

**REPORT ON PROCEEDINGS BEFORE**

**COMMITTEE ON THE INDEPENDENT COMMISSION  
AGAINST CORRUPTION**

**REVIEW OF THE 2021-2022 AND 2022-2023 ANNUAL REPORTS OF  
THE ICAC AND THE INSPECTOR OF THE ICAC**

**At Macquarie Room, Parliament House, Sydney, on Monday 11 December 2023**

**The Committee met at 9:00.**

**PRESENT**

Mr Jason Li (Chair)

**Legislative Council**

The Hon. Tania Mihailuk

**Legislative Assembly**

Mr Mark Hodges (Deputy Chair)

Mr Michael Regan

Dr David Saliba

Ms Kobi Shetty

Mrs Wendy Tuckerman

Mr Tri Vo

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Dr Sarah Kaine

**The CHAIR:** Welcome to today's public hearing of the Committee on the Independent Commission Against Corruption. Today's hearing is part of our review of the 2021-2022 and 2022-2023 annual reports of the ICAC and the Inspector of the ICAC. The hearing is being broadcast to the public via the Parliament's website. Before we commence, I acknowledge the Gadigal people, who are the traditional custodians of the land we meet on here at New South Wales Parliament. I also pay my respects to Elders, past and present of the Eora nation and extend that respect to other Aboriginal and Torres Strait Islander people who are present today or watching proceedings on the New South Wales Parliament's website.

Today we will hear from witnesses representing the ICAC, including Chief Commissioner the Hon. John Hatzistergos, AM, Commissioner the Hon. Paul Lakatos, SC, and members of ICAC's executive. Afterwards, we were going to hear from the Inspector of the ICAC, Ms Gail Furness, but unfortunately she is unable to attend, so we will hear from the Inspector in the new year. I thank everybody who is appearing before the Committee today. I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings; copies of the guidelines governing coverage of proceedings are available. I declare the meeting open.

**The Hon. JOHN HATZISTERGOS, AM,** Chief Commissioner, NSW Independent Commission Against Corruption, sworn and examined

**The Hon. PAUL LAKATOS, SC,** Commissioner, NSW Independent Commission Against Corruption, affirmed and examined

**Mr DARRIN MOY,** CEO, NSW Independent Commission Against Corruption, sworn and examined

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

**Ms BERNADETTE DUBOIS,** Executive Director, Investigation Division, NSW Independent Commission Against Corruption, affirmed and examined

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

**Ms MICHELLE WARD,** Executive Director, Corporate Services Division, NSW Independent Commission Against Corruption, sworn and examined

**The CHAIR:** I welcome witnesses from the NSW Independent Commission Against Corruption. I thank you all for appearing before the Committee today. Will each of the witnesses confirm that you have been issued with the Committee's terms of reference and information about the standing orders relating to the examination of witnesses?

**JOHN HATZISTERGOS:** Yes.

**DARRIN MOY:** Yes.

**ROY WALDON:** Yes.

**PAUL LAKATOS:** Yes.

**BERNADETTE DUBOIS:** Yes.

**LEWIS RANGOTT:** Yes.

**MICHELLE WARD:** Yes.

**The CHAIR:** Would any of the witnesses like to make a brief opening statement before the commencement of questions?

**JOHN HATZISTERGOS:** It might assist you, Mr Chair, if I just give you a brief overview of where we are at. This is the first occasion that the Commission has had the opportunity to appear before this Committee in a formal sense since it was reconstituted following the 2023 state election. I do, however, acknowledge that a number of you did attend the Commission offices for an introduction to our Commissioners and senior staff and for a tour of our premises. Regardless, let me take this opportunity once again to congratulate each and every one of you on your election as members and, more specifically, as members of this Committee. This Committee is a key accountability mechanism for the Commission's work. Within the terms of our respective obligations, I want to assure you that we'll do whatever we can to assist you in your important work.

My term as Chief Commissioner, along with that of Commissioner Helen Murrell, commenced on 7 August 2022. Commissioner Lakatos commenced shortly after on 12 September 2022. You would be familiar with the fact that in 2016-17, the Commission effectively had a budget reduction which culminated in the reduction of its staff by around 10 per cent. Our predecessors reported on this to the Parliament and produced two section 75 reports advocating for a change in its funding model. The Commission itself, under our predecessors, took the approach that as there was no change in the Commission's statutory functions, it would continue to perform them. One of the consequences, however, became a significant impact on the timeliness of our activities, and I will come to this later.

Upon assuming our responsibilities, one of our first tasks was to embark upon the production of a new strategic plan to guide our work over a three-year period, from 2022 to 2025. That plan was constructed following consultations at all levels of the Independent Commission Against Corruption, and it is a public document. Moreover, we've commenced this year to report on our work within the terms of that plan. I will deal with these matters shortly, but before that, it is appropriate that I address the issues of funding, which are fundamental to an understanding of where we stand.

The Commission appreciates and welcomes the funding sought and granted by the New South Wales Government in 2022-23, which enabled us to increase our staffing levels and better fulfill our statutory functions. The Commission also acknowledges that its re-baselining funding proposal and its business case submission was approved by the New South Wales Government following two independent reviews and led to a further improved financial position in 2023-24. To give you some idea, 2019-20 was the last financial year the Commission received grant funding from the Department of Premier and Cabinet for its general operations. Budgets have now been reinstated and increased the Commission's funding. In 2020-21, we received a one-off COVID payment. In 2021-22, there was a reinstatement from the fiscal cliff. If it hadn't occurred, we would have had to lose about a quarter of our staff. In 2022-23 there was the rightsizing of the Commission to include corporate services and other non-investigation staff support areas. In 2023-24, there was the re-baselining.

In 2022-23, we had an additional 17 staff—but all those positions have now been filled. I can provide details on those roles if you wish. The Government now also provided a \$20 million general contingency fund for integrity agencies to be able to provide for the unpredictability in expenditure requirements. Our main expenditure items in 2023, excluding staff, are on legal fees, which you should also bear in mind included some contractors who were reclassified as temporary staff. We also had some consultants, due to higher inclusion of engagements pursuant to section 104B of the ICAC Act in Operations Keppel and Galley. Our employment-related expenditure was \$2.5 million under budget in 2023 due to delays in recruitment for the budget positions. The Commission diverted some of that variation to complete unexpected upgrades to our NUIX system.

In 2022-23, following workforce and process evaluation by KPMG in 2020-21, the Commission received recurrent funding from the Government. That funding, particularly for the investigation divisions, included positions such as a director of strategic capability, three assistant investigators, an extra forensic accountant and equivalent of 1.5 full-time equivalent contracted investigator workforce, and the equivalent of 1.5 full-time equivalent contracted telecommunications intercept monitors. Appointments were made for assistant investigators, a director and a forensic accountant, and telecommunications monitors were engaged to review a substantial number of telecommunications intercepts, which were disseminated by another agency. We restructured our forensic accountants into a financial investigation unit to centralise financial investigation services within the division.

In early 2023, we had two temporary brief handlers who were employed to prepare advisory briefs for the Director of Public Prosecutions and enhance the completion and the quality of those briefs. Following the 2023-24 re-baselining, there were 20.5 full-time equivalents budgeted for, of which 14 were new positions and 6.5 were existing roles which were reverted to permanent. Those positions were across various divisions of the Commission. We've also been provided with \$6.049 million for our technological upgrade. Critically, in both these two years that I have referred to, along with other integrity agencies, we have been exempted from efficiency dividends. The funding enhancements and the associated decisions have been critical to enabling us to meet our legislated obligations and our strategic direction.

I want to take this opportunity to thank both the previous and the present Government for that funding, as well as the parliamentary joint Committee which supported the Commission's advocacy. Moving forward, the Commission is conscious of the new Government's commitment to an independent funding model. At this point, we've not been provided with details as to how this will operate.

Over the last two years, our investigation division has faced some critical resource shortages due to long-term absences and difficulty in filling vacancies. That led to some eight prolonged unfilled positions, but

recruitment activity continues with the aim of ensuring that we have 60 full-time equivalents in that investigations division within six months.

Just very briefly, in terms of some of our other areas, our assessments area—in terms of complaints, we are, at the moment, on track to have a higher number of referrals to us than in the previous year, if the current trajectory based on July-September is sustained. The number in 2021-22 was 3,570, in 2022-23 it was 3,004, and thus far we have 1,359. The most common areas are local government, health and custodial services. In terms of section 74 reports to Parliament, you would be aware that when we came to office in August/September of last year there were five outstanding Commission reports which had not been completed and not furnished to Parliament. They were reports that had been presided over by previous Commissioners: in the case of Operation Galley, by former Commissioner Rushton; and in the case of Operation Keppel, Assistant Commissioner Ruth McColl. All those five reports have now been furnished to Parliament. That work has been completed.

At the moment, we have three investigations which are full investigations and five preliminary investigations. Two of the investigations have been escalated in 2023-24. A further four preliminary investigations and two full investigations have been closed. A further investigation has been completed. The Commission has a range of KPIs for registering, assessing and reporting on matters to the Commission's assessment panels. These are monitored and reported on. The Commission is comfortably meeting these targets at the present time. One area of concern has been the provision of briefs to the office of the Director of Public Prosecutions. That's an area where we've focused some attention on and are grateful for the additional funding that I had referred to in this year's budget, which has enabled us to engage two permanent staff to carry out that work.

In our corruption prevention area, we have expanded significantly the activities of the Commission. In 2022-23 we have conducted 215 speaking engagements and workshops, reaching 12,700 people. We have published five new guidance publications providing practical advice for public officials on reducing corruption risks. These included probity aspects of ethics walls, managing corruption risks and regulatory work, managing conflicts of interest in local Aboriginal land councils and corruption risks associated with supply panels. In February this year we produced a publication on assessing corruption control maturity. In the current financial year we are on track to deliver 150 workshops: face to face and video conferencing. Last month we issued a report titled *Fraud and corruption control: evaluating compliance and its drivers*. This report assesses how the public sector agencies approach compliance with government fraud and corruption control policy.

