHAIR: Just to finalise this part of the questioning, in terms of your expanded statutory—I suppose it is the first part of your answer there, where you spoke about taking on an extra responsibility under the statutory legislation or the like—what are some examples? I think you have mentioned it in your opening statement but maybe, just for the record, just maybe highlight and then of each of those, is there any concerns with funding that sort of activity at the moment?

Mr MILLER: I will answer the last question first because it is easy in the sense that: no. As I indicated, for those new functions that were conferred in the last 12 months, we have received the funding that we asked for for those functions, and they include the work that we will be required to do to support the sector prepare itself for the new Public Interest Disclosures Act, as well as our enhanced functions going forward under the Public Interest Disclosures Act.

The Mandatory Disease Testing Act, which as I said, commenced on 1 July 2022, we also received some modest, but we think appropriate, funding for that. It is very difficult in that case for us to predict exactly the resourcing need, because even when the relevant parliamentary committee was considering this, the evidence that exists makes it very challenging to predict, for example, how many applications for mandatory disease testing will be made in the next 12 months. I think we have received notification of about 14 so far, so it is not like there has been a flood of applications.

The other significant change to our function, which I mentioned in my opening, is the express ability to review complaint-handling systems of government agencies. This is something we have done before, in the sense that we—as part of an investigation, particularly a complaint investigation, one aspect of a complaint will be typically, not only am I complaining about what I am complaining about, but I am also complaining about how the agency handled my complaint about what I had complained about.

So, often in an inquiry, preliminary inquiries or investigation, we will be looking at the complaint-handling system. What this function enables us to do is to look at an end-to-end complaint-handling system, without needing it to be tied to a particular complaint, or a particular allegation of maladministration. It also means that we are able to engage more collaboratively, I suppose, and positively with the agency, because it is not about, "We are investigating your complaint-handling system in order to identify all the problems with it or whether in fact it does constitute some form of maladministration," we are reviewing it to see if there are improvements.

That is one where we did not put up a specific budget bid, but included with the broader budget proposal there is additional funding that has enabled us to support that function. As I mentioned, we have an assistant Aboriginal Deputy Ombudsman, George Blacklaws, who is leading work reviewing the Department of Community and Justice's complaint-handling system relating to child protection right now.

The ACTING CHAIR: Thank you, Mr Miller. Would any of the committee members like to ask a question? Mr Lynch.

Mr PAUL LYNCH: Arising out of your opening statement, can you tell us when you think OPCAT really will be implemented?

Mr MILLER: It must be implemented by January 2023, and I am hopeful that it will be implemented by that date. We have, for the past two years, taken every opportunity, when we meet with government or the Attorney or the Minister who was responsible for the Ombudsman Act before the Attorney, to ask about the Government's preparation's for OPCAT, whether there is anything we could do to assist the government to be ready for OPCAT. We stand ready to assist in any way we possibly can.

At the moment the Government's response to us has been entirely consistent with what I have heard the

Government respond to committees, including budget estimates committees, which is that, until the current impasse with the Commonwealth Government over issues of funding is resolved, the New South Wales Government is not progressing the nomination of NPMs, or the other implementation.

So, we stand ready, I suppose. Certainly, if we are to be nominated as an NPM, my preference would be that we be informed of that - I would say well before, but we are probably past that point now—before January 2023, rather than during January 2023, so that we can again meet the expectations that come with that function, but like you, I do not have any additional information beyond what the Government has said publicly.

The ACTING CHAIR: Mr Searle, please.

The Hon. ADAM SEARLE: Is legislation needed? What is your view?

Mr MILLER: Our view is yes. Our view is yes it is, and I think that is also consistent with the view of the United Nations committees, including the Subcommittee on Prevention of Torture (SPT), which is currently in Australia. I think it just arrived on Sunday. Yes.

The Hon. ADAM SEARLE: I could be wrong, but I think we have only got three more sitting weeks left this year, if past practice is any guide they will be the last three sitting weeks in this Parliament. So, there is no—unless we get a surprise tomorrow or the next day, there is no realistic chance of legislative change, so what happens in January? Can they just administratively designate an NPM at the legislation in the new Parliament?

Mr MILLER: That is correct. The designation of an NPM itself does not require legislation. Already, Australia has indicated that it is going to implement OPCAT in a staged manner. Although OPCAT itself does not provide for this, there are places of detention that are what we might call the 'traditional places of detention': corrective, correction centres, youth justice centres, police lockups, et cetera. Then there are a broader category of facilities where people are, by the authority of government, not free to leave, and those internationally are accepted to be places of detention and therefore subject to OPCAT as well.

