

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 Preston Stanley Room, Parliament House, Sydney, on Thursday 15 February 2024

The Committee met at 14:10.

PRESENT

Mr Jason Li (Chair)

Legislative Council

Legislative Assembly

Mr Mark Hodges (Deputy Chair)
Mr Michael Regan
Ms Kobi Shetty
Mr Tri Vo

PRESENT VIA VIDEOCONFERENCE

The Hon. Dr Sarah Kaine
The Hon. Jacqui Munro

Mrs Wendy Tuckerman
Mrs Sally Quinnell

PRESENT VIA TELECONFERENCE

The Hon. Tania Mihailuk

The CHAIR: Good afternoon, everyone, and welcome to today's public hearing of the Committee on the Independent Commission Against Corruption (ICAC). 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. I am Jason Li, the member for Strathfield and Chair of the Committee on the ICAC. The hearing is being broadcast to the public via the Parliament's website. Before we commence, I acknowledge the Gadigal people of the Eora nation, 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, and extend that respect to other Aboriginal and Torres Strait Islander people who are present today or watching proceedings on the Parliament's website.

Today we will hear from the Inspector of the Independent Commission Against Corruption, Ms Gail Furness, SC, which follows from our first public hearing that was held with representatives of the ICAC in December last year. 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 hearing open.

Ms GAIL FURNESS, SC, Inspector, Office of the Inspector of the Independent Commission Against Corruption, affirmed and examined

The CHAIR: I welcome Ms Gail Furness, and thank her for appearing before us today. Ms Furness, can you please 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?

GAIL FURNESS: I have.

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

GAIL FURNESS: I would, thank you very much, Chair. At the outset I thank the Committee for allowing me to give evidence now, rather than in December, when I don't think anyone would have appreciated my appearance on that occasion, but thank you very much. I also thank you for inviting me today to speak to my two annual reports, the first I authored but dealt with matters before my time, and the second I authored and dealt with matters within my time. I must apologise also—this is my second apology, so early on—because there are a couple of typos in the foreword as to the date, but let me assure you the date is 2023, not 2022.

The highlights from this last year, for me, have been, firstly, the attention that's been given to the time frames for the ICAC to present their reports to Parliament; secondly, the positive response that there has been to my audit on witness welfare. I think the Committee will understand, from the December appearance by the commissioners and others, that they have adopted and have put in place, or are close to finalising putting in place, the response to those recommendations, for which I am grateful. It's remained constant over the last few years that most complaints I receive arise from the Commission deciding not to investigate somebody's complaint to it. Given the numbers, I think, in their annual report, that's not surprising, because they investigate less than one per cent of the complaints that they receive. So, that remains the main issue.

Because I can't merely substitute my view for that of the Commission or, in other words, I don't have a merits review function, I can only consider and investigate a complaint that the Commission didn't investigate, if that decision itself was tainted in some way by misconduct or maladministration. So, it can't just be "I disagree"; there's got to be something fundamentally wrong about how they got there. Fifty-one complaints were made last year, which is an increase of 22 from the previous year—not entirely sure about why. I did some publicity, which may have affected it, and received more Memorandum of Understanding (MOU) complaints from the ICAC. There's some difference between how the commission and I count complaints, but we're working through it and hopefully, by the next annual report, we will be entirely on song.

After decisions not to investigate being the subject matter of complaints to me, the next was reported misuse of information by the ICAC staff, which ranged from sending the wrong email to the wrong address, to downloading material on private USBs. Many of those are set out in the ICAC's annual report. They set out about seven or so of those examples. After that, it was Operation Keppel, which, I am sure you will all remember, was the proceedings into the former Premier and the former member for Wagga Wagga. That took up a lot of time, and a lot of complaints were made about various aspects, including how long it took to finish and report to Parliament. And, as you know, I did a report on that.

Most of our complaints we deal with in about two weeks, because the ICAC is very good in turnaround. Generally speaking, I need the person's complaint to the ICAC and their response back for me to consider whether or not the ICAC's response was tainted in some way. Now, there's also been some changes to legislation, which

I think you're probably aware of too, that I refer to in the report. And, finally, I might say that the relationship that I have with the Commission, particularly the Commissioners, the Chief Commissioner and the Solicitor to the Commission, continues to be a cooperative and effective one.

Mr MARK HODGES: Inspector, at its inquiry to review the aspects of the ICAC Act, this Committee—the former Committee—recommended that the Government consider amending the Act to provide the Inspector of the ICAC with similar powers to those held by the Inspector of the LECC, including the power to require ICAC to respond to the Inspector's recommendations. Changes were then made to section 57 via the ICAC and LECC Legislation Amendment Act, which provided processes for the Inspector to follow up on recommendations made to the Commission. Does your Office have any processes which you've put in place, or which are in place, to consider the implementation of recommendations made to the Commission?

GAIL FURNESS: Yes. I correspond frequently with the Commission and we have in place various time frames in which we respond, if the Commission hasn't responded to us. I'm satisfied that, in respect of the two reports I've referred to—the witness welfare and Operation Keppel reports—they responded in time which was timely and that, save for one recommendation for which they have given an explanation, they have accepted all the recommendations. I think, probably, all are in place except perhaps the welfare officer may not have started yet, but has certainly been selected.