We have developed new educational videos providing easy-to-understand guidance. That material is all available now on our YouTube channel. The videos, including *Obligations of public office*, *Myths and misconceptions about corruption*, *Myths and misconceptions about the NSW ICAC*, and *Tone at the top*, have been added in recent months. We acknowledge more needs to be done to communicate the lessons, particularly in areas of high risk. One example of that is the work that we have done with members of Parliament leading to and following the state election, which has involved us producing a number of publications and conducting educational sessions which have sought to reinforce key messages. I am pleased to acknowledge both the Premier and the Leader of the Opposition, and the Presiding Officers and members of relevant privileges and ethics committees, along with many MPs themselves, have supported these initiatives. I hope they will continue.

Finally, I just want to mention that our investigation reports, that I've indicated have been furnished to Parliament, have included a number which have identified findings of corrupt conduct against members of local councils. Two of those investigations contained interesting similarities. In both cases, councillors received corrupt benefits from foreign nationals or companies owned or controlled by foreign nationals. In some cases the benefits included travel, hospitality and accommodation provided as part of overseas trips. In Operation Galley, our investigation identified local councillors who were filmed in the company of escorts, which one described as a blackmail tool.

Other Commission reports, including Operations Keppel, Skyline and Aero, have involved foreign nationals who were parties to, witnesses of, or victims of corrupt conduct. Earlier this year the Director-General of ASIO delivered his annual threat assessment, in which he nominated foreign interference as one of ASIO's primary security concerns. This is not to suggest that the cases investigated by the commission are of interest to ASIO or that New South Wales has a unique problem with foreign interference, but the Commission is concerned that certain agencies such as local councils and local Aboriginal land councils may be targeted by individuals who may not be entirely familiar with the standards of integrity that the Commission strives to uphold. The Commission is seeking to target this risk moving forward.

It is not the only emerging risk, however. Members of the Committee should be aware that the Legislative Council's Portfolio Committee No. 1 has commenced an inquiry into artificial intelligence in New South Wales, and the Commission has made a submission. Artificial intelligence will have an impact on every industry and

profession, including the Commission's investigative and preventative functions. The Commission is not an expert in the use of AI, but as part of our strategic plan we will be working on this with subject matter experts to avoid the threats and to embrace the opportunities.

I will leave my comments at that, and I will come to further matters, no doubt, in the course of questioning.

**The CHAIR:** I thank the Chief Commissioner for that opening statement. We come now to questions. I might lead off on some matters that you directly raised in your opening statement, if I may, Chief Commissioner. You finished on AI and the impact of technology. You also mentioned the roughly \$6 million you'd received for technological upgrades. I wonder if you could comment on the work that the Commission's done assessing your own cybersecurity risk, where it fits within your risk assessments through your own risk and audit committee, where you feel the Commission's cybersecurity risk profile is, and whether you feel you're sufficiently resourced to deal with the sort of risks—whether they're foreign interference risks or local risks—within the cybersecurity realm. Could you comment on the risk profile, what sorts of impacts that might have, the actions that you're taking to address them and whether you feel you're sufficiently resourced to address those issues?

**JOHN HATZISTERGOS:** Michelle, did you want to do that?

**MICHELLE WARD:** Thank you for your question. Just as a brief overview, we have recently received funding from the Government's Digital Restart Fund. That has kickstarted a lot of our work in that area, with the appointment of a principal security information officer and a data analyst. They've commenced that period of work. We have had consultant work reviews prior to that, but we really are in the early stages. That involves also making assessments on our essential eight components that we do as part of the annual reporting process. We report to Cyber Security NSW on both of those measures as well. It is only the beginning stages. We are formulating a lot of our plans. We are partaking quite actively in incidents and playbook exercises across government. There are further areas that we need to go into. But suffice to say, at the moment it's still pretty early stages. We do need to cover a whole broad remit in that space.

**The CHAIR:** Through your risk and audit committee, do you have an organisational risk matrix and risk-appetite-and-tolerance framework?

**MICHELLE WARD:** Yes, we do. We report to our audit and risk committee on a quarterly basis. We are forming a lot of those risk assessments. We've got a cybersecurity policy that governs all of those areas but, as I mentioned, they still are in the early design and implementation stages.

**The CHAIR:** Do I take it that your current risk assessment around your cyber readiness is not within appetite; it's classed as a significant risk?

**MICHELLE WARD:** I wouldn't regard it as a significant risk. A lot of agencies are quite new in this space. We're only recently receiving fund as a whole-of-government initiative across the board. We do measure ourselves against other agencies as well. I wouldn't regard it as a high risk, no. We're slowly tackling the various tasks before us. They just take time in order to build the framework.

**The CHAIR:** But you don't regard cyber risk as a high risk for the Commission?

**MICHELLE WARD:** Not at present, no.

**The Hon. TANIA MIHAILUK:** Just to the Chief Commissioner but, indeed, to all of the Commission, back on the issue of foreign nationals, I think you said earlier that there were two cases specifically related to local government where foreign nationals had some influence and were able to take councillors or individuals—I'm not sure who they were—on trips and travel and so forth. Are there any suggestions from the Commission as to what we could suggest to the Parliament in relation to this? It almost seems to me that there's nothing specifically legally preventing these councillors or council staff from attending such trips, participating in these sorts of trips or accepting that type of hospitality. Obviously, they have to declare—well, you'd hope they would declare—that type of activity. But would you suggest that there may need to be some tightening of the legislation around councillors participating in these trips or trying to obtain this type of hospitality?

**JOHN HATZISTERGOS:** We've resisted saying that councillors shouldn't be allowed to travel overseas.

**The Hon. TANIA MIHAILUK:** It's not so much travelling overseas; it's the idea that someone else is paying the bill.

**JOHN HATZISTERGOS:** The issue that was raised in both Operation Galley and Operation Tolosa is broader than just travel. It was a suite of what may be described as "grooming behaviours" which were designed to find favour with councillors, who were then making decisions in relation to applications which the sponsors of

that grooming behaviour were involved in, in circumstances where there hadn't been declarations made. Had there been, there would have been a case for those persons to consider whether they had a private interest that conflicted with their public obligations. But although the cases of Tolosa and Galley had some parallels—it was a similar type of behaviour—the issue of foreign interference is not confined to two cases. We saw it in Operation Keppel, with the former member for Wagga Wagga. We also saw it in Operation Aero, which involved the Labor Party and a developer who was making a donation that was not authorised. And we also saw it in Operation Skyline, which involved an Aboriginal Land Council.

It's a broader issue, and I think it involves players who are not familiar with the standards of the public sector in this state and more broadly in Australia, or who think that they can get around those standards. We need to target those persons, as well as build up integrity amongst local government and State Government representatives. The first part—communicating messages to foreign nationals—is more complicated. We're looking at how we can do that at the moment and reaching out to potential investors to acquaint them with what the expectations are. Does that answer your question?

**The Hon. TANIA MIHAILUK:** It certainly gives the Committee something to think about down the track about what we can recommend to Parliament. It does look like an area that needs to be tightened. As you said, it is both state government and local government representatives that can get caught up in this. To the ordinary person, you would think something like that should be declared and that people should think long and hard before accepting such hospitality or the like. But it seems to me, at this point in time, that it's difficult to manage the foreign national perspective. I agree with you that there are countries that think this sort of behaviour is completely normal and they see it as something that, in some respects, is a practice that they do in their own particular countries. Maybe it is something where we can provide—whether it's the legislative framework around it—some idea of a directive. Chief Commissioner, you were talking about putting something together. Would that be a bit of a guidance around this? Is that what—

**JOHN HATZISTERGOS:** We're looking at communicating to persons who we might think would want to engage in that sort of activity. I may have more to say about that in due course, but at the moment we're looking at various strategies, including how we communicate and looking at social media networks to get the messages across to those people. Treasury, I think, has to approve people who invest in property. That may be a gateway we can use down the track, but it's a complicated issue. It's not just sponsoring the travel; I must make it quite clear. I think both Galley and Tolosa included travel to go to people's weddings who were allied to the particular proposals. This is a fairly intensive grooming which is involved. Councillors and other decision-makers need to be aware of it and the pitfalls of engaging in such conduct. I think Galley—correct me if I'm wrong—involved going to nightclubs, escorts, accommodation, travel and, as I said, there was a wedding that was also involved. Tolosa also involved a wedding—similar pattern of behaviour. In Galley, it was multiple councillors. In Tolosa, it was one councillor.

**The Hon. TANIA MIHAILUK:** But they seem examples where it's quite obvious that there's some sort of breach there and it's inappropriate. I'm also concerned about examples where there are trips that are just funded by foreign nationals just for the purposes of coming and viewing a city or viewing developments in a city and it seems a little bit more normal per se because they've conducted some meetings and they're doing tours of a city—there are councils that do that—or where part of the travel is funded by foreign national groups, for example, where it's just perhaps the accommodation and the meals. So I think there needs to be some real tightening around this, Commissioner. What the ICAC has exposed is, I think, excellent because it gives people an idea of the lack of understanding of what is okay and what's not okay, but I think we need to perhaps go a bit stronger. I certainly think the Committee should be considering some sort of recommendations where we look at what's appropriate and what's not appropriate when it comes to accepting hospitality.

**JOHN HATZISTERGOS:** That's a broader question than what we've looked at.

**The Hon. TANIA MIHAILUK:** Yes, it is.

**The CHAIR:** I think this is a really interesting sort of theme.

**The Hon. TANIA MIHAILUK:** It's not just local government. It's going to impact state government too.

**The Hon. Dr SARAH KAINE:** I just wanted to go back to cyber issues. I'm not entirely sure who to address this to. The Chair asked about cyber risks. One area that I'm concerned about—and I'd be interested to know how the Commission is preparing itself—is considering data integrity in a time when we're increasingly faced with AI that can produce deepfakes. This is less about threats to accessing the data of the Commission and more about the data that you collect and the types of programs you might be thinking about to ensure that the data you're receiving is what it purports to be, given that we're now in an era of deepfake AI capability.

**JOHN HATZISTERGOS:** I might ask Bernadette.

**BERNADETTE DUBOIS:** I'm not quite sure what you mean, but the data we receive is—

**The Hon. Dr SARAH KAINE:** If I can clarify, we have a parallel inquiry looking at AI and its uses, and one of the threats that we've been discussing is particularly the capacity for fake voice recordings, telephone recordings, the capacity for those, to the naked eye and, in fact, to anyone, to seem real, when actually they're quite easy now to fraudulently create. I wondered if you'd given thought to this across the range of the kind of information that you collect.