Australia, as I understand it, has made clear that, for us, OPCAT will be implemented in a staged process. The focus initially will be on the traditional places of detention - immigration centres, prisons, et cetera, and that makes sense. Similarly, with the implementation of NPM arrangements, it would be possible to nominate an NPM or multiple NPMs, and for them to utilise their existing statutory functions, to the extent that they overlap, in some respects, with the functions of an NPM.

Most obviously, the Inspector of Custodial Services does conduct inspections, so could be nominated as an NPM, and would still conduct inspections. The question about how far the Inspector would be able to go down the OPCAT-style inspection versus the traditional custodial services inspection function would be a question for her. Until the legislation is implemented, that gives a much clearer statutory grounding to that function.

The Hon. ADAM SEARLE: Thank you. That is my question, thank you.

The ACTING CHAIR: Thanks, Mr Searle. Any other questions from the Committee there? Just in regard to the Inspector of Custodial Services, you have suggested in the annual report that it be merged with the Ombudsman's Office. Could you just expand on why that is beneficial and then what is involved in that, just for the Committee and for public record?

Mr MILLER: Yes. I have been on record saying that I do think it would be worthwhile...

The Hon. ADAM SEARLE: As has every Ombudsman for the last 20 years.

The ACTING CHAIR: Right, okay, so it is a longstanding idea. Okay. Please proceed.

Mr MILLER: There are overlaps between the work of the Inspector and the work of the Ombudsman, and particularly the New South Wales Ombudsman, because we have for a very, very long time had a program of extensive visits to custodial and youth justice centres. We visit custodial settings, the Inspector visits custodial settings; the Inspector visits in order to inspect, we visit in order to inform our complaint-handling, and also to receive complaints. So, we receive complaints while we are there; the Inspector cannot receive complaints, although she can refer people to us, so that they complain to us.

There would be obviously efficiencies, in terms of having a coordinated team undertaking, what the Inspector calls inspections, what we call visits. There would also be an improvement in understanding within the system, and I am talking particularly about those who are detained in the system, about who they are speaking to at any particular point in time. I do from time to time hear anecdotes back from my people who may be visiting a particular facility, and they will be talking to an inmate who says "Oh, but I was talking to you people last week," and it was "No, that was not us, that was the Inspector."

Beyond that, I think, with OPCAT, there is an additional reason to consider a merger, and I will come to what a merger would involve shortly, and that is, at the moment, the Inspector draws her staff from the Department of Communities and Justice. So, her staff are formally employees of the same department that includes corrective services and youth justice.

My view is that that is at least a problem in terms of the perception of independence for that office. So when it comes to merger, a very light-touch merger would be, simply, to provide that the staff of her office are not employees of the Department of Communities and Justice, but are employees of, for example, the Ombudsman's Office. That would not change their day-to-day responsibilities to the Inspector, who would still supervise and manage them, but it would provide them with the structural separation, which I believe is necessary if the Inspector were to be nominated as an NPM.

There are then gradations of merger beyond that point. For example, in Queensland, the way they have dealt with the combination of inspection and complaint-handling functions is that the Ombudsman is appointed both as Ombudsman and Inspector, and the Ombudsman/Inspector appoints a Deputy Ombudsman to effectively discharge the inspection function. That is similar to what we do with community services. So, for example, Monica is the Community Services Commissioner, even though Community Services are my functions. Similarly with oversight of Aboriginal programs, we have a Deputy Ombudsman who discharges those functions.

The ACTING CHAIR: Okay, thank you very much. Mr Lynch.

Mr PAUL LYNCH: Just on the long-running turf battle over who gets to do the inspections, there was a time when the Ombudsman's office had a dedicated team just working exclusively on prison issues. I think your predecessor as Ombudsman got rid of that and had generalised teams. Where is it at now? Have you got a specialised team for prisons or is it more generalised?

Mr MILLER: We now have a specialist team which is called the Detention and Custody Unit. I think it is probably a slightly unfair mischaracterisation of what my predecessor did to say that the specialised team was disbanded. What we did in the 2019 restructure was we functionally—we aligned our structure functionally, rather than sectorially, as our predominant design principle. So, we had an Assessments Unit, which is primarily responsible for the frontline handling of complaints, and where possible, the rapid resolution of those complaints. Then there is an Inquiries and Resolution team for more complex matters that require engagement, and then there is an Investigations team.