Mr MARK HODGES: So, you're satisfied with the actions that the Commission is taking in response to all of your recommendations, are you?

GAIL FURNESS: In respect of those two reports, certainly.

Mr TRI VO: Quite relevant to what you just said, do you have any processes or ways of monitoring or following up on the implementation of these recommendations? Have you got ways of monitoring it?

GAIL FURNESS: Yes, I do. The draft report goes to the Commission in the first instance, and I happily discuss any recommendations that I propose to make. I did that on this occasion. Then the report is furnished to the Presiding Officers and then published. The Commission responds publicly, and to me, within a short period of time, their views in respect of them. Then, thereafter, they provide me with regular updates.

I also request regular updates. However, there has never been any issue with timeliness in their response to me on any matter, including recommendations. That happened in these two respects and, as I said, they have adopted and pretty much implemented all of them, save for one recommendation for which they gave reasons. That recommendation was that I recommended that they reconsider their key performance indicators for furnishing reports to Parliament because, frankly, I thought they were unrealistic. Their view was that they had reconsidered them recently, and put them in place recently, so they weren't prepared to reconsider them at that time.

Mr TRI VO: I have a follow-up question. All of these recommendations and the implementation of them, they are published on the website, aren't they?

GAIL FURNESS: They are certainly published in their annual report. I don't know about their website, but in their annual report they set out their responses. To this Committee they gave evidence as to those responses, so it is most certainly in the public domain—their responses.

The Hon. JACQUI MUNRO: Thank you, Ms Furness, for coming today. I'm sorry I can't be there in person. I'm feeling a little unwell myself, so I didn't want to inflict that upon anyone else. I have a couple of questions based on the annual reports. The first one is that, in the 2022-23 report, it notes that ICAC sent the Inspector five notifications under the MOU of seven occasions where an officer of the Commission inadvertently released information that should not have been released. I was wondering if you could provide some detail on this, please?

GAIL FURNESS: Certainly. Some of it is provided in the ICAC's own annual report. The examples I can give—there were a number of occasions where people in the assessment section of the ICAC, who deal with incoming complaints by way of mail, email and phone, sent the wrong email to the wrong person, or they sent the wrong attachment to the wrong person—that sort of thing. It has been explained to me in terms of volume as well as the speed with which people do that.

The ICAC has put in place various things to deal with what they describe as inadvertent disclosures—I don't describe them as inadvertent disclosures; they do. There is some mechanism whereby you can turn off an auto response. We all know—we put in two letters and a number of email addresses come up that we use frequently. They have disabled that so that people have to type in the right email address. I think they have taken some other technical steps to stop that happening. So they are of that sort of nature.

The Hon. JACQUI MUNRO: They seem like they could be fairly serious breaches of privacy, in that case.

GAIL FURNESS: That is right. A recent one, which is not for that annual reporting year but for now, is that I have asked them to make sure that they have told everyone who has been, if you like, the victim of one of those disclosures, of the disclosure, and they have provided me with assurance and/or the actual letters. I have made sure that in every case they do that. There are new privacy laws in place, and they are required to report eligible breaches. I have had discussions with them to ensure that that happens in respect of what they describe as inadvertent disclosures. Certainly, the person who might be affected is told, and then there is consideration as to whether the Privacy Commission needs to know as well, because they could be serious privacy breaches. I agree with you.

The Hon. JACQUI MUNRO: Are any of those victims—that you might refer to them as—taking further action as a result of that breach of privacy?

GAIL FURNESS: If I believed it was as a result of a systems error that remained unfixed, yes. If I believed it was not inadvertent, yes. But in each case, I've been satisfied that it was inadvertent, and certainly there was no intention to do it, in any of the cases that I've seen. There has been systems reform in respect of each of those, and/or there's been performance plan-type things in relation to the relevant staff.

The Hon. JACQUI MUNRO: So those people who have been a victim, so called, haven't decided to take further legal action, for example, against ICAC?

GAIL FURNESS: No, certainly not that I'm aware of. In fact, I'm only aware of one person who wanted further information, to satisfy themselves that the damage to them was lessened. As far as I understand, the others accepted the nature of it and the consequences, in their mind, as I understand it, were not significant to take it further. Equally, I might also say that the persons, who got something they shouldn't have got, has been told to and have assured them that they would delete it immediately.

The Hon. JACQUI MUNRO: I also note that, in the previous year's report, there was apparently only one occasion of inadvertent release of information. I'm just wondering if there's anything that you have been able to discover that might be the cause of such an increase.

GAIL FURNESS: Volume is one thing. I think there is more activity in the assessment section. I think that the capacity of technology to work against us has a part to play as well. We all get emails with many people copied into them, and if you push "reply all" as opposed to "reply", many more people get it than you intended to. But I'm satisfied that they are conscious of changing the technology, and now with the obligation to report breaches of privacy, I believe that that will ensure that they are vigilant. I've taken it up with them quite a bit, in discussions as well as correspondence, so I've certainly not just let it lie.