**BERNADETTE DUBOIS:** The information that we collect—surely, with open-source information, then that's a possibility because you don't know what's on the internet. But, in relation to our actual data that we have, it usually comes from either telecommunications interceptions—it comes from search warrants, computers, phones. If there is some misinformation or deepfake material in there, it'd be very hard for us to identify what that is. But, if it comes to the point where that material is evidence, then we'd have to look more closely. But we haven't come across that as yet. But it is certainly something to consider.

**The Hon. Dr SARAH KAINE:** So, just to confirm, there isn't a plan to prepare for that kind of eventuality, the impact of that kind of AI in that space? At the moment there's no sort of upskilling or—

**BERNADETTE DUBOIS:** We've just started down that track, and there's a submission put forward to implement an AI strategy team from across the Commission, including our cyber staff and also IT and other experts in our forensic area. It's only just in its infancy, and that'll be a leadership team to look at our AI, both internally and externally, and also look at an assessment of our ability to implement AI as well within the Commission. But that's only, as I said, in its infancy.

**Dr DAVID SALIBA:** Just a follow-on from that. Are there any synergies in collaborating with other state and national agencies?

**JOHN HATZISTERGOS:** We are doing that. It was agreed at the last Commissioners' meeting.

**Mr MICHAEL REGAN:** John, thank you for your opening remarks—noted. Thank you all for the work you do. It's very much appreciated, particularly by those on the Committee here. The Commissioner acknowledged there was over-representation of local governments in the statistics in the annual report, possibly due to a large number of local councils in New South Wales and the high level of people's interactions with local governments. You commented on some trends in particular, about the foreign interference side of things, and the concerns going forward. Are there any other trends that we should be looking at or concerned about? Separately, you mentioned also the corruption prevention activities, and they've been upped, which is great. Are they targeted specifically at councillors, or councillors and staff?

**JOHN HATZISTERGOS:** I just missed the first part of the question.

**Mr MICHAEL REGAN:** You noticed that there were trends. You noted a couple. Is there anything else that we should be looking at or digging deeper in?

**JOHN HATZISTERGOS:** Can I just say this. One of the things we've been doing is focusing very much not just on where we get complaints but also where we don't get complaints, because we have taken the view that in areas where we don't get reports under section 11, it doesn't necessarily mean that the areas are corruption free. It just may mean that we're not getting reports from that particular person or agency because there's no culture of reporting. There've been a number of areas and one specifically—I won't identify it at this point—where we have been concerned for some time about the lack of reports across the sector. We're working with that agency or that particular area and its constituent parts to try and get some additional culture of reporting to us because we think that it's a corruption risk if you've got an agency which is not reporting.

I know people view statistics and say, "You're getting a lot of reports of corruption. That means corruption must be rife." It doesn't necessarily follow. There is an obligation under section 11 for executives to report corrupt conduct. Generally speaking, the areas where we get lots of reports from have a good culture of reporting. The areas where we don't get as many reports, we don't. We're working in that particular space. The other areas that you've identified—we are looking at, obviously, the area of AI and also cyber, across the government, for corruption risks that that may involve. We're at the early stages of doing work in that area. The other area you mentioned was councillors and staff. I might get Lewis—

**LEWIS RANGOTT:** Thank you, Chief. The answer to the question is that we do try to tailor educational materials to those two different audiences: the councillors and the staff. Often, if we're on site at a council, we'll try and meet with both. Obviously, councillors are quite time poor. They're often seeing us at seven o'clock at night, and we're trying to tailor something that suits their time needs but also the functions of the work that they

do. Also, you'd be aware that there are differences between metropolitan councils and non-metropolitan councils and the powers, their planning powers in particular. So we try hard to target both with our work. As you said, Sir, it's a very large sector, 128-odd councils, so we do our best to cover as many as we can.

One or two other areas that we've noticed—again, these come out of some of the investigations that the Chief has mentioned—are areas where councillors still have significant planning discretion, which includes the voluntary planning agreements, which arose in Operation Galley, and the planning proposals. A fairly standard complaint that comes to us—which, again, may or may not involve corrupt conduct—are situations where a developer owns a parcel of land, there's a government announcement about, for instance, changing zonings to allow more housing or whatever the case might be and, whether you're on one side of the boundary or the other side of the boundary, can create significant windfall gains for the landowner, and those are contested matters and sometimes generate complaints that are directed towards us.

**Mr MICHAEL REGAN:** Are you finding councils reaching out to you, whether it's general managers or council mayors reaching out to you directly? Or are you reaching out to them more?

**LEWIS RANGOTT:** We have very good relationships with quite a number of councils. Commissioner Murrell—who is not here today—for instance, spoke at the Local Government NSW annual conference recently, so we think we have good relationships. As the chief mentioned, there are some that probably don't report as much as they could and with which we don't have the best relationships. Of the 128 councils, there is a combination of good and indifferent, and we would like to be on good terms with as many as possible.

**JOHN HATZISTERGOS:** We are trying to do much more with local government now that we've finished Operation Tolosa, and we can draw on the lessons of the most recent investigations and bring those together. So we have sought an appointment with Local Government NSW to speak to them moving forward. Commissioner Murrell and myself did have a meeting with the Minister a few months ago. I think he's reported on that to Parliament. So we had a meeting and we've written to him about some recommendations in our previous reports that we think need to be followed up.

**Ms KOBI SHETTY:** I'm just interested to know whether you feel that the public interest disclosure protections are strong enough to encourage reporting across all of the sectors you're interested in?

**JOHN HATZISTERGOS:** It's relatively new; it started in October. It broadens the capacity to provide protection and it reduces the threshold for detrimental action. I think it's an improvement on the previous regime, and we're certainly anxious to work within the framework.

**Mrs WENDY TUCKERMAN:** Commissioner, just in regard to the number of complaints that you do get from local government, would you perhaps like to comment on that lack of confidence from the public in regard to how councils are handling investigations? I note that a lot are not actually investigated by you, but I feel like, because of that lack of confidence, they're obviously looking at ICAC to solve the issue for them. Do you have any comments around that?

**JOHN HATZISTERGOS:** Yes. There are two things I can say. We have referred some matters back to councils to investigate themselves, but we've asked them to get external investigators. That seems to be the practice, rather than asking the council itself to investigate a matter. There may be cases where it would be okay for the council to investigate the matter but, generally speaking, we ask for an external investigator to be appointed, we ask for an investigation plan, we then consult with them about the process for the investigation—that is, who they've selected and what they're going to be actually looking at—and then they have to report back to us. So there is that dimension which should hopefully provide a level of reassurance.

Of course, if the report comes back and we're not happy with it, we can action it further and perhaps take it on ourselves. Our Act, however, requires us to take on the serious cases and the systemic cases. That has got to be our focus, and we have to take into account the role of agencies to investigate corruption as well. I think it's section 12A. So we have to operate within that constraint. There are other bodies that can obviously follow it up. There's the Office of Local Government, which can also carry out investigations. At the moment, I have to say, I think that agency's under a fair bit of pressure. They communicate to us that their capacity to investigate is limited. They have some staffing issues.

**The Hon. TANIA MIHAILUK:** Sorry, Commissioner, which agency?

**JOHN HATZISTERGOS:** The Office of Local Government.

**The Hon. TANIA MIHAILUK:** I didn't even think they had that capacity to do that.

**Mrs WENDY TUCKERMAN:** Yes, they do.

**The Hon. TANIA MIHAILUK:** They do?



**JOHN HATZISTERGOS:** They do.

**The Hon. TANIA MIHAILUK:** News to me.

**Mrs WENDY TUCKERMAN:** So are you saying that a number of your resources are going in to reviewing some of those investigations that you've referred back to council? Are you reviewing what's going on in regard to that?

**JOHN HATZISTERGOS:** Whenever we get a report back from any agency that we've referred the investigation to under section 53 or 54, we review it.

**Mrs WENDY TUCKERMAN:** So is that a substantial amount of your resources being used in that area?

**JOHN HATZISTERGOS:** I wouldn't say it's substantial, but it does take time. These reports now go to our Investigation Management Group so that all the Commissioners have an opportunity to read them and to discuss them, along with our senior officers.

**Mrs WENDY TUCKERMAN:** Just referring back to corruption prevention, do you have a good working relationship with the Office of Local Government in regard to forming some sort of educative platform, particularly for new councillors who will be elected in 2024, in regard to the concerns that you noted today? I just feel there have been a number of inquiries which suggest that we need to be better at educating councillors on their roles and responsibilities. Are you working with the Office of Local Government to look at some sort of educative piece around their roles and responsibilities in those areas?

**LEWIS RANGOTT:** I can assist. Obviously the requirements for councillors is the mandatory training program, and the OLG take the lead on administering those requirements. I think they do a good job with that. It has been a big improvement compared with previous years. So we share information. I think our relationship with OLG could be a little closer on that particular front. We certainly—where we're asked to and where our resources permit it—deliver some sort of training product to councillors. We try to coordinate with other integrity agencies when we do that, and we obviously use our own case studies. We rely on that material. So I think it could be improved a little bit, but it's certainly running quite smoothly, especially compared with the regime that existed before the mandatory training.

**Dr DAVID SALIBA:** Chief Commissioner, just broadening the sector scope, in terms of that, table 15 of the most recent annual report talks about the various sectors and the section 11 reports pertaining to those sectors.

**JOHN HATZISTERGOS:** What page is this?

**Dr DAVID SALIBA:** I don't have the actual report on me; I just know it's table 15.

**JOHN HATZISTERGOS:** Sorry, yes.

**Dr DAVID SALIBA:** We've got health at 208—these are section 11 reports—custodial services, then education, local government at 105 and transport, ports and waterways at 49. Is there any analysis you'd like to add in relation to table 15?