Under the 2019 restructure, Detention and Custody was part of the Assessments unit, so it was a team within the Assessments unit. What I have since done is, I have created that Detention and Custody unit as a separate team which—basically because the degree of sector-specific knowledge that the people in that team need to have, both to receive complaints and to resolve complaints through inquiries, is such that it does require a dedicated team in, my view.

Particularly when you are talking about people in custody, typically their access to us is by phone, and they have very limited time in which to call us. Their calls are limited to, I think it was seven minutes, it might be 10 minutes now. So, it is imperative that when they do call us, they speak to someone who has already a very good knowledge of the system in which they are living. Quick answer to your question: yes, there is now a dedicated specialist Detention and Custody Unit, that deals with the end-to-end of custodial complaints.

Mr PAUL LYNCH: And my alleged mischaracterisation was based upon evidence given to the Committee.

Mr MILLER: I should say, we have not walked away from the principle that the functional basis of designing, particularly the complaint-handling side of our business, is the right base level organising principle. The challenge is how we ensure that within that we do maintain the sector specialisation that is needed, and it is not just in detention and custody, it is also the case in community services, child protection, et cetera.

The ACTING CHAIR: Okay then, thank you, Mr Lynch. I will just ask a question regarding the public interest disclosures and section 2 of the Public Interest Disclosure Act provides for the Act to commence 18 months after assent or earlier by proclamation. I think during your opening statement you mentioned that you are looking to start by October next year. I was just wondering if you could update us on that, any challenges that are relating to the implementation of that, and is there any amendments for the Act?

Mr MILLER: Starting with the commencement date, the Act must commence by I think it would be—I think it is around 23 October, which is the date—I think it is 18 months since the Act was assented to. We will be considering—as the Committee will be well aware, there is a Public Interest Disclosures (PID) Steering Committee. We will be taking to the next PID Steering Committee an agenda item to discuss the commencement date for the legislation. Our recommendation to Government will be that it proclaim the Act to commence on 1 October rather than 23 October. Apart from the fact that it is a nice round number, it helps with the reporting obligations under the Act, which will change from the current regime.

We also think it is important that the Government do issue that proclamation as soon as possible, to give the sector the certainty about when the regime will commence, because to your second point of the question, there is a lot of work that is needed to be done. I think the bulk of the work at the moment is really on our side of the court, if I can put it that way, and that is to develop all of the supporting material that will underly both the development of policies and practices by agencies, but also the training and support that we will provide to

agencies. What I am really talking about there is a whole suite of guidance material detailing how, in practice, that Act will operate, and that is the work that we are really focused on right at the moment.

There will be a great deal of effort required from every public sector agency to prepare for the legislation. One of the significant changes is that whereas under the current *Public Interest Disclosures Act 1994* (PID Act), those who receive PIDs are those people who have been nominated, essentially, by their agency to be PID disclosure officers. Some agencies nominate very few PID disclosure officers; that is something we have expressed concern about in the past, but even agencies that nominate significant numbers of PID disclosure officers will find themselves, under the new PID Act 2022, in a situation where any manager within the public service will be able to receive a PID. They do not need to do much with it, but they do have obligations, and one of their obligations is to make sure that that PID gets to a PID disclosure officer.

What the Government has done is to change the responsibility, so the onus is not on the whistleblower to work out, how do I—to whom do I have to make this PID?, the onus is on management within an agency. What that means is that every manager within the public service will need at least some minimum level of training to be able to recognise a PID when it comes to them, knowing that, for example, a public official wishing to report wrongdoing does not have to say, "Excuse me, I wish to make a PID," they do not even have to use the words PID at all. It is again on the manager to identify, "Hey, this is a report of wrongdoing, it might reach the threshold I need to do something about it." So, there is a great deal of training that is required.

Part of the reason for, I think, having a sensible period of time to bring agencies up to speed is because already we have received some contact from some agencies, expressing concern about the administrative burden, if I can put it that way, of the new PID Act. Part of our challenge over the next 12 months will be to support and reassure, particularly small agencies, that the PID Act 2022, although it does significantly change the landscape for whistleblowing, in many respects represents a common-sense approach to whistleblowing, and is not something that agencies need to be frightened of.