The Hon. JACQUI MUNRO: The applications made under the Government Information (Public Access) Act (GIPA Act), and also the Public Interest Disclosure Act, were listed as zero in both last year's and the year before's reports. Is that normal?

GAIL FURNESS: Look, we're very small. I received 55 complaints. My only source of complaints is the ICAC, no-one else. I can't deal with anything else other than the ICAC quite seriously misconducting itself. So, it's got to be maladministration or misconduct. People might be very unhappy with the ICAC for a whole range of reasons, but it needs to be elevated to misconduct or maladministration. I receive a complaint—as I said before—I ask the ICAC for their response to it, if I haven't already got it, and these two documents are both known to the person complaining to me, because they wrote the complaint and they got the response.

It's not as though I hold large amounts of information that other people might want and can't get their hands on, so I think that's part of it. Public interest disclosures—I can take public interest disclosures against the ICAC. I suspect people go to them first rather than come to me. The Act, as you know, changed as of last year. I can say that this current financial year I've received my first PID, so I'll be reporting on that next year.

The Hon. JACQUI MUNRO: Congratulations.

GAIL FURNESS: I'm not sure about that, but thank you.

The Hon. JACQUI MUNRO: Given that, in the 2021-2022 report, there was a specific section about one of the special reports that was produced in response to Operation Keppel—and it was about the Telecommunications (Interception and Access) Act. It spoke about some recommendations to the ICAC about its interactions with the Department of Foreign Affairs and Trade (DFAT). It did say in that report that the Commission would contact DFAT, as proposed as part of those recommendations. I'm curious about how those recommendations have proceeded. Has there been a process set up with DFAT's approval? And another part of

that question is around whether the national version of our ICAC is going to be responsible as a point of contact, rather than DFAT, for example, or will that affect the process of engaging with federal bodies?

GAIL FURNESS: Firstly, I wasn't Inspector and wasn't responsible for that report, nor for the immediate follow up, but my understanding is certainly that the Commission did engage with DFAT and does have a process in place. They would be best placed to answer detailed questions about that. I have another hat, which is that I'm the Inspector of the National Anti-Corruption Commission (NACC). Leaving that hat on the table beside me, I'm not sure that NACC actually has any oversight of the ICAC, in respect of that legislation, but certainly the Commonwealth Ombudsman oversees both the ICAC and NACC in respect of product, for want of a better word, from telephone intercepts and other things. There is an oversight of the ICAC, quite separate from me, about telephone intercept material.

The Hon. JACQUI MUNRO: In another of the special reports—the 2023/02 one—relating to the time that it took to furnish the report, I was wondering if you made those recommendations around timing with a view to what is achievable? Or was it based on what is ideal?

GAIL FURNESS: The problem I had was that there is no objective standard against which one can judge the writing of a report, so it cannot be said that it should have been done by virtue of some edict in three months, five months or seven months. You had to consider it on its facts, if you like, rather than by objective standard. So, what I sought to do was to break down the component parts. For example, it took six months for the submissions to be exchanged, which is a long time. It then took about eight months for the report to be written. In the middle of that, there were new legal issues that arose. It then took about three months for it to be reviewed internally, and then it took about another three months to go through the proofing layout.

Now, from my point of view—I'm a lawyer and I don't do proofing layout or necessarily reviewing—they seem to me a really long time, just from a commonsense point of view. So I said to them, "You've got to look at this. It seems really long to me." I looked at the submissions and I said, "That seems really long too, so you need to consider, Commissioner, when you're setting the timetable for submissions, what's reasonable." And also look at page limits. It was 500-odd pages. I can't remember the exact amount, but it was a huge number of pages from Counsel Assisting, so obviously the other parties had to respond in kind. So, there were many aspects of that that contributed to the lengthy period. I pulled them apart and, in respect of each, made suggestions and recommendations as to how they should think about rethinking their process to reduce the time. I am not sure if that actually answered your question.

The Hon. JACQUI MUNRO: Well, it's around whether they're achieving—it's hard to judge when they're not producing reports, especially to such a large investigation—and whether they have been responsive to that to the extent that they fulfil your recommendations.

GAIL FURNESS: Well, Operation Hector is the one that they—that is, the current commissioners—have done from the beginning to end, although the end is not yet reached. I know that they reduced the composition of the review panel, so fewer people had their paws on it, which would have reduced the time. They've engaged more layout, proofreading and editing people so as to reduce that period of time. I am not sure how they put it—probably not instruction—but there's a standing item for the Commissioner to consider limiting page numbers and they've changed the operations manual. They've also got more staff. They've got more lawyers who can engage with the report than they had before. So, at each stage that I broke it down into, they have made changes with a view to the whole process being shorter. We will know when Operation Hector lands.

The Hon. JACQUI MUNRO: More broadly, in terms of complaints conflicts, how many complaints have been made about the ICAC since 2014—in that decade?

GAIL FURNESS: That is long before my time. I can't answer that. But, certainly, the material would be available in the annual reports. We can go through the annual reports and tell you about that. I certainly know that, over the last three years, there has been an increase—an increase over each substantive year, and this year being the greatest number. I wrote an article for *Bar News*, which is not widely read but is, certainly, among New South Wales barristers. I think that probably contributed because, frankly, those people who will be most connected with what is happening and most conscious of wrongdoing will be them—so a source, I would have thought, of complaints. But we will take that on notice, and give you the details.