**JOHN HATZISTERGOS:** Table 15?

**Dr DAVID SALIBA:** Yes, that table.

**Mr MARK HODGES:** It's on page 25.

**JOHN HATZISTERGOS:** Generally these are very good reporters. Following Keppel, we revised our guidelines and we published our guidelines and we sent it out to every agency. In fact, that may be a reason why we're getting an increased number of reports since those guidelines have been revised. But the definition of corrupt conduct in the ICAC Act, which triggers a section 11 obligation, doesn't have to be serious corrupt conduct. Any corrupt conduct has to be reported if a section 11 obligation arises. NSW Health is an extremely good reporter. It doesn't matter how small or big it is, they will report. Custodial Services is similar. Local Government is variable. It is a big sector and there is a big level of interaction, but it's variable according to, obviously, the councils. Some are very good and some are not as good, so work has to be done there.

**Dr DAVID SALIBA:** Just following on from that, are there any specific strategies in terms of the corruption prevention sphere to target these sectors to address some of the concerns?

**JOHN HATZISTERGOS:** I'm not quite sure what—

**Dr DAVID SALIBA:** Are there any specific corruption prevention targeting strategies in terms of education and the other measures you're implementing?

**LEWIS RANGOTT:** Yes. Among other things, we've just recently restarted our outreach program, which has been on hold during COVID. So that is where we put boots on the ground in a regional area and talk about reporting and have face-to-face discussions with agencies and remind them of their reporting obligations. As the Chief mentioned, we've reissued the section 11 reporting guidance, which was published and sent to all agencies. Some of these big reporters that you've set out there in that table 15—we try to have, wherever possible, regular, bilateral catch-ups with key agencies. For instance, I catch up from time to time with peers at Corrective Services and Education and Transport—some of those things. So the big agencies—where we can, we try to have an abiding relationship with them.

**Dr DAVID SALIBA:** Following on from that, I really want to commend the Commission for their work in the prevention sphere. I have looked at the corruption prevention division's current Manning state at 15.58 FTE staff. Is there any proposition for the future state in terms of increased staff to help continue on the good work that you are doing there?

**JOHN HATZISTERGOS:** We have just increased the staff, I think, in this budget.

**LEWIS RANGOTT:** There is, yes. In the financial year reported in that report, we had funding for an extra trainer and I think the Commissioners have targeted our training and education function for extra resourcing. So there's an extra one there and then, in the latest increase awarded, I have obtained funding for two extras. Not that long ago I had one trainer. I am going to boost the team up to potentially four, which is pleasing.

**Dr DAVID SALIBA:** Awesome. I have read through chapter 4 and I saw the deliverables and the increased tempo in terms of presentations and engagements. Resources permitting, what activities would you like to see done in the future?

**LEWIS RANGOTT:** Traditionally we have had very good face-to-face training workshops. That's been our strength for many years. We wanted to push into some of the more digital broadcasted products. The Chief mentioned that YouTube channel, so that's a way we can get messages out in more of a broadcast than a narrowcast function. I think we can get better in that particular area and also, again, where resources permit, more of a train the trainer model or do-it-yourself thing. We can't cover the whole half a million-plus public officials in the state, but if we can put more tools in their hands where they can assist themselves, I think I'd like to get into that area more strongly as well.

**JOHN HATZISTERGOS:** We should just indicate that next year we will be doing three outreaches. We did one outreach this year in Newcastle-Central Coast. We are currently planning an outreach for the Riverina, which will be held in the first part of next year, and we'll do an outreach in Western Sydney and another outreach in a rural location. So we'll be doing three outreaches. We normally do two, but next year we're not hosting the Australian conference, which will be held in Darwin, so that gives us additional capacity to do an additional outreach to try and get some of these messages through. And local government is a key component of our outreach programs.

**The CHAIR:** Before I pass to Mr Hodges, I want to follow up a question on the education and prevention theme. What's been your experience in respect of investigations where people have engaged in questionable conduct? How much of that has to do with lack of knowledge of the rules and how much has it been a deliberate flouting of the rules or recklessness? It goes to the theme around the importance of prevention as opposed to the importance of the investigation—this preventative drive—and where the weight should be in respect of focus and resourcing.

**JOHN HATZISTERGOS:** We take a risk-based approach, so we look at where the risk is highest and we devote a lot of our resources in those areas. This is the reason why we are putting so much of our resources into this place and members of Parliament, because this is an area of high risk. You have a range of people coming in from different vocations with different ethical boundaries to a place where there are very high expectations, high accountabilities and significant responsibilities that can impact on the public, and they need to understand what the constraints are. It's not unconstrained, exercising public power. So that's very important. And it's the same with other organisations. We look at where the risks are. We have done an analysis in relation to local government to identify risk areas where we need to concentrate our activities, bearing in mind that local government itself is very diverse. You've got some councils which have a huge amount of development and huge amount of regulatory responsibility and others much less so.

**The CHAIR:** Your resources are always limited. I think I saw a statistic—you only really are able to investigate 1 per cent of the inquiries that you receive. The rest is delegated or passed on to other agencies to

follow up, so it's a joint approach. How effective do you think that is? Every time there is serious and systemic corruption, are you obliged to investigate that, or do you have to prioritise, given available resources?

**JOHN HATZISTERGOS:** Our Act requires us to provide an emphasis on serious corruption conduct or systemic corrupt conduct. We have significant powers, and obviously those powers need to be reserved for appropriate cases. There are a lot of other things that happen in the public sector which don't require the intensive level of investigation that the Commission would undertake in one of its own investigations. So that's where we put our emphasis. It doesn't mean that we can't take on an additional serious or systemic corrupt case if it arises. We will take it on. But we are trying to build up a public sector which is corruption resistant, and that involves agencies also taking on responsibilities. That's why I mentioned earlier on about our corruption prevention publication on looking at corruption maturity in agencies and how resistant they are to corruption. We think that's very important in building up the skill set of agencies themselves to identify corrupt conduct and to deal with it—and with our oversight.

**The CHAIR:** Do you feel you have enough follow-up capability or you have the systems and processes in place so when you rely on another agency to follow up something that you may not investigate yourself—

**JOHN HATZISTERGOS:** We generally get very good cooperation, generally speaking. We do have a provision in our Act which enables the public sector to respond within six months of our recommendations as to their plan of action. That's been there for some time and, generally speaking, agencies do respond very well. Where we're asking for policy changes that involve the Government or the Parliament, that obligation does not extend, obviously, to those agencies—to either the Government or to the Parliament. We have asked that that be legislated for in a change. We made that recommendation in our Operation Keppel report. We haven't got a response. We've said that it should be the Premier on behalf of the government and the Presiding Officers on behalf of the Parliament. We haven't, at this point, got a response to that request. We did raise it with your predecessors and, in their final report, they didn't address it, unfortunately. We have re-emphasised that in Keppel and we're waiting to hear a response. We do think that needs to be followed up.

**The CHAIR:** Yes. Thank you.

**JOHN HATZISTERGOS:** And we will publish the outcomes. Our strategic plan measures, as one of our performance measures, the implementation of our recommendations. So we will publish our recommendations, and we will also publish the extent to which they have been implemented, so that we are accountable.

**The CHAIR:** Yes. Thank you. I am just trying to get how effectively the field is being covered, whether the balance is right and, where there are gaps and things are falling through the cracks or things are getting lost, that there is action and there is a recommendation and that it kind of gets lost. It often happens.

**JOHN HATZISTERGOS:** We don't lose them. We document them and we expect them to be followed through. As I said, there is a timeline in the Act for agencies, but it doesn't apply to the government and it doesn't apply to the Parliament. We want that addressed and we're waiting to receive a response. I don't want it to be thought that we haven't had cooperation from governments in the past. Generally we do get cooperation. It may take a bit longer than six months, but we do eventually get a response back, but we would like it to be legislated.

**Mr TRI VO:** Do you know the reason for the health sector's increase in the section 11 reports received for 2022 and 2023?

**Dr DAVID SALIBA:** I think it is the same page as table 15.

**JOHN HATZISTERGOS:** Oh, yes. It has gone up by 24 per cent. No, I can't. I can say to you that they are generally a very good reporter. The smallest thing in NSW Health will get a report.

**Mr TRI VO:** Do you think that might be related to COVID?

**JOHN HATZISTERGOS:** It's possible. I mean, there's a range of things but they are an extremely good reporter. They will report the slightest thing. Someone looking at a document that they shouldn't have looked at—that'll get reported. They are an extremely good reporter. I'm not critical of NSW Health at all.

**Dr DAVID SALIBA:** Something relevant to that would probably be table 12, Chief Commissioner. It shows complaints from people in 2022 regarding the types of conduct.

**JOHN HATZISTERGOS:** What page is this, sorry?

**Mr TRI VO:** It is 22.

**Dr DAVID SALIBA:** So you've got partiality, improper use of records and information, improper use or acquisition of funds or resources et cetera. Is there any analysis that you would like to add there maybe, to help?

**JOHN HATZISTERGOS:** Of?

**Dr DAVID SALIBA:** Of the types of conduct—corrupt conduct.

**JOHN HATZISTERGOS:** These are complaints. They're not necessarily substantiated complaints but they are complaints that people make. I should just indicate to you that a lot of the complaints that come to the Commission are anonymous, which makes it very difficult for us to be able to follow it through. Now, it doesn't mean we ignore it because sometimes what happens is that we get an anonymous complaint and we may get another anonymous complaint and the puzzle starts getting better identified. But it is a large proportion of what we get and they are allegations and they may not be substantiated in the end.

**Dr DAVID SALIBA:** Partiality really strikes out. I remember in one of the prevention discussions or the sessions that we had before in terms of the MPs, there was mention of partiality. Would you mind elaborating on that, just for the sake of the public good?

**JOHN HATZISTERGOS:** A large part of that has to do with recruitment, I think. A large part of it is recruitment—people in agencies who feel that someone got a position that they weren't entitled to—making allegations. We can carry out assessment inquiries—and we usually do if we feel it's got any substance—which means writing to the agency and asking for information to help us decide whether something further needs to be done in it. If it doesn't involve a systemic issue and we think there is some substance in it, we may refer it back to the agency to investigate under sections 53 and 54. If we don't think there's anything in it we may terminate it but if it's a stand-out one case of partiality, it's unlikely that we would do it. It may be that, over a period of time, we get further information about a particular individual or a particular agency which identifies there's a problem; we may end up getting involved in it if it becomes systemic like that. Does that answer your question?