The ACTING CHAIR: Thank you, Mr Miller. I will just ask another question now regarding your engagement with Parliament, which we always encourage. You note that a new protocol is being developed to engage with MPs when you visit their electorates. I just want to try and get an update of that and of course—go on, yes.

Mr MILLER: In an ad hoc way in the past, this office has met with new members of Parliament, has reached out to meet with electorate office staff, and indeed, I think probably now over 12 months ago, I held a webinar with staff of electorate offices to talk about what we do. There is obviously a lot of potential—I will not say overlap, I think the better way to describe it is referral pathways, between members of Parliament and the Ombudsman's office.

Quite often, members of the public are probably more aware of their local member as a potential avenue to raise concerns or complaints, than they might be about the Ombudsman. It is important that members of Parliament are aware of the services that the New South Wales Ombudsman can provide to them and their office in helping to resolve complaints. One of the things we are really focused on is the fact that there is an election next year, so I understand.

Mr PAUL LYNCH: I think there is, yes.

The ACTING CHAIR: That is correct.

Mr MILLER: Where one of the things that we will be looking to do - obviously members of Parliament are very, very busy post an election, but without too much delay past the election - is to have an opportunity to meet with the new members, to explain the services that we provide, and perhaps to do that in conjunction with some of the other oversight bodies, the most obvious one being the LECC, with respect to police complaints.

The ACTING CHAIR: That sounds—yes, certainly for the electorate offices you are more than welcome in the Upper Hunter anytime to come and visit.

Mr PAUL LYNCH: Not doing a raid.

The ACTING CHAIR: I will just ask another, just on the back of that one. Your comment in the annual report, that you want to engage with Parliament and other independent oversight agencies regarding that shared model for parliamentary statutory officers. Have you commenced that initiative and what outcomes are you hoping to achieve from that?

Mr MILLER: We have had discussions with the other integrity offices, predominantly around the funding issues that I discussed earlier. Obviously not the amount of funding, but that issue of the principles. I think it is fair to say that, although I remain of the view that it would be a worthwhile exercise to consider the status, of what some people have described as the 'integrity branch of government', as formally recognising them as offices of Parliament in the way that some other jurisdictions have done so, it is not something that appears to have significant momentum, if I can put it that way. So while I am keen to continue with a conversation along

those lines with anyone who is willing to have that conversation, it is probably not something that we are necessarily going to be investing a lot of our time in pushing. I think our view on the importance of independence and transparency, and clarity of that reporting line to Parliament, rather than to government; we will continue to make that point at every opportunity.

The ACTING CHAIR: Thank you, Mr Miller. I will just look to my Committee members before we move on to the child death review team part of the session. If I could just check with Dr McDermott; he was having some audio-visual issues before. I just wanted to check if you have got any questions.

Dr HUGH McDERMOTT: No, no. I am fine, Chair. Thank you.

The ACTING CHAIR: Okay then. Thank you, Dr McDermott. Mrs MacDonald?

The Hon. AILEEN MacDONALD: You have referenced in your opening remarks about using section 27 and that the Minister provided a statement. Have you heard—and that it is rare that you use that, have you had any further discussions with the Government about the recommendations contained — I know you mentioned it in your opening statement.

Mr MILLER: Yes, we have. Not with the Minister, and we would not with the Minister. As I said in the opening, the Minister's explanation is an explanation to Parliament, and it is a matter for Parliament, as to its satisfaction or otherwise with her response. In terms of the department, we monitor—when we investigate and we make recommendations, we monitor the implementation of those recommendations. Obviously, we do not monitor the implementation of recommendations where the agency has said "We are not going to implement your recommendations," because there would be no point.

In this case, there were some—although in substance, the agency did not accept most of the recommendations, and certainly not the key recommendation, which was—well, the key two recommendations. One was to prohibit what we call 'fully naked body strip-searching' in youth justice centres, whoever might be in control of that centre at the time, whether it is the adult correctional staff, or the youth justice staff. So that was rejected. The other suite of recommendations were largely around entrenching in legislation some of the protections around the type of strip-searches that are permitted, partial body searches, and that was also rejected. But some of the more process-driven recommendations were accepted. So, we are still engaging with the department, in terms of monitoring their implementation of those recommendations.