The Hon. JACQUI MUNRO: Perhaps this might have to be taken on notice as well, but I am curious about how many adverse findings an Inspector has made over that time.

GAIL FURNESS: Certainly.

The Hon. JACQUI MUNRO: This relates more specifically to your role as an Inspector—not necessarily just you, but what is the process for inspectors to declare potential conflicts of interest?

GAIL FURNESS: Certainly, I know in my national capacity there is a process. In my state capacity, because I'm independent of pretty well everyone except you, I don't have that direct relationship with, for example, the Attorney General or even the Premier's Department, so I'm not sure that there is a structure in the same way that there perhaps is with parliamentarians. But if I were to experience a conflict, I will tell someone from the Premier's Department. That is my own view of it, rather than it being imposed upon me.

The only possibility that came up—there were two. One was the NACC appointment. The Attorneys-General got together, as did the Premier and the Prime Minister, and each spoke about that appointment. There was another question of an appointment I held at the beginning of this appointment, and the Solicitor General gave advice on it. They are the only times where—I don't think either was a conflict but, nevertheless—there were two interests that needed to be considered.

The Hon. JACQUI MUNRO: So, essentially, because this role is considered to be above everything, there is no formal process for a conflict of interest disclosure at this time.

GAIL FURNESS: Not that I'm aware of, but I'm conscious, obviously, that were there to be two interests that others may perceive, then the Premier's Department would be my first port of call, but it's a good point as to whether there should be a more formal process. Perhaps it could be with you, as the parliamentary Committee—I could tell you. I'm certainly alive to the issue and open to telling anybody, but the obvious port of call would either be Premier's Department or you.

The Hon. JACQUI MUNRO: So, it essentially relies on you as an Inspector to be impartial and up-front as you believe?

GAIL FURNESS: My integrity is at the heart of everything I do, so, yes, it does rely on my integrity.

The CHAIR: There is a structural issue there as well, in the sense that if there was a conflict—say you were looking at a matter that the ICAC had considered, and there was some sort of conflict in the facts there—you couldn't, because of that conflict, actually do it. That would be problematic.

GAIL FURNESS: There is a structural answer to that. There is provision in the Act for Assistant Inspectors. I know, in the case of the current Inspector of the LECC, when there was a previous Inspector who had a conflict, there was an Assistant Inspector appointed to carry out that function. Certainly, there is a structural solution to a conflict, absolutely, and that has been used in the past in relation to a similar Inspector role.

The Hon. JACQUI MUNRO: I was wondering if you are aware of any ICAC internal reviews of its own processes, at the moment?

GAIL FURNESS: At the moment? Of what processes—I'm sorry?

The Hon. JACQUI MUNRO: Any internal processes that need to be reviewed about its own integrity or undertaking of work, really. Obviously you review, but is the ICAC doing any of its own homework, for want of a better term, at the moment?

GAIL FURNESS: Yes, it is. My source of information is partly the annual report. They set out all of their internal governance and their internal reviewing processes. That's available in their annual report. I am an observer to the Audit and Risk Committee that meets quarterly, and I receive all their papers. I also receive all the Executive Management Group papers and all of their Investigation Management Group papers. Without being precise at the moment and nominating each area, I know that there are constantly areas of work of the ICAC under review. I either get—because of all of that material—or I can seek reports of any of those reviews that are relevant to my functions. But their annual report has a large section on governance.

The Hon. JACQUI MUNRO: Do they have any of their own processes for investigating conflicts of interest or declaring conflicts of interest as commissioners?

GAIL FURNESS: As I understand it, they do.

The Hon. JACQUI MUNRO: They do?

GAIL FURNESS: Yes.

The Hon. JACQUI MUNRO: Are you aware of any at the moment?

GAIL FURNESS: Any conflicts?

The Hon. JACQUI MUNRO: Yes.

GAIL FURNESS: Certainly in the papers that I read, from time to time someone over the past year or so has declared a conflict and it has been managed. I'm conscious of that from reading papers, but they certainly

have processes in place for declaring them and then acting upon that declaration, because there are many ways of dealing with conflicts of interest. One is standing aside completely, but there are a whole range of other matters or how you can deal with it. But, yes, they do have. But their annual report sets out all of that.

The Hon. JACQUI MUNRO: So, that includes a very clear process of how to manage different conflicts of interest, which may be real or perceived and require different responses?

The Hon. TANIA MIHAILUK: Point of order: I think, procedurally, these are questions that should have been directed to the Commission, when we had members of the Commission before us, in their public hearing. I'm not sure if the Inspector is actually in a position to be able to respond to this type of line of questioning. I'm not trying to offend Ms Munro. They are fair questions, but they should be better put, I think, to the Commission rather than the Inspector.

The CHAIR: I think the Inspector is capable of determining for herself what she is comfortable answering and what she is not comfortable answering. I note the point of order, but I don't think there is a point of order.