**Dr DAVID SALIBA:** Yes, definitely.

**Mr MARK HODGES:** I just go back to the issue of local government, specifically, to start with, with respect to—you referred to meetings with foreign nationals or lobbyists or developers. Have you looked at the question of the requirements for councillors or lobbyists to actually disclose the existence of those meetings prior to voting upon any resolution, or even prior to discussions with their fellow councillors?

**JOHN HATZISTERGOS:** We've made some recommendation, I think, in our latest reports.

**LEWIS RANGOTT:** Yes. Some of the findings in those reports were that they involved corrupt payments—corrupt transactions—so it's highly unlikely that a corrupt person will disclose their corrupt payments in a register. Putting that to one side, for many years the requirement to disclose non-pecuniary interests—generally, relationships—has been there, so if someone is determined to conceal that, they will. But certainly those model code requirements have been there for a time and they're robust. There are sometimes some grey areas for the councillors but obviously travelling in the company of a developer to an overseas location to attend their wedding would give rise to a non-pecuniary conflict of interest.

One of the other recommendations that we made, I think, in the Operation Galley report—we have a situation where councillors can legitimately receive certain gifts and they can be accepted and kept if they are simply disclosed in the pecuniary interest return. We took the view that if the gift is from a property developer, that might be the thing which would be prohibited, for instance. It's illegal to accept a donation from a developer, but not the type of gift that we've been talking about. Going back to the start of my answer, if someone is determined to conceal these things, they will. They just won't put it on their register and they just won't disclose it.

**Mr MARK HODGES:** I also want to discuss the naming of some of the inquiries. I mean, apart from your own operation, we see inquiries referred to as Canada Bay Council or other councils, or even the Hills Council, which has an effect upon the entire administration rather than the target that might be one or two people. Do you want to make any comments about the reputational damage to the entire administration of a particular council or body, as to how it's named?

**JOHN HATZISTERGOS:** That's the first time I've heard of that complaint. It's very difficult if you have an issue which arises in a particular council to somehow suppress the name of the council itself because I think it would be pretty well known where the individual comes from.

**Mr MARK HODGES:** It may well be pretty well known to those people that are, I guess, legally trained, but there are a lot of—

**JOHN HATZISTERGOS:** Perhaps I could say this to you. You would be familiar with Operation Witney, which involved the former Minister who was the member for Drummoyne, who made approaches to Liberal members of Canada Bay Council. I can assure you that in every education session that I have done where

that case has come up, I have had nothing but praise for the three Liberal councillors who, to their absolute credit and to their great detriment, stood up for the public interest against the most intensive actions of the local member to try to achieve an outcome which the Commission found was not in accordance with the public interest. And I'll do that again with councillors who do the right thing.

**Mr MARK HODGES:** I suppose that's correct in circumstances after the investigation is completed but we see a lot of complaints made, or issues made, where, prior to the completion of your investigation, there's that lag period when the complaint, particularly when it comes out in the public knowledge, affects the entire council until such time as your investigation takes place. We're moving into—

**JOHN HATZISTERGOS:** Look, we can take that on notice and we can do what we can. I mean, one thing I think we could do, particularly—some of these cases we get referred to us by the council itself and I think it's appropriate to acknowledge that. If we're doing an investigation and go public we could make it clear that this came along a referral of the council itself, which may address some of the concern.

**Mr MARK HODGES:** We're moving into a council election cycle in September 2024 and we're likely to see issues of complaints to ICAC coming out there being weaponised. What can you do to assist that?

**JOHN HATZISTERGOS:** I am happy to do what I did in the lead-up to the last state election. Before the last state election, I think we wrote to all of the members and all the political parties warning them about not weaponising the Commission, and I actually made a statement about not weaponising the Commission. To some extent, that was effective. It didn't completely eliminate the weaponisation of the Commission but I think it had its impact. I am happy to do that again if that—

**Mr MARK HODGES:** So you will do that?

**JOHN HATZISTERGOS:** I'm happy to do that again, yes.

**Mr MARK HODGES:** And if someone breaches your request, is there a prohibition on it?

**JOHN HATZISTERGOS:** What we've said in the past is that we may have to clarify the status of our involvement with a public statement if someone tries to weaponise the Commission. That's what we'll probably do. If someone's making a false allegation, that's a different matter. There are potential criminal penalties for that. It's not providing us with any assistance if someone just goes public about a particular allegation because that alerts people to the fact that something untoward may exist. It may result in lines of inquiry not being able to be pursued so it's not assisting us at all. If people have allegations to make and there's some substance to them, they should refer them to us and let us do our work.

**Mr MARK HODGES:** I thank you for that. Does that mean that you would support a prohibition on complaints being made public prior to you making them public?

**JOHN HATZISTERGOS:** What do you mean "a prohibition"?

**Mr MARK HODGES:** Making it a criminal offence for someone to refer to the fact that a complaint has been made to ICAC, prior to you making it public.

**JOHN HATZISTERGOS:** I think that would be very difficult. Sometimes matters get referred to us publicly. You can even have the Parliament passing a resolution in both Houses directing a matter to us. I don't know how you manage that. There is a whole variety of different circumstances making it difficult. Certainly, if someone does it in circumstances which are contrary to the law as it stands, that can be actioned.

**Mr MARK HODGES:** But you say it actually does affect your ability to investigate matters.

**JOHN HATZISTERGOS:** I'm sorry?

**Mr MARK HODGES:** Do you agree that you say it affects your ability to investigate matters when matters become public prior to you making them public?

**JOHN HATZISTERGOS:** It can. I think a prohibition would be problematic. You would have to think through how you are going to do it. Periodically I see members of Parliament getting up and saying, "Have you referred this matter to ICAC?" It's complicated and I don't think it's a straightforward solution. Although I do encourage people, if they want to make a referral to us, to do it appropriately and not publicise it.

**The CHAIR:** This is a good segue into the issue of protection of witness reputation. It has been a theme of significant interest to this Committee. There was the audit by the Inspector this year and a report by a previous ICAC Committee. I wonder if you could give us an update as to where the Commission is in respect of implementing some of those recommendations.

**JOHN HATZISTERGOS:** Are you talking about the witness welfare?

**The CHAIR:** Correct, and specifically the wellbeing management officer. I think in the annual report you said that you would like to do that, subject to funding being available. Has the funding been made available for that wellbeing officer or are you able to accommodate that within your 2023-24 budget ask?

**JOHN HATZISTERGOS:** I should have mentioned that there have been two inspector's reports since we have been appointed as Commissioners. The one you are referring to is the Special Report No. 2023/01 *Audit on the welfare of witnesses and other people involved in the ICAC investigations*. That report correctly identified witness welfare as a concern. It's also something which is part of our strategic plan. I am pleased to advise to the Committee that we have made significant progress in the area. As an interim measure, we made our employee assistance program provider available to certain witnesses at risk.

We put a substantial cohort of staff through mental health first aid training. We have established the witness liaison officer position and we have selected a preferred candidate. We have also selected a provider to provide additional mental health awareness training to our staff and operate a service at which at-risk witnesses can be referred to mental health assistance, including critical incidents. We have also drafted relevant amendments to our operational manual and case management system. That is the progress we have made in relation to that matter. That is the first of the two Inspector's reports.

**The CHAIR:** And the wellbeing officer? That was a specific recommendation.

**JOHN HATZISTERGOS:** That's the welfare officer.

**The CHAIR:** I see. It's a matter of great concern to me. I note that there was a witness who took his own life in 2022. There were two witnesses who took their own lives in two years between 2020 and 2022. Both of those witnesses were members of the Australian Chinese community. In a note that was left by witness C—I think the Inspector referred to this person as witness C—he spoke of the shame that would be brought upon his family. I just urge the Commission to think about these sorts of cultural sensitives. We talk about it in terms of the reputation of witnesses, but there are cultures for whom this is not so much reputation; it's a question of deep shame. It's a question of deep shame to even be named. I think the point is around the cultural sensitivity of the backgrounds of the witnesses and ensuring that that sensitivity is taken into account. Given that, in respect of witness C, less than two years beforehand there was a similar circumstance where another witness from the Australian Chinese community took his own life, presumably under similar circumstance, I think there is a strong case to do our best to make sure that doesn't happen again.

**JOHN HATZISTERGOS:** We are very conscious of it and we are doing what we can.

**The Hon. TANIA MIHAILUK:** Can I just say, Chair, that I lived through that, being on the Committee. I don't think the Commission or any of the staff could have done anything different. It was tragic, undoubtedly, but there is already so much that the Commission has to deal with in relation to this idea that we have to protect witness reputations. I think everything was done right by the Commission and the staff in relation to that. It was tragic, but I don't think anything could have been done to prevent that. I have to be honest with that. I think it's a little bit unfair—I'm not suggesting that you are implying that anyone is at fault, but I have to be very clear about that. The Commission has to do its job and it was investigating corruption. Witnesses are called for a variety of reasons and there is only so much that a Commission can do. That is no different from any court in Australia, really. I don't think we can do more than is expected from the Commission. I have to say this. It was an unusual set of circumstances that led to those two very tragic incidents, but I don't think anything could have been done to have prevented that by the Commission or indeed the staff. I have to be very clear on that.

**The CHAIR:** Ms Mihailuk, I accept that. It's not an attempt to apportion any blame.

**The Hon. TANIA MIHAILUK:** No, I know. I am just making the point.

**The CHAIR:** I am just making sure that we do everything that we can. I don't believe that they are necessarily unusual circumstances, as you say. My point is around that there are particular cultural sensitivities at play here.

**The Hon. TANIA MIHAILUK:** Yes, but we were living through COVID and there were a whole range of other issues at the time that were causing people to have stress. I am just saying that there were a whole lot of issues.

**The CHAIR:** My point is simply that we should aspire to do everything that we can to prevent people from taking their own lives.

**The Hon. TANIA MIHAILUK:** I get it. They can do what they can.

**JOHN HATZISTERGOS:** We are doing what we can, Mr Chairman. I should just indicate that routinely in our investigation reports to our investigations management committee, risk factors are identified in

any investigation. We take those into account in the course of investigating a matter to ensure that we don't lose sight of those issues as we are moving through it. We do have legislative obligations, obviously, and we have procedures in place. We will have the welfare officer. We have done the relevant training. We are anxious to ensure that we do whatever we can to maintain witness welfare. It is important for us also in the course of the investigation because we want to be able to get information from persons who might be quite distressed about circumstances in which they are involved.