The ACTING CHAIR: Thank you, Mr Miller. Are you satisfied, Mrs McDonald? Thank you. Is there any other questions before we move on to the Child Death Review Team? Okay. No, okay. In that case we will move on to that, and does anyone want to lead on that one? Otherwise, I will start. In regard to the pandemic impacts, did holding meetings online create any issues for placing limitations on the work on the CDRT, and what impact did it have on resourcing?

Mr MILLER: In terms of the meetings of the CDRT, I actually—and I will ask my colleague Monica Wolf to add in on this - since I have been Ombudsman, almost, I think, every CDRT meeting has been remote. I have only been Ombudsman for 18 months officially. My view on those is that I do not think that the effectiveness of those meetings has been diminished because of them being held remotely, and in some respects there have been some advantages to the remote, or at least hybrid mode, of operating those meetings. As I mentioned, the CDRT comprises very busy experts who have day jobs, and the ability for them to call into a CDRT meeting from their place of work, whether that be the Children's Hospital or wherever, I think has been quite useful. I would not want to hold every CDRT meeting remotely throughout the year. I think there are benefits, in terms of discussion, that come from having people in the room, but I do not think we have been significantly adversely impacted by the remote environment. As I said, I think that we would be looking to take advantage of, at least, the hybrid ability to meet going forward. Would you agree with that?

Ms WOLF: I would totally agree. I do not see that there has been any drop in effectiveness. It is always much better and much nicer to see people face-to-face but it is a balance. They are very busy; they are also scattered, so going forward, hybrid, would be a really good way to go.

The ACTING CHAIR: Thanks, Ms Wolf.

Mr MILLER: The second part of your question, in terms of our team, so the staff who work on child death reviews. One of the things that has concerned me, about COVID, is that much of the work that our staff can do in that area, at least in theory, can be performed from home, but the subject matter of that work is such that bringing that work home is not always the best, in terms of the psychological welfare of our staff. For me, it is very pleasing that we now are able to have staff, particularly in that area, working in the office and the ability to—the improved ability to, if I can put it this way, leave work at home, particularly that work.

The ACTING CHAIR: I think we all concur with those thoughts, definitely. I will just look to my Committee members now. You are okay. Any questions from there? Mrs Williams?

Mrs LESLIE WILLIAMS: Yes. I did have one question, actually, and it is in relation to the sudden

unexpected death in infancies, and it is about your recommendations that I understand still have not been implemented in relation to post mortems. Can you make any comment about that, of whether you have moved any further in getting your recommendations implemented?

Ms WOLF: I would say yes, and I would have to take that on notice, specifically about the post mortems. A number of years—the recommendations around sudden unexpected death in infancy have been managed over a number of years. It was quite a really significant shift in the way we were recommending that those deaths be investigated, and there have been quite a lot of gains. We are still monitoring a number of those recommendations, but, for example, there is an enhanced review at the post mortem forensic services stage where expertise is being brought in.

There is a joint cross-government group that has worked to really bring the different areas of government together when they are investigating a sudden unexpected death of an infant. So, obviously it involves police, it involves the Coroner, involves Health, sometimes Department of Communities and Justice (DCJ). So, that is progressing. There has been a lot of progress, we are still monitoring, and one of the particular areas we are monitoring is the interviews within Health after a baby dies, because that collects the medical history, which is really critical to everything that happens after that, including the pathology. It is one of the missing things we identified.

The ACTING CHAIR: That is fine there, Mrs Williams? Yes, okay. Any questions from—I will just ask a question regarding safe sleeping if I may. You note that the New South Wales Health's engagement with agencies Department of Communities and Justice (DCJ) and Red Nose was delayed by the pandemic. That is in the annual report. Have these meetings now occurred since then?

Ms WOLF: I would have to take that one on notice and give you the detail. I do not want to—it was a long time ago, that annual report. I think there have been—there has been progress. We are continuing to monitor but we can provide that information in detail.

The ACTING CHAIR: Thank you very much. That would be lovely. Then, can I just ask a question regarding quad bikes, and - the use of adult quad bikes by children continues to be an area of concern for the CDRT. In the annual report you note that your proposed legislative changes were not adopted by the New South Wales Government, but that the CDRT are satisfied that the intent of the recommendation has been met by SafeWork New South Wales initiatives. Why were the proposals not adopted, and what are the legislative changes you would like to see in that area?