The Hon. JACQUI MUNRO: I am happy to move on. There are two more areas that I was interested in. The first one was around the process of requesting action by NSW Parliament. As I'm sure you're aware, the Commissioners were engaged in requesting particular powers from the Premier or from Cabinet around additional surveillance mechanisms. I'm wondering what your role is, as an oversight body, to requests that are made between commissioners and the Cabinet?

GAIL FURNESS: As I understand it, the Commission engaged with the Premier's Department in respect of seeking a regulation to enable them to, as I understand it, do something that every other anti-corruption agency can do—or, at least, many of them, if not all of them. I was informed by the Chief Commissioner that he proposed to do it and he gave me a copy of his submission. I didn't and I don't consider it my role to intervene in what was largely a political process. He was entitled to put a submission, and then the politics would deal with it. It was entirely in the political realm, it seemed to me, because obviously the regulation had to be made and then could be disallowed. That was my view. He certainly didn't consult me about it, as he didn't need to, but as a matter of courtesy he told me and gave me a copy of it, and I read it. And then if, as indeed it was made, it's not my role to then say to Parliament, effectively, or the subordinate regulation process, that it shouldn't have been made. That's not my role at all.

The Hon. JACQUI MUNRO: I guess it's a question of whether those kinds of correspondence should be made public rather than be subject to, essentially, no transparency in those requests.

GAIL FURNESS: It's not a matter for me.

The Hon. JACQUI MUNRO: Just a final question on that one: The reports on the use of those extra powers, that were provided, will be provided by the Chief Commissioner as he said in the annual reports. He said that that's a voluntary activity that he will do. I'm wondering if you're getting any reports on the use of that additional power, more frequently than 12 months?

GAIL FURNESS: He's not obliged to report to me on that matter at all.

The Hon. JACQUI MUNRO: No, but is he? Because he's obviously demonstrated that he's willing to give you information that he doesn't technically have to, but to ensure that you are a part of the process. I wanted to understand if you were receiving any additional updates on the use of those powers.

GAIL FURNESS: I'm not sure what the subject matter of those updates would be, based on what I understand the power to be. If you can tell me more about what information you think I might, could or should get, I can help you but I'm not sure what information you're suggesting that he convey to me.

The Hon. JACQUI MUNRO: The information that the Chief Commissioner has said that he would put in the annual report, voluntarily, will obviously be a 12-monthly review of the powers. I want to know whether you will get additional updates in the meantime of the use of those powers, given you were provided with some additional information that was not technically required, but could be useful in the transparent undertaking of the powers.

GAIL FURNESS: I still am not sure what information you think he could tell me. Is it numerical, that he has done something on X number of occasions, or is it something more than that?

The Hon. JACQUI MUNRO: It definitely could be; I don't want to be too specific, because he's yet to report on the use of the powers. I'm not sure how he intends to put them in a report. From what I understand, from what's been said, he would explain how often those powers have been used and in what investigations. You haven't received any information of that nature?

GAIL FURNESS: Nor have I sought it.

The Hon. JACQUI MUNRO: That's fine. Thank you for your generosity so far. Regarding the independent funding model, the new government said it would try to set up this independent funding model but it seems like there's not much detail yet. The Chief Commissioner gave evidence to that effect at the end of last year that they haven't been consulted yet. I was just wondering if the NSW Government, the Attorney General or the Premier have consulted you about what an independent funding model might look like?

GAIL FURNESS: No.

The CHAIR: Does anybody else have questions for the inspector? If not, I have a few. The first relates to witness reputations and witness protections. It's an issue that I'm very concerned about. Thank you for your report and the inquiry that you did on that. I note that, literally months after you'd handed down your report, somebody else had taken their life. I note that at least two people who had taken their lives were members of multicultural communities—of the Chinese community. When the Chief Commissioner was in and we held our public inquiry, we raised this point about the need to take into account cultural sensitivities, when it comes to reputations and questions of shame, and how different people from different backgrounds deal with issues of public shame and reputation.

Most of the recommendations in your report on witness reputations had to do with the seeking of psychological support, the training of Commission staff and having avenues available and the Chief Commissioner has written back saying they're going to do more, I hear. I just wonder if you had any reflections on this particular topic. I'd make the final remark that mental health issues—in putting phone numbers for terrific organisations like Beyond Blue et cetera, members of migrant communities in my experience are very unlikely to call those numbers when they seek help. Do you have any reflections on that?

GAIL FURNESS: I was acutely conscious of that during the inquiry. I was aware of the backgrounds of some of those who either took their own lives or were distressed. That was at the forefront of my mind—that there had to be some cultural understanding within that work. I certainly have spoken to the Chief Commissioner and the Commissioners about that. They are conscious of it too, particularly Commissioner Paul Lakatos who, as you may well know, was on the Mental Health Review Tribunal some time ago. That's definitely a feature that needs to be taken into account. In my mind, it was just embedded in the process that you would look at the person who was experiencing the pain, and you would take into account the person, and that whatever response was made took that into account. I didn't see the need to have a separate system, but more that that would be a factor that would be taken into account.