**Mr TRI VO:** This is not being critical of the commissioner before or the current one, but this is part of the Inspector's recommendations in her audit of the witness welfare. I think she has done the audit quite well and that is one of the recommendations. Before you mentioned that there have been or there are recommendations published, and also that your implementation will also be published. In terms of this witness welfare, I believe the implementation will also be published as well. Is that right?

**JOHN HATZISTERGOS:** Yes.

**Mr TRI VO:** Because I think it's quite an important thing to note because the Chair has mentioned that in the last two or three years, two witnesses had taken their lives and they came from a certain cultural background. That's why I think we should pay more attention to that, especially when the Inspector made the recommendations and because the powers of the ICAC and the inspectors are very wide and sometimes very intrusive, whereas in the criminal jurisdiction, of course, you are innocent until proven guilty. In a lot of ways ICAC is quite publicised and that is something we just have to bear in mind and be mindful of.

**Mr MICHAEL REGAN:** Commissioner, how does the Commission take adequate measures to protect anonymous witnesses throughout the hearing process, including in the publishing of exhibits and transcripts?

**JOHN HATZISTERGOS:** Anonymous?

**Mr MICHAEL REGAN:** Yes. We notice there is an increase in anonymous complaints as well, so you want to protect anonymous witnesses throughout the hearing process.

**JOHN HATZISTERGOS:** Well, if we don't know who they are, it's difficult to provide protection.

**Mr MICHAEL REGAN:** You mentioned that earlier.

**JOHN HATZISTERGOS:** We may get information from them, but ultimately we need to be able to get information that we can act on. We may, as we go through the process, find out things that an anonymous person has told us which may have some substance, but we're very conscious of ensuring that any person who may be vulnerable in the course of an investigation is protected.

**Mr MICHAEL REGAN:** In what ways?

**JOHN HATZISTERGOS:** Look, it's more a matter for investigations, but there's a variety of things we can do—a variety of ways we can approach the investigation so as not to reveal the identity of a person or persons who we might be suspecting has reported to us. But bear in mind that there are criminal penalties for taking action against an employee because of the fact that they're cooperating with ICAC.

**Mr MICHAEL REGAN:** I guess, as a new MP, without going into specifics, I get people who want to be whistleblowers but don't feel that they're going to be protected accordingly, whether it's from the perspective of their job or in other measures, I guess. Is there any recommendation or things that can help the Committee that we could look at to help strengthen the whistleblower protections because there seems to be a desire to potentially expose some of this but they're just—and it's funny you mention Health because that's one of the ones I was thinking of. They want to do that but they just don't feel like they could be protected.

**JOHN HATZISTERGOS:** Sorry? What did you say?

**Mr MICHAEL REGAN:** Whistleblower protections—in terms of how do we strengthen them, or are there any recommendations you could make to encourage people to come forward with the relevant information?

**JOHN HATZISTERGOS:** We've just got into a new Act at the moment, so we'll need to see how it works. Did you want to add anything?

**BERNADETTE DUBOIS:** Not really. We monitor the risks and if we do have a witness that—anonymous is very difficult because we don't know who they are so we can't necessarily manage it. But if we have witnesses who we believe may be vulnerable, our investigators maintain contact with them and they do speak to them on a regular basis and reassure them. You know, if there are concerns, we refer them to the employee assistance programs, either our own or their own organisation's, and we do monitor it through the investigation management group. When we have the new witness welfare program, then there'll be greater support through that officer, who I believe is starting in the new year.

**LEWIS RANGOTT:** I believe so, yes.

**BERNADETTE DUBOIS:** And that program will then support that particular witness. But it's not a number of witnesses; it's usually a few or a handful.

**Mr MICHAEL REGAN:** Is it a good thing or a bad thing that the anonymous complaints are rising? It was 24 per cent and now it's up to 27 per cent of the complaints.

**JOHN HATZISTERGOS:** Well, we'd prefer to know who the author would be—

**Mr MICHAEL REGAN:** Of course you would.

**JOHN HATZISTERGOS:** —so we can go back to them, if necessary, and get some further information. But in a context where at least this year we've got an increase on the previous year, and it looks as though we're going to have an increase in reporting, it's a good thing that we're getting an increase in reporting, even if it's anonymous.

**The Hon. TANIA MIHAILUK:** You've been doing too much media, John: that's why. Once people know about ICAC, that's it—they'll write to you.

**The CHAIR:** On that, there have been instances in the past when the Commission's media policy has been breached.

**JOHN HATZISTERGOS:** Sorry?

**The CHAIR:** There have been instances in the past when the Commission's media policy has been breached and information about witnesses has been provided.

**JOHN HATZISTERGOS:** Well, the only time I heard of that allegation was recently, I think. There was an issue with Keppel, and I think it was the member for Hornsby. Is that Matt Kean?

**The CHAIR:** The member for Hornsby, yes.

**JOHN HATZISTERGOS:** He made a complaint about us indicating the date that we were going to release the Keppel report and he made a comment that we issued a press statement and it was like announcing a Taylor Swift concert.

**The Hon. TANIA MIHAILUK:** He knows. Matt Kean knows.

**JOHN HATZISTERGOS:** Now, I should just indicate in relation to that complaint that the Commission was getting constant media inquiries as the state election was approaching and there was a lot of speculation as to whether the Commission was compliant with its obligation under section 77 of the ICAC Act to furnish its report as soon as possible after completing its involvement. It was in those circumstances that the Commission issued in its statement, firstly, on 11 January 2023. Since December 2022 we also provided updates to the parliamentary Committee and to the Inspector about our progress in completing the report. When the report was to be released we indicated what date that was going to occur and the reason again was because we were getting constant media inquiries. In order to enable our staff to concentrate on their essential work, we notified the date that the report would be furnished to Parliament after those arrangements had been made. It wasn't unprecedented. We'd done it before where there's been a lot of public interest. I completely reject the statement that we were doing it to try to engender publicity.

**The Hon. TANIA MIHAILUK:** I agree with you.

**JOHN HATZISTERGOS:** We notified the date as soon as we were told by the Presiding Officers when they would be in a position to receive the report and, so far as the media arrangements concerning the presentation of the report, that was something that was arranged by the Parliament. It wasn't something that we asked for.

**The CHAIR:** Has there never been a case when the media have been told in advance when, for instance, a search warrant has been executed?

**JOHN HATZISTERGOS:** Well, that was another allegation that was made in this Parliament. I looked into that issue and I can tell you this: Three cases that I think were identified were, firstly, in relation to Operation Aero where there was a search warrant executed on the New South Wales branch of the Labor Party. I'm informed by our director of strategic capability that the media were present outside the premises following the execution of the warrant and it was suspected that, during the execution of the warrant, an employee directly or indirectly contacted the media. That wasn't contact by the Commission. A second one was at the Central Coast where there were some search warrants on residences of sitting members in the course of Operation Spicer. There was a media presence following the execution at one of the premises but we're not aware of the Commission having been involved in alerting the media to that one. The third one was Operation Hale, where the director of



strategic capability was present himself during the execution of the search warrant and he says that there was no media presence before, during or immediately following the warrant.

I want to assure members that it's not the practice of the Commission to notify media of the execution of search warrants. The fact that others may, during the course of the search warrant, decide to get information and contact the media is something out of our control, but we certainly do not do it. There was a recent report about some search warrants that were executed in another operation that the Commission's been conducting and all I can say is that the media were not present during the execution of those search warrants and the commentary in relation to that matter is incorrect about who was the subject of the search warrants—some of it is incorrect. So we don't do it. I would be very annoyed if it ever happened, I can assure you.

**Mr MARK HODGES:** Can I ask some questions regarding your timelines for completion of preliminary investigations? You refer on page 36 of your report to there being a standard investigation protocol and a complex investigation protocol. Can you inform the Committee what the difference is between your view of what a standard investigation is and what a complex investigation is?

**JOHN HATZISTERGOS:** Yes, that's a fair question. That detail is now published on our website, so you will be able to find the criteria by which we decide whether something is standard or complex. Do you want to add anything?

**BERNADETTE DUBOIS:** Sure. I will go to the complex, probably, first—no, I will stay at the standard. It might only be one public official, one search warrant, maybe a limited number of interviews, limited number of witnesses, no covert activity and probably little or no financial investigation—that's your standard investigation. They are able to be completed at a much quicker pace than something that's more complex. Complex is where it's multiple persons of interest, multiple search warrants, a very complex financial investigation—sometimes including trusts—telephone interceptions, and it might also be regional, which complicates the matter. That's probably the majority of them. It's just, in total, much more complex, and it takes a lot longer. It also usually amounts to a large sum of money, millions of dollars in procurement, and that does complicate it across divisional resources. Whereas sometimes it's just the investigation division can do it, it might be multiple staff involved, computer forensics. That complicates it. That's what a complex investigation is. It just allows more time for that type of investigation to be conducted.

**Mr MARK HODGES:** At the completion of either a standard or a complex investigation—correct me if I am wrong—is that when the Commission makes a decision either to discontinue or for the matter to become a public inquiry or a private inquiry?

**BERNADETTE DUBOIS:** The decision to make a public inquiry is section 31 by the three Commissioners. We report to the investigation management group monthly in relation to our investigations. So if we believe there's nothing further to investigate, we will put a recommendation through that the matter be discontinued, and it's considered by that management group. If it's for a public inquiry, again, that's up to the Commissioners, and we will put forward the evidence that we have to date. Often the case lawyer might put through legal advice as to where we are, and then that's put forward to the Commissioners by the legal department for consideration.

**Mr MARK HODGES:** Do you think you need more funding in relation to the investigation aspect of the Commission's activities?

**JOHN HATZISTERGOS:** At the present time, no.

**Ms KOBI SHETTY:** If I may, there has obviously been a lot of publicity this year following Operation Keppel about time frames. Given the increase in funding, do you expect that that will be improved or are there other aspects that you would like to—

**JOHN HATZISTERGOS:** Thank you for the question. That was actually the subject of another Inspector's report, which I might go to at this moment. That was *Special Report 2023/02*. We've responded to those recommendations which the Inspector has set out. Firstly, we have amended our Operations Manual for the conduct of public inquiries and for investigation reports so that, when we complete a public inquiry, the presiding Commissioner can, amongst other things, impose a page limit on the length of the submissions. The length of submissions in Keppel was extraordinary, and the complexity of them needed to be addressed. So that's one of the things we have done.