Ms WOLF: I think we were—stepping back, the recommendation was that there be a review to consider legislation to prohibit children under 16 using quad bikes. That recommendation was not accepted, and as Paul mentioned, once a recommendation is not accepted, we do not really monitor it. It is still I think the view of the CDRT that that should happen. What Safe Work did, it did a number of initiatives that were trying to educate around the use of quad bikes, and provide resources to make sure that there was knowledge of how you can safely ride a quad bike, including not having passengers, that kind of thing, and other safety measures. I think there were some kind of supports provided with that. So in that context, yes, we were satisfied.

The ACTING CHAIR: Okay. Well, I would like to think my family were listening right now to hear that because they are guilty of that. Anyway, but I am sure they are not listening, as they do not listen to me at home either. Is there any other questions there from—I might just ask regarding the child restraints and seatbelts. Has work commenced on the Neuroscience Australia study aimed at child restraint practices in regional areas?

Ms WOLF: Our understanding is that was delayed by COVID but the intent is to do that, and that is not our research, that was—yes.

The ACTING CHAIR: A Neuroscience Australia study.

Ms WOLF: Made a recommendation. We made a recommendation that there be further work done and that I think through Transport NSW, but I will have to check that. But they were going to commission Neuroscience Australia. My understanding is that that was delayed.

The ACTING CHAIR: Thank you.

The Hon. AILEEN MacDONALD: I have a question.

The ACTING CHAIR: Thanks.

The Hon. AILEEN MacDONALD: You mentioned youth suicide in your opening remarks and it is quite alarming, the increase. What changes would you suggest to New South Wales Health to address those risks, to work on prevention rather than after the suicide itself?

Mr MILLER: The CDRT will consider what recommendations to make in respect of suicide, and we have in the annual report, and again next week you will see we have previously made recommendations around, for example, postvention interventions, but I would not—part of the—it goes to—part of the purpose of the CDRT

is that we do not make a lot of recommendations, but when we make them we make sure that they are based on very solid evidence. So, we would be looking to build the evidence base around those numbers, in order to make recommendations, rather than—I am not in a position to speculate on the types of recommendations that might come from a review of that evidence, but it is certainly concerning that suicide, particularly for that age group, the 15 to 17, has taken over from transport as the most significant cause of death.

The ACTING CHAIR: Can I—which is probably more in the next report, I would imagine, but knowing how long it takes to get to that, we might ask the question now. The trend over the last 12 months, or during COVID, would indicate—I thought it was in youth suicide going down. Is that correct in your opinion and do you have ideas or comments around what is happening there?

Mr MILLER: Yes. Our next report, which will be tabled probably in the second half of next year, will analyse the deaths in 2020-2021. Part of the reason for the time period is because the register itself can move. There can be sometimes issues about attributing cause of death immediately, versus over a period of time, particularly if the matters are coronial matters, but also in order to analyse those numbers. I think on our very—the very early indications that we have now - is that the numbers are not significantly tracking upward from what we reported, in respect of 2018-2019. I would not go so far at this stage as to say that they are tracking downwards, but we have not seen anything to date - and as you say, we will report in detail next year - to suggest that the numbers are alarmingly tracking upwards from what was already an alarming number in 2018-19.

Ms WOLF: I think I would just add on that that the trend has been—it is the only cause of death where the trend has been increasing, and looking at year-to-year does not really give you that understanding, so it is really [inaudible]

The ACTING CHAIR: Okay. It is looking at the trend overall rather than—yes, it is more like that. Yes, okay. Well, thank you for that. I will just check with my Committee members because that is all my questions. Dr McDermott?

Dr HUGH McDERMOTT: No, I have no questions.

The ACTING CHAIR: Okay. Thank you.

Mr PAUL LYNCH: I am fine.

The ACTING CHAIR: Thank you, Mr Lynch, and thanks, Mrs MacDonald. Okay. In that case, thank you for answering all those questions and for your time here today. We thank you for your work and thank you for appearing before the Committee today. We may send you some additional questions in writing. Your replies will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr MILLER: Yes, we would.

The ACTING CHAIR: Thank you. Well, that concludes our public hearing for today, and I would like to place on record my thanks to all the witnesses who have appeared today. In addition, I would like to thank Committee members, Committee staff, and the staff of the Department of Parliamentary Services for their assistance in the conduct of the hearing. The Committee will now conduct a deliberative meeting, and I may ask that the public gallery be cleared. If Mr McDermott could just stay online please. Thank you.

(The witnesses withdrew.)

The Committee adjourned at 12.30 pm.