In terms of the numbers, I'm sure that the Commission would welcome any suggestions as to what other connections they should be putting on their material, to enable people from different cultural backgrounds to access it. I am sure that they would be more than happy and they'd welcome it. Certainly, I took advice from a forensic psychologist who worked in this area. That was a matter I discussed with him at some length—as to how that could be acknowledged and part of the solution. They were the numbers he suggested to me, but I completely accept there may well be, and there probably are, other numbers that can be put up or other pieces of information that can be put up. I would put it on my website, as well. If somebody wanted to tell me another range of numbers that would be helpful to people, that would be very positive and beneficial.

The CHAIR: Is there any information or data available about the cultural diversity of staff who work at the ICAC?

GAIL FURNESS: I think it is in their annual report. I think they're required to report on a whole range of things, including—certainly, gender is one of them. I think culture may well be. But all of that relies upon people identifying, as we know. Disability is one too, but not everyone puts up their hand. Their annual report would be your answer to that question, but I think it's yes.

The CHAIR: In reading the report on witness reputations, it struck me that one of the key issues is the discretionary power for the Commissioners to determine when a hearing is a public hearing, and when it's not a public hearing. In particular, when an examination of a witness is done in public and in view of the media, I wonder if you had any comments about how comfortable you were with current arrangements around that. Providing the psychological support and staff training, I think, will be helpful, but I was interested in your views around the scope of those discretionary powers and the ability for any judicial review or other review of those discretionary powers.

GAIL FURNESS: I think it's section 31 that sets out the mandatory considerations for the Commission in deciding whether to hold a public hearing. It includes in the public interest, seriousness of the allegations and I think also something like the seniority of the people involved—impact, that sort of thing. So there are various

considerations that, as I understand, are mandatory. I know that, in each of its reports, the Commission sets out its reasons for why it held a public hearing. That's all public.

I know that my predecessor had a complaint as to why the Operation Keppel second tranche, if I can call it that, was held in public. He wrote a report and concluded that it didn't amount to maladministration, remembering my role is not to say I agree or disagree with what the ICAC says. They have to have done something seriously wrong. They have to have misconducted themselves or engaged in maladministration. He found that the decision to hold a public inquiry was not maladministration, and he gave reasons consistent with, I think, the criteria in the ICAC Act—the importance of it et cetera. The fact that there are statutory requirements in relation to it I think is very positive. The fact that they report on their reasons is very positive.

The final piece of the structure is that they have agreed—decided, perhaps agreed—with a suggestion by me that arose from what happens in Victoria: that they give me their reasons in advance. As a matter of internal governance, they write down the reasons. Presumably, someone puts up some brief to the Chief Commissioner, who agrees, for the reasons set out, to hold a public inquiry. He gives that to me in advance of the public hearing, which would, in theory—I'm not sure about practice, given timing, but certainly in theory—permit me to say something in advance. That's only happened on one occasion, and that was in relation to Operation Hector, and I didn't have anything to say about the reasons. There are, if you like, three structural aspects to the process, each of which independently and together are, in my view, a proper response.

Mr MARK HODGES: Inspector, in relation to the answer you've just given, in respect of the decision of the Commission to hold a public hearing, obviously prior to that there are investigations and sometimes a private or confidential hearing. Have you looked at the issue as to how long it takes the Commission to make a decision—the time lag from when it holds a private or confidential hearing, to the time when it actually decides to hold a public hearing? Is there something where there could be a delay, in that aspect, that could be looked at?

GAIL FURNESS: I'm not sure the word "delay" applies because the compulsory examinations are part of the investigation. It's reasonably commonplace, as far as I understand it, for an investigation to involve a whole range of information, or tools if you like: notices, search warrants, intercepts and the like, and compulsory examinations. They're part of the process. I'm not sure that they are at the end of a process and then there's a time to consider a public inquiry because, as I understand it, the product of a compulsory examination can, if not often, send investigators down all these other paths. So, that's not the end of the investigation.

Mr MARK HODGES: No, I appreciate that. But, obviously, there's a decision process that has to take place by the Commission itself to decide to hold a public hearing. Indeed, you just indicated that they often give you a report when they make that decision to hold a public hearing. What—

GAIL FURNESS: Sorry, let me interrupt to clarify that. They don't give me a report. What they do is they give me a copy of the reasons that have underpinned their decision to hold an inquiry.

Mr MARK HODGES: We haven't seen the reasons, obviously, but do those reasons indicate the whole process that has taken place? My concern is to eliminate the delay, and I don't know how long it takes the Chief Commissioner or the Commissioners to make that final decision to hold a public hearing. Is it months? Six months? Obviously, it took a long time to give the final decision in Operation Keppel. Is this something which takes a long time as well, that particular last phase to hold that public hearing? We don't know. That's why I'm trying to find out.

GAIL FURNESS: I understand that. It's only happened on one occasion, and I can't remember the level of detail as to the investigation which preceded the decision. But I suppose, where I have some difficulty with your question, is that there is an assumption that the compulsory examination is at the end of it, and then nothing happens until the decision. I don't understand that to be the case. As I understand it, the investigation, which could take many different forms and involve many different ways of gathering information, comes to a point in time where the decision-makers say, "Right, we've got enough to go public", and then, presumably, put it up to the Commissioners. I'm not sure about the concept of delay. I think they investigate for as long as it takes to investigate, and when they think they've got enough to go public, they make the call. That's as I understand it.