The operations procedure manual for investigations has also been amended to address recommendations 2 and 4 by streamlining the membership of the review panel, providing that it should aim to meet no longer than two weeks after receiving a draft report; updating it to reflect our current KPIs to furnish at least 80 per cent of our reports to the Presiding Officers of Parliament, where the public inquiry has been five days or less, within

80 days of the receipt of the final submissions, and for a public inquiry of more than five days, 180 days within the receipt of final submissions.

Recommendation 3 has also been addressed by amending our Operations Manual for the preparation of reports by detailing efficiency practices such as providing the report in a complete state as much as possible for editing, and also taking into account variables that can impact on the timeframes for preparing reports—for example, the length, the complexity, the impact of tables and other graphic elements on the layout. With respect to recommendation 5, the Commission has changed its KPIs for the completion of section 74 reports, as set out above, but these times are consistent with those which were proposed by the Commission in its July 2022 submission to this Committee.

So, given the relatively recent adoption of those times, it's not proposed to revisit those times at this point in time, but we will monitor them. One of the concerns I have with the times is they are structured on whether it's five days or less or more than five days. If it's more than five days, that can be quite a number of days, or it can be six or seven days. You also have to bear in mind that around 95 per cent of the evidence that we have in these matters is now data. It's not actually the length of oral evidence before the Commission. So that's not reflected in our KPI, which basically looks at the time that the public inquiry is taking place. But we will monitor these issues and, if necessary, we will need to adjust them. We will come back to you and let you know in what way.

At the present time, we've got budget increases which have enabled us to have two additional lawyers in our legal division. That means that we're no longer—certainly, with the operations moving forward, we can allocate additional support for the writing and the finalisation of the report. So that will obviously help. I think our media and communications team has also had some supplementation. We've got some temporary support at the current moment. You've got to bear in mind that we have had five reports in this last year left by our predecessors, and all five were at a stage where the three Commissioners had to look over all of them before being able to furnish them to Parliament. That's the way it works. That has required a considerable effort, along with all the other activities that we have had to do—all the other investigative work, the corruption prevention work that has had to be done. We operate with legal support, obviously, but our legal division is 12 lawyers. Robodebt had 30 staff, and yet they are only doing one matter. So bear those things in mind.

**Ms KOBI SHETTY:** My question was more around whether you think the increased funding will help to improve the timeliness.

**JOHN HATZISTERGOS:** It certainly will help.

**Ms KOBI SHETTY:** Yes.

**JOHN HATZISTERGOS:** It certainly will help—not only that, but also the change in processes.

**Mr MARK HODGES:** Just in relation to the delay, you raised this in your earlier address regarding the delay in getting briefs to the DPP. I can see that the last one still waiting for a brief was a matter of October 2021. I am looking at page 129. That's the investigation of software systems, Western Sydney TAFE. It's now two years and two months, effectively, from that.

**JOHN HATZISTERGOS:** So this is—

**Mr MARK HODGES:** I'm just trying to work out the length of the delay that it's taking—there is no criticism here; I'm just trying to work out how we can improve it—of the finalisation of a brief to the DPP at the completion of your reports.

**JOHN HATZISTERGOS:** I have that here somewhere.

**Mr MARK HODGES:** Page 129 seems to be the last—

**JOHN HATZISTERGOS:** Yes, just give me one moment, please. I'm told that's expected to be submitted to the ODPP by the end of the year.

**Mr MARK HODGES:** That's two years. That's obviously a result of lack of funding. Is there something being done to try to address that and get the briefs to the DPP much quicker?

**JOHN HATZISTERGOS:** The most important initiative we've taken to get briefs to the DPP quicker is to have dedicated brief officers, which we have now had funded in the last budget—permanent brief officers. Previously, what we were doing was, whoever was investigating the matter would have to do that alongside their investigative work—work on the brief preparation—and then submit it to legal. Now we have got some dedicated people who are just preparing briefs. The aim is to try to get things out as soon as we can, bearing in mind that some of these investigations are very complex and we need to provide admissible evidence to the DPP. In some instances, I have to say, we don't get cooperation. Witnesses who may be compelled to come to ICAC to give

evidence can't be forced to give statements, and that complicates the situation. We have one investigation—not this one—where the principal witness in the case, who was compelled and gave evidence before the ICAC, is not cooperating. That makes it much more difficult for us. That's why sometimes these timelines are longer than we would like.

**Mr MARK HODGES:** The preparation of a brief, correct me if I'm wrong, doesn't involve re-interviewing witnesses, does it? It's just basically going through—

**JOHN HATZISTERGOS:** It can require getting statements of the witnesses.

**Mr MARK HODGES:** Haven't the statements already been given as part of the—

**JOHN HATZISTERGOS:** Not always. If a person has been forced to come to the Commission to give evidence, that evidence is usually subject to protection under section 38. Afterwards, we make a recommendation. And then if the witness won't come forward voluntarily to provide a statement, we may have to prepare our own statement as to what we think the witness would say if the witness was called in a trial court, and a decision has to be made as to whether to pursue that matter or not.

**Mr MARK HODGES:** So it's not just a matter of going through your own records and extracting—

**JOHN HATZISTERGOS:** No.

**Mr MARK HODGES:** That explains it a bit more.

**Mrs WENDY TUCKERMAN:** And, clearly, the different burden of proof would impact how that statement was developed as well.

**JOHN HATZISTERGOS:** We ask the Director of Public Prosecutions to give us advice. If they say that there's a case, sometimes they will come back with requisitions as to information that they want us to get, and we will work on getting that material together for them.

**The Hon. Dr SARAH KAINE:** The Chief Commissioner spoke in his opening statement, and we've referred to it several times, about the increase in staff in various areas. I think it might be helpful—and it can be on notice if that's better—if we could get a list. I think you offered it—

**JOHN HATZISTERGOS:** Yes, I can offer you a list of the 17 positions for the last—

**The Hon. Dr SARAH KAINE:** That'd be helpful. It just means that when we're talking about what additional resources, where they're needed, what's happening and what the changes might be in timings, it would give us a better sense of where those resources have gone. Thank you very much.

**JOHN HATZISTERGOS:** We can provide that information to you. I should indicate that we have 128 staff at the moment. Once all of the positions are filled, with the budget supplementation we've had, we'll go to 158, which is a significant increase in our staffing.

**The Hon. Dr SARAH KAINE:** Thank you for that. It'd just be interesting for us to see where that's—

**JOHN HATZISTERGOS:** Yes. We can provide that information to you.

**The Hon. TANIA MIHAILUK:** In the past, I know that some of the staff and, indeed, the Commissioners themselves have been subjected to various intimidation and threats and so forth. I wanted to know how that was going, whether there are records kept—even phone calls where people might have abusive people on the other end—and the support that is given to staff in managing this. I know there would possibly be letters, because sometimes we receive these letters as well. I appreciate that the Commission might be quite accustomed to this. Are there staff that are impacted by that?

**JOHN HATZISTERGOS:** Are you talking about abuse to our staff?

**The Hon. TANIA MIHAILUK:** Yes, the staff that might be subjected to either outside witnesses or people ringing the ICAC and threatening staff, or writing in. I know there have been issues with that in the past. Is that now not to the same degree? Is it being managed? Are staff being supported if they are feeling that they're being subjected to any intimidation and harassment in conducting their work?

**DARRIN MOY:** That is a very good and welcome question. Yes, we have. Through various managers, but also more generally, we are rolling out training that we call resilience training. Resilience doesn't mean that you just have to put up with whatever comes to you. It offers everyone in the organisation a range of tools and principles, if you like, to deal with people who are coming to us who are also under pretty significant stress or have an agenda, and try to encourage our colleagues not to take that personally but to deal with it in a way that

makes sense for what the approach is—and how to handle that—and embed into the culture a real sense of kindness towards each person in the organisation.

That's something we've just started. We've almost delivered that to 50 per cent of the organisation. That will continue. I lead that. It's a program that I developed when I was at the Federal courts, which have a similar experience with dealing with people who are going through pretty significant life issues and present themselves in a way that perhaps isn't them—but even if it is them, it's not always easy to deal with—and trying to ensure that the impact they have on us is reduced as much as possible. But it's an important question.

**The Hon. TANIA MIHAILUK:** Is it ever a reason why staff might leave ICAC? Has it ever been brought up in any exit interviews?

**DARRIN MOY:** I'm not aware of that being the case. Michelle, are you aware of that being an issue?

**The Hon. TANIA MIHAILUK:** I'm not sure if you keep those types of records.

**MICHELLE WARD:** No, I haven't heard that.

**DARRIN MOY:** It's certainly something that has had an impact on the enjoyment that people have in the workplace. But I think there is a sense now—and if you looked at our people matter survey, burnout was a significant worrying element of that. No doubt this contributes to that sense of burnout. That's why we're addressing this very authentically and carefully and making sure that everyone knows that this is something that's very important to the Chief Commissioner, the Commissioners, myself and all of my colleagues sitting around this table. We're all active in this space.

**The Hon. TANIA MIHAILUK:** It's important for us, as a Committee, to hear that too. I'm pleased to hear that.

**DARRIN MOY:** And people are very aware of the importance of the work they do. That helps. When people know why they turn up, it's a lot easier to deal with some of the impacts that the difficult things we have to do have on them. It is being aware of that and monitoring it as well as we possibly can. We're also using an organisation called Neural Networks, which the NSW Public Service Commission recommended. That's helping us improve the way in which we lead and manage our colleagues. Part of that is understanding the impact that we have on each other and on other people. That fits into the witness welfare approach as well.

**Dr DAVID SALIBA:** In terms of burnout and managing burnout, is there any consideration, in terms of bolstering the investigative capability of ICAC, of employing strategies to boost surge capacity—such as secondees from other law enforcement agencies, computer forensics and the like—to help with investigations or, perhaps, a reserve component, similar to the Australian Federal Police, where former employees are on a list and they can come and assist in terms of brief developments et cetera?