Mr MARK HODGES: That's the point I'm talking about. They do all that investigation, then it comes to a stage that they have to make the call. My question was a more focused one: From the time that they have completed what they believe to be all of their investigations, is there some sort of delay? Have you ever seen any sort of delay between that period and when they make that call?

GAIL FURNESS: I think it's a question for them, because they know that time frame; I don't know that time frame. But, secondly, it's only happened on one occasion with me and that was Hector. I can't remember the level of detail, other than that I was satisfied there was a sufficient basis to go ahead.

Mr MARK HODGES: Do you also get their reasons, or does the Inspector's office always get the reasons, when they make a decision to go public? Is that something they always have to do, or they just do it as a courtesy?

GAIL FURNESS: As I've said, we came to an arrangement where they would give that to me, and it's only happened once.

Mr MARK HODGES: Should we make a recommendation, do you think, that in each case they make a decision to go public they are required to give the reasons to the Inspector? Would that help you?

GAIL FURNESS: They've already agreed to do it.

Mr MARK HODGES: Agreed informally, though, not formally.

GAIL FURNESS: They've agreed to do it in public. They gave evidence before a committee—maybe not your Committee; maybe the previous Committee—that they would do it. That's sufficient for my purposes. I don't expect that they'll do anything other than as they've publicly said they'll do. As I said, it's only happened once.

The Hon. JACQUI MUNRO: Just to clarify that: I'm wondering, when you get those reasons, if you are not satisfied that they are commensurate with going public, are you then able to say to the Chief Commissioner, "Actually, this doesn't warrant a public hearing," and then stop that process? Is that the idea of getting the reasons early?

GAIL FURNESS: I don't doubt that if I took a different view, I could have a discussion with the Chief Commissioner. Whether that would stop the process is an entirely different matter. I can't tell them what to do. I'm not a Supreme Court judge. I don't do judicial review. I could certainly tell them my view and, no doubt, they'd take it into account and either do something different or not. But it hasn't happened.

The Hon. JACQUI MUNRO: If it was different to what they had determined, would your dissenting reasons make any sort of public showing anywhere?

GAIL FURNESS: I'm not dissenting, because I'm not part of the decision-making structure. They are the decision-making structure. They have agreed to tell me in advance. If—and it's all hypothetical; it hasn't happened—I didn't agree with them, I could tell them I didn't agree with them. Then it would be a matter for them, whether they did whatever they wanted to do. I can't stop them.

The CHAIR: I guess the question was—

GAIL FURNESS: I understand the question is whether I'd make that public.

The CHAIR: Yes.

GAIL FURNESS: I'm not sure. It has not happened; I'm not sure.

The Hon. JACQUI MUNRO: I think that's an interesting thing to consider. Of course it's not happened yet, but if it were to happen, obviously, it would be good to have some confidence, perhaps, that when those reasons were reported publicly, there was also an understanding that as Inspector you had thought that there was a different pathway.

GAIL FURNESS: They report on those reasons in their investigation report and so, again, as a matter of theory, I could ask them to report the fact that I took a different view; whether I do that or not, I don't know. I'd want to think about all the circumstances, because there might be many reasons why I took a different view.

The Hon. JACQUI MUNRO: I think that is an interesting piece of process for the Committee to consider.

GAIL FURNESS: Certainly.

Mr TRI VO: I have a question that's quite relevant to what you're talking about. You said you received one reason before a public hearing, and the previous Committee had agreed to provide reasons for future hearings.

GAIL FURNESS: No, not the Committee. The Chief Commissioner told the previous Committee that he would give that to me.

Mr TRI VO: Does that mean that, for any public hearings in the future, you will receive the reasons for having the public hearings?

GAIL FURNESS: Yes.

Mr TRI VO: You said you received 51 complaints for the year ending 2022-23 and then, previously, 29 complaints for the year ending 2021-22 and 22 complaints for 2020-21. So it has increased, and one of the reasons might be that there was a publication in the *Bar News*.

GAIL FURNESS: I'm probably being very generous to the influence of me and the *Bar News*, but it's a possibility.

Mr TRI VO: Out of all the complaints, you didn't find any findings of misconduct or maladministration by the Commission. How do you communicate that to the public and also the complainants, who may feel like they might have a valid complaint, especially as there have been more complaints in the past two or three years?

GAIL FURNESS: There are a number of aspects to that. How I communicate it is via the public annual report, so it is available on the website. In terms of the complainant, I tell them why and I give them reasons. As most of them are about a decision not to investigate, it's fairly plain that the Commission makes that decision 99 per cent of times, because it investigates 1 per cent. In order for that decision to come within my ambit, they have to have miscondacted themselves. They have to have acted corruptly. They have to have had some private interest in not investigating it. They have to have misused public information. They have to have done something like that.

Decision-making is by an assessment panel that represents all of the Commissioners and some of the executive. So you can imagine that, looking at it objectively, for the Commission to have acted corruptly in deciding not to investigate is going to be very rare, because there are so many people involved, and they take on so little work. Because they're not a complaint-handling body; they're a corruption-investigating body. It doesn't surprise me that they're mostly complaints to me, nor does it surprise me that, in most cases, the decision they've made is a perfectly appropriate decision and perfectly reasonable. Of course people are unhappy. I try to explain my reasons but, at the end of the day, the mere fact of not investigating is not, in and of itself, corrupt conduct.

Mr TRI VO: You say you haven't found findings of misconduct or maladministration, so it seems like the system is working quite well. Are there any ways we can improve the system?

GAIL FURNESS: I'm sure there are many ways you can improve the system. I made recommendations in two reports as to how to improve the system, and those recommendations have been taken up. I've also recommended that the legislation be amended and, in the main, that has been taken up. So there has been, at least in my time, quite a lot of changes, some of which I've initiated—not all. But there have been a lot of changes and, no doubt, there will continue to be better ways to do things.

Mr TRI VO: In the two reports, the recommendations you're talking about were the recommendations on the welfare of witnesses and the time taken to finish reports. Is that right?

GAIL FURNESS: That's right.

Mr MARK HODGES: Other than all of the recommendations that you've made in your previous reports, are you satisfied that your powers are sufficient and, if not, are there any further recommendations, other than what you've already disclosed, that you would like to make by way of additional powers or additional resources?

GAIL FURNESS: I have perfectly adequate powers, thank you. I have the powers of a royal commissioner. And I don't want merits review, and the previous Committee didn't want to give me merits review. So we're all the same—no merits review.

Mr MARK HODGES: I think a merits review would be very difficult for you as a single person.

GAIL FURNESS: Would it what.

The Hon. TANIA MIHAILUK: Ms Furness, of the 51 complaints, are you being requested, in any of the correspondence by any of the complainants, to meet with you directly in your capacity as an Inspector? If you are, how do you manage that? I'm not sure whether you meet with any complainants directly or whether there is a process around how you deal with those sorts of requests, if you are requested.

GAIL FURNESS: None come to mind, which is not to say that somebody has requested it and I have not remembered it. I would weigh it up, really, as to whether it was in the interests of the complainant and necessary for me to fulfil my role to meet with them. Certainly, I don't have a blanket position as to no or yes. It may not have happened at all but, if it does, it hasn't happened very often. Telephone calls are a different matter but, generally, my staff deal with telephone calls, and most people are very happy with that. It has not been an issue that has been raised with me—and lack of access to me, if you like—other than in writing.

The Hon. TANIA MIHAILUK: I am not suggesting that people meet with you. I'm just asking whether those requests are asked of you and whether you had a process in place, for example, should you meet with the complainant—whether there would be a witness, for example, present in the room or whether there is any kind of process available in your Office, should you meet with the complainant.

GAIL FURNESS: That was the question I was answering in terms of meeting with the complainant.

The Hon. TANIA MIHAILUK: I know.

GAIL FURNESS: As to the process, I would never meet with somebody alone. There would always be somebody present. I wouldn't necessarily describe them as a witness, but there would always be somebody present.

The Hon. TANIA MIHAILUK: Do you have two staff? Is that right, Ms Furness? Is that part-time staff available?

GAIL FURNESS: No, I have two half staff. I have half of Tracey and the other half belongs to the Inspector of the LECC. He let me bring all of her here today. I have half an administration person, and the other half belongs to the Inspector of the LECC. So I have two halves. And I am part-time, so I have three halves.

The Hon. TANIA MIHAILUK: I appreciate that. I only ask because there are very similar requests made of Committee members—for us, from time to time, when complainants want to meet with members of the Committee. I was just wanting to know whether you had similar requests. I suspect that perhaps some of the correspondence that you are receiving, we may also be receiving as a Committee. I'm not sure if you have ever shared that type of correspondence with your office, but I suspect that there is some overlap in the type of correspondence that we receive and that perhaps you receive. I was just keen to know whether there were any requests to meet with you and how you would manage a request like that. That's all.

The CHAIR: Are there any other comments you would like to make to us?

GAIL FURNESS: I think I have probably talked for long enough, but I'm certainly happy to answer any further questions that you might have in writing.

Mr TRI VO: I have one more question, sorry. It is relevant to the previous question. When you try to find facts or make inquiries, especially to the complainants, is it easier through the phone or through correspondence, or does it depend on the situation?

GAIL FURNESS: It depends largely on the complainant. I think it's better to do it in writing because they can read it again and again and show it to other people if they don't understand it, whereas if it is done orally, one, there is no record and, two, it gets mixed up in the retelling.

The CHAIR: Thank you very much for appearing before us today. We are very grateful. On behalf of the Committee, please accept our thanks.

GAIL FURNESS: Thank you for having me. I look forward to next year.

The CHAIR: 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?

GAIL FURNESS: Certainly, as well as to the question on notice.

The CHAIR: Excellent. That concludes our public hearing for today. I thank Ms Furness, who appeared before the Committee. I also thank Committee members, Committee staff, the broadcast team and Hansard for their assistance in the conduct of today's meeting.

(The witness withdrew.)

The Committee adjourned at 15:15.