**BERNADETTE DUBOIS:** We do have 1.5 FTE funding for workflow. We did try a pool of investigators, and we have advertised a couple of times for contractors, to get a pool. Unfortunately we drained the pool pretty quickly in terms of contractors. The depth of it is not that deep. We find that people with the appropriate experience prefer long-term contracts or long-term employment. Six months for them is not—so we tend to use the 1.5 to bring on a full-term contractor for a year. We do it that way. We have had secondments from various agencies, including Fair Trading and some other organisations. But it's quite often hard to get short-term contractors. And, in fact, it's hard to get investigators sometimes when we do go to recruit. But, yes, we do have the funding for that, in short.

**The CHAIR:** You mentioned your People Matter survey. Are you able to share your engagement scores?

**JOHN HATZISTERGOS:** We actually released something in our annual report, so you can read it in there.

**Mr TRI VO:** Are you satisfied that your powers, as provided by the ICAC Act, are adequate for fulfilling the functions of your office?

**JOHN HATZISTERGOS:** We've recommended some changes, and I've referred you to them already, particularly the issue in relation to reporting by the Parliament and by the Premier. We've made other recommendations. At the moment, the Parliament is not a reportable authority, so it doesn't have a section 11 obligation like other agencies. We've asked for that to be addressed. We have also addressed, at least for the time being, the issue of access to potentially unlawfully acquired evidence, contrary to the surveillance Act. We at this stage have a regulation which enables us to operate for a period of two years.

**Mr TRI VO:** That's up to 2025.

**JOHN HATZISTERGOS:** We would like, however, a more ongoing permit, should this situation arise in the future, and I understand that there may be an inquiry looking at that issue by a parliamentary committee—I'm not sure whether it's this one or another one—before the expiration of the two years. We would like that as well. I'm not sure if we've asked for anything else. I think that's the summary of what we've asked for. I should just indicate that your predecessors did advise me about a review of the ICAC Act, at the last meeting that we had with them prior to the election. At that stage, it was eight years since the last review, and this year it's now nine years. So at some point, I would anticipate, there'd be a review of the Act done, as there has been on 10-year cycles in the past. It may be that there will be other issues that will be thrown up at that time.

**The CHAIR:** Perhaps on that point and noting that it's a new panel of Commissioners—touched on that earlier. Would you like to comment on your experience with the handover? There has been discussion in the past about staggered commissioner terms, just so that some corporate knowledge is transferred. Would you like to comment at all about your experience in the transition and whether you think staggered terms would be a good idea?

**JOHN HATZISTERGOS:** All three of us came together at the same time. Sorry, Commissioner Lakatos came slightly after myself and Commissioner Murrell. I think it's fair to say that our interaction with our predecessors was minimal. I'm not suggesting that we didn't have any interaction, but it was minimal. The Chief Commissioner wasn't available because he went overseas. We did have some interaction with Commissioner Rushton, who was appointed as an Assistant Commissioner for one of our investigations, and also Assistant Commissioner McColl, who was doing Keppel. But it wasn't a situation where we had periods where we were working together, us three and our predecessors. That didn't occur. So it was a bit of a learning curve, but I must say the staff were very supportive and very helpful and made our job much easier than it otherwise would've been.

**The CHAIR:** Thank you. I'm just conscious of time. We're approaching 11 o'clock. Are there any other questions from the Committee? I wonder, Commissioner, if there are any from the witnesses, if there's anything else anybody would like to talk to?

**PAUL LAKATOS:** Can I say something? I've been the silent voice here, which is the way I do my best work, normally. The witness welfare issue, of course, has been raised by the Chair and others, as well as the Inspector. We have these investigation management group meetings regularly. In terms of those witnesses identified, who have vulnerabilities, we consider at every stage what their circumstances are and how we can alleviate it. I do appreciate that different cultural backgrounds are affected differently by inquiries such as ours, and we also appreciate that, whether you are, as it were, the target or think you're the target, the stress involved in being involved with us, for many people, is huge. Our role is not to exact punishment along the way but to do our statutory functions. So in each of those steps, we, I think, pay very careful attention to what we perceive are the vulnerabilities of various witnesses and so on.

Perhaps the only other thing I will say is that, on the transition of the new three Commissioners to this body a year or so ago, as John rightly said, it was a steep learning curve. I happen to say—this is a personal view—that the three-commissioner model, which was the subject of some debate previously, in our case has worked particularly well. The three Commissioners had a joint history in some aspects but different backgrounds in others. When it comes to debates as to what can and should occur to discharge our statutory functions, there are robust conversations. Sometimes we agree to disagree, but I think it does protect against a certain degree of groupthink, which may otherwise be involved. So my experience here has been, one, because of the staff that we have, who are extremely capable, experienced and well informed, and, two, as a result of the two other commissioners with whom I deal: Chief Commissioner and Commissioner Murrell. My perception at the moment is it's working as well we can make it work. That's all I wish to say.

**JOHN HATZISTERGOS:** Chair, I just wanted to say something to you which may be of interest to the Committee, following on from Commissioner Lakatos, and that is something that hasn't perhaps been touched on by members of the Committee but is very important to us, and that is our transparency and our accountability. You may not be aware, but when we are carrying out investigations and we want a search warrant, we have to go to the Local Court to get it. There are circumstances where we don't do that, but routinely we go to the Local Court to get a search warrant. If we are seeking a telephone intercept, we go to the Administrative Appeals Tribunal member to get that. A controlled operation I can authorise, but I'm oversighted by the Inspector of the LECC. With surveillance warrants, we have to go to the Supreme Court.

In relation to our holdings, our telecommunications intercepts, we are oversighted by the Commonwealth Ombudsman and, for surveillance, by the Inspector of the LECC. We are a very accountable agency, but we are trying to improve and increase our accountability. One of the things you will find on our website is our memorandums of understanding with other agencies. One of the ones that we have made public is our MOU with the Inspector. You will see that on the website. That details the information that we provide to the Inspector,

routinely, on a regular basis, including the minutes of our meetings where we discuss various matters. We are proactive in our communications with the inspector, as we are with you, as much as we can be.

So we do regard our accountability and our transparency as very important to us. If we get a complaint in the organisation about one of our staff, we supply it to the Inspector proactively. I just want to stress that because we are often described as an unaccountable body that does whatever we think. It's not quite like that. In fact, it's nothing like that. We understand that we have significant responsibilities and significant powers, but we try to make ourselves as accountable as possible. Part of that is to you people as the oversight Committee.

**Mrs WENDY TUCKERMAN:** Just on that, in regard to the recently tabled Surveillance Devices Amendment (ICAC) Regulation, does the use of unlawfully obtained surveillance device recordings present any challenges, particularly in relation to the Director of Public Prosecutions' evidentiary threshold?

**JOHN HATZISTERGOS:** I don't think so but, in terms of challenges, we have published on our website our protocol for dealing with that information. We've also supplied it in advance to your Committee, so you have the details of how we are going to manage that information. At this point, I'm not in a position to be able to detail to you where that may end, but we certainly don't have any concerns at this point in time along the lines that you've suggested. The other thing we will do, to satisfy members of Parliament, is we will in our annual report provide some statistical information about operations where we use those powers. I think there was a concern that we may use this in other investigations rather than the one that precipitated it. We will disclose that in our annual report as to the number of investigations that these powers are being used for so that we can be accountable in that respect. We will do that voluntarily.

**Mrs WENDY TUCKERMAN:** I think that's very important.

**Ms KOBI SHETTY:** I just note that there have been some recent changes to funding models to increase agency independence. Is that welcome, and is there anything further that you would like to see on that front?

**JOHN HATZISTERGOS:** I'll just correct one thing. The independent funding model is something that was promised by the new Government. We haven't gone down that model yet. We are still under the model that involved a separate agency within Treasury making recommendations to the ERC, I think it is, with us being able to comment on it. It's largely the model that had been put in place by the previous Government. I have no concerns about our budget at this point in time. I want to make that quite clear. It doesn't mean that we may not have other funding requirements moving forward. But at this point in time, we are satisfied with the response we have had to our requests. They have been met in full.

I'm grateful to both this Government and the previous Government for that. It will make a significant difference to where we are. We will provide you with the details of the additional positions which we've managed to recruit, and where we are in that process, but it will make a big difference in our work moving forward. We are grateful to this Committee for the support they gave along that route. As to where we go with the independent funding model, I'm not quite sure what the new Government has in mind. They haven't told us at this point in time.

**The Hon. TANIA MIHAILUK:** They probably don't know themselves.

**JOHN HATZISTERGOS:** I'll wait to hear from them, but I don't have a sense of grievance over our current situation in terms of the budget. Thank you for asking.

**The CHAIR:** If there are no other questions, I think that concludes the evidence for today. I thank all the witnesses for appearing today, for giving evidence and for your really important work here in New South Wales. The Committee may also send you some further questions in writing. Your reply to those questions will form part of your evidence and may be made public. Would you be happy to provide a written reply to any further questions?

**JOHN HATZISTERGOS:** Yes.

**Mr TRI VO:** Sorry, Chair, is there a time line for that? I think there was a recommendation that, if you have written questions, you have to do it by certain dates.

**The CHAIR:** Yes, that's part of the resolution that we passed earlier.

**JOHN HATZISTERGOS:** Just bear in mind that there is the compulsory shutdown.

**PAUL LAKATOS:** The Christmas break.

**JOHN HATZISTERGOS:** Yes, for two weeks.

**The Hon. TANIA MIHAILUK:** I don't think there will be any major questions coming to the Chief Commissioner.

**JOHN HATZISTERGOS:** Anyway, if you get them to us ASAP, we will make sure we get them to you before Christmas.

**Mr MARK HODGES:** Enjoy your Christmas, and happy Christmas.

**JOHN HATZISTERGOS:** Thank you for your assistance.

**The CHAIR:** That concludes our public hearing for today. I thank all the witnesses who have appeared before the Committee. I thank Committee members, Committee staff, the broadcast team and Hansard for their assistance in the conduct of today's hearing. Merry Christmas, everyone.

**(The witnesses withdrew.)**

**The Committee adjourned at 11:05